S.D. Ashok Kumar Vs. the State

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Court : Chennai

Decided On : Dec-19-1989

Reported in : 1991CriLJ1963

Judge : T.S. Arunachalam, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 156, 157, 161, 397, 482 and 561(A); Indian Penal Code (IPC), 1860 - Sections 420; Constitution of India - Article 226

Appeal No. : Crl. M.P. Nos. 8989, 8990 and 15798 of 1989

Appellant : S.D. Ashok Kumar

Respondent : The State

Advocate for Def. : R. Shanmughasundaram, Addl. P.P.

Advocate for Pet/Ap. : K.A. Panchapakesan, Adv. for S. Sadasharan and S. Nagarajan

Judgement :
ORDER

1. Crl.M.P. No. 8989 of 1989 is a petition under section 482, Cr.P.C., filed by the accused in Crime No. 284 of 1989, on the file of the Sub-Inspector of Police, Madurantakam, within the jurisdiction of the Judicial Magistrate, Madurantakam.

The petitioner seeks to invoke the inherent powers of this court, to call for the records in Crime No. 284 of 1989 on the file of the respondent-Police Station and quash the first information report and further proceedings in pursuance of the said first information report, as an abuse of process of court.

2. Crl.M.P. No. 8990 of 1989 is a petition for stay filed by the accused, pending disposal of Crl.M.P. No. 8989 of 1989.

3. Bhaskaran, J. admitted Crl.M.P. No. 8989 of 1989 on 8-8-1989 and on the same day directed interim stay of further proceedings in Crime No. 284 of 1989 on the file of the respondent, for two weeks. The stay ordered was continued for three more weeks on 22-8-1989 and thereafter it does not appear, that the stay has been extended.

4. Crl.M.P. No. 15798 of 1989 has been filed by the State represented by the learned Public Prosecutor under section 482, Cr.P.C. to vacate the order of stay made in Crl.M.P. No. 8989 of 1989 and permit further investigation in Crime No. 284 of 1989.

5. To arrive at a decision in all these petitions, it may be necessary to deal with certain salient facts. The accused, Ashok Kumar, is a resident of Madurantakam and appears to be a dealer in precious stones. The first informant V. Venkatachalam is a resident of Dharmapuri situated approximately 200 miles away from Madurantakam. It is not disputed that the accused Ashok Kumar and the first informant, Venkatachalam, had business transactions for some length of time. The first information report will also disclose that there had been money dealings as well between the first informant and the accused.

6. The first information report dated 13-sed to the Deputy Inspector General of Police, Chengai Anna District, Teynampet, Madras, appears to have been forwarded to the Madurantakam Police Station on 3-7-1989. On the same date the Sub-Inspector of Police, Madurantakam (Law and Order) had obtained an opinion from the Assistant Public Prosecutor II in charge of Madurantakam, that an offence punishable under section 420, I.P.C. was disclosed, on the averments found in the first information. On 4-7-1989 the complaint of Venkatachalam, the first informant,

was registered at 1 p.m., as Crime No. 284 of 1989 and investigation taken up.

7. The date and time of occurrence have been stated to be approximately 3 years prior to 4-7-1989, the date of registration of the crime. The first information report reads as follows, in first person :

'I am dealing in precious stones which are used in jewellery, by buying and selling them at different places. In the course of such trade, I had business contacts with Madurantakam Ashok Kumar (accused) and in pursuance thereof, we had money transactions. In the course of such trade relationship, Ashok Kumar told me three years ago, that he would take my Fiat Car M.E.D. 5814, a 1979 Model vehicle, for Rs. 53,000/- and that he himself would discharge Rs. 22,000/- due on a hire purchase for the car, entered into at Bangalore, and for the balance sale consideration, he would give me precious stones. Ashok Kumar stated so before two witnesses, who are respectively T. N. Arjuna Pillai, resident of 39/1, O.M. Street, Saidapet, Vellore and Kandaswamy, Karukuppettai Village, Kancheepuram, Ashok Kumar told before them that he would take the car. He took the car three years ago in 1986 from Dharmapuri to Madurantakam. Meanwhile, Ashok Kumar, alleging that in the business dealing between me and him, I had cheated to the tune of Rs. 10,000, given a false complaint with the influence of his elder brother Ukkam Chand, the ex-Chairman of the Madras Water and Sewerage Board and the case arising out of the said complaint is pending trial at Madurantakam. Now Ashok Kumar is using my Fiat Car M.E.D. 5814 with a fake registration certificate book. The original R.C. Book has been deposited by me with the Financier Sohan Finance, 170, VIth Cross, Santhi Nagar, Bangalore, Telephones Nos. 70825 and 28751. I did not take any action against Ashok Kumar till now, since his elder brother had influence in the earlier Government. Hoping that I will get justice now, I am preferring this complaint. I request that my Fiat Car M.E.D. 5814 may be seized from Ashok Kumar and restored to my possession.'

8. It is on this first information report, that very prompt investigation was initiated on 4-7-1989 and the accused was arrested on 5-7-1989 at 8-20 p.m. and produced before the Chief Judicial Magistrate, Chengalpattu and remanded to Judicial custody. The house of the petitioner in Crl.M.P. No. 8989 of 1989 was

searched on 8-7-1989; but nothing incriminating was seized. However, the respondent noticed a light green Fiat Car bearing registration No. M.S.W. 8458 in the garage of the petitioner's house, bearing chassis No. P.N. 41471, Engine head No. 1362 GI 1172 and Engine No. 15549. The two back wheels of the Fiat Car were not to be seen. This car was not seized by the respondent; but the particulars from the R.C. Book were noted.

9. On 12-7-1989 the court of Session, Chengalpattu directed the enlargement of the petitioner on bail on certain conditions, which were relaxed by this court on 17-7-1989.

10. Mr. K. A. Panchapakesan, learned counsel appearing for the petitioner, while referring to the averments in the first information report, relating to the prosecution launched against the first informant by the petitioner, brought to my notice that the said complaint was registered on 2-9-1985 and Venkatachalam was arrested and released soon thereafter and the case is now pending trial, before the Judicial Magistrate, Madurantakam. The cheating referred to in that complaint was on 15-8-1985. After meticulously taking me through the contents of the impugned first information report, he contended that it does not disclose any cognizable offence, which alone would, in law, permit the police to proceed with the investigation of the case. If no cognizable offence is disclosed, it is his submission, that the police would not have any authority to take up investigation and on that sole ground the impugned first information report will have to be quashed. He further contended that the contents of the first information report, disclose that the car was taken three years ago on or about 1986 from Dharmapuri and, therefore, the Madurantakam Police will have no jurisdiction to investigate, on the impugned first information report, under section 156, Cr.P.C. which empowers any officer in charge of the police station to investigate any cognizable case, without the order of the Magistrate having jurisdiction over the local area within the limits of such station. It is, therefore, his argument that the investigation by Madurantakam Police is without jurisdiction. The complaint, if it discloses a cognizable offence, must have been forwarded by Madurantakam Police to the concerned jurisdiction Police Station, for investigation and report. He also contended that the petitioner, Ashok Kumar, had filed a private complaint against the District Superintendent of

Police, Chengalpattu, which has been taken on file as C.C. No. 75 of 1989 by the Chief Judicial Magistrate, Chengalpattu, and was posted for enquiry on 6-7-1989. To prevent his appearance before the Chief Judicial Magistrate, in the guise of an investigation on a three year belated complaint, which did not disclose any offence with a view to harass the petitioner, these proceedings have been initiated which, on the face of it, portray an abuse of process of court. In passing, he would submit that the complaint of the petitioner against Venkatachalam preferred on 2-9-1955 and referred to in the impugned FIR would show that even from 1-9-1984, the relationship between the petitioner and Venkatachalam had not been smooth, and that on an earlier complaint lodged in or about February, 1985 by the petitioner against Venkatachalam, the latter promised to pay the money he owed to the petitioner; in the precious stones trade, after adjustment of the monies seized from him by the police, on such complaint. Therefore, according to the counsel the alleged car transaction is a myth.

11. Per contra, Thiru, R. Shanmughasundaram, the learned Additional Public Prosecutor vehemently contended, that the investigation could not be proceeded with in view of the stay granted by this Court. The investigation done so far revealed vital clues to attract the offence under Section 420, IPC. The investigation is at a standstill now and if investigation was not to be permitted, it would lead to accumulation of cases without proper disposal. According to him, it is not the stage when this Court could stifle the investigation, when, according to him, the averments in the complaint prima facie disclose an offence under Section 420, IPC. He would further contend that at the time of search of the residence of the petitioner, a Fiat Car bearing registration No. M.S.W. 8458 was found in the Car shed. The entry in the R.C. Book relating to that car indicated that one Ganesan was the owner of the Car. The registration certificate showed that it belonged to a goods vehicle and not to a Fiat Car. Therefore, there was reasonable suspicion that the Fiat Car seen in the Car shed of the petitioner may be connected with the Fiat Car M.E.D. 5814, which is the subject matter of the crime. He would also contend that quashing of a first information report will be an extraordinary remedy and the petitioner, if aggrieved, could always invoke the inherent powers of this court after filing of the final report. He would also urge that the aspect of mala fides should not be gone into at this stage. The prosecution has

not denied the pendency of a case against Venkatachalam and the Deputy Superintendent of Police, Chengalpattu, initiated at the instance of the accused, Ashok Kumar.

12. In view of nature of contentions urged by either counsel, I directed the production of the investigation record, to find out the material collected during investigation, till it was stayed by this court, on 8-8-1989. Though after the middle of September, there has been no stay of investigation, investigation had not been carried out and the prosecution had come out with a petition to vacate the stay. This petition to vacate the stay was filed early in Nov. 1989 and ultimately the main petition itself is being disposed of now.

13. Normally, at this stage, where a complaint has been made and investigation has just been initiated, it may not be expedient to go into the question of mala fides, put forth by the learned counsel for the petitioner. However, certain basic facts, as they appear in there cords, will have to be stated. The effect of those material, without adding or subtracting or appreciating the truth or otherwise of such material, if it is possible to conclude that further continuation of investigation will be an abuse of process of law, such investigation could be quashed and there is no dearth of authority for such a proposition.

14. The first information report dated 13-6-1989, stated to have been sent by post from Dharmapuri to the Deputy Inspector General of Police, Chengai, Anna District, appears to bear an initial of the D.S.P., D.I.G., on the very same date. This has been forwarded on 28-6-1989 to the Deputy Superintendent of Police, Chengalpattu, who, in turn, had directed investigation and report by the Inspector of Police 'H'. On 4-7-1989 the Inspector of Police 'H' had directed the S.I. H-l Crime to investigate and report. It is only thereafter the FIR was registered as a crime. In between, on 3-7-1989 the opinion of the Assistant Public Prosecutor had been obtained by the Sub-Inspector of Police, (Law and Order). The record produced shows that on 8-7-1989, while the Sub-Inspector of Police, Had searched the house of the petitioner, he had noted down the details of the Fiat Car bearing registration No. M.S.W. 8458 found in the garage of the petitioner - The contents of the R.C. Book relating to M.S.W. 8458 form part of the case diary. The

record clearly indicates that M.S.W. 8458, which was, originally a goods vehicle, was later altered into a motor car. Initially it was a closed van manufactured in 1961 run on diesel and it was later converted on 3-10-1986 into a motor car with a Fiat body with the necessary permission and such permission which had been sanctioned forms part of the entries, in the registration certificate. The vehicle, which was originally in the name of one Ganesan, has been transferred to the name of the petitioner on 26-3-1986. It is also seen from the case diary that after the registration of the complaint at 1 p.m. on 4-7-1989, the Sub-Inspector of Police went over to the residence of the petitioner and peeped into the car shed, which was locked, and found that there was a Fiat car inside, though clearly the details of the car were not visible. Therefore, he deemed it necessary to enquire the first informant. He proceeds to Dharmapuri and examined Venkatachalam and recorded his statement on 4-7-1989. On the same day he went over to Vellore and examined witness Arjuna Pillai and later examined witness Kandaswamy at Conjeevaram. He halted at Conjeevanam on the night of 4th and on the morning of 5th reached Madurantakam and examined witnesses Shanmugham. Thamin, Ansari and Kumar. It was only that evening at 6 p.m., the accused was arrested. Dharmapuri is approximately, at a distance of over 200 miles, from Madras and Vellore is about 90 miles away from Madras Conjeevaram is at a distance of 45 miles from Madras, while Madurantakam is exactly 50 miles from Madras. After the registration of the complaint at 1 p.m. at Madurantakam on 4-7-1989, it prima facie appears impossible to go over to Dharmapuri, examine the complainant, reach Vellore on the same night for examination of witnesses and still find it possible to reach Conjeevanam the very night itself for examination of a witness at Conjeevaram, before returning to Madurantakam on the next morning. This appears to be stranger than fiction. It may be, that at this stage the Court cannot appreciate the scope and nature of investigation carried out by the agency entrusted with such task, but when an impracticable factor stares at the face, the Court cannot hide its head, as an ostrich and prefer to be in oblivion to basic circumstances. It is further seen from the material collected during investigation, that even in April, 1985, Venkatachalam and others had moved this court and obtained anticipatory bail on an alleged complaint by Ashok Kumar, the accused in this crime. This fact is clear from the petition filed by Venkatachalam and others

under section 482, Cr.P.C, in Cri.M.P. No. 2974 of 1985 and the order of Singaravelu, J., directing the release of the Venkatachalam and others on bail, in the event of arrest, on 24-4-1985, made in the said petition. It is also noticed from the records produced by the respondent that on the reverse of the sheet, where the statement of Kumar under section 161, Cr.P.C. has been recorded in carbon on 5-7-1989, (there are two carbon copies of the statement of the witness apart from the original written in ink), an endorsement had been made (on the second carbon copy) as follows :-

'Charge sheet stage. Draft Charge to be prepared. Since High Court stayed I. case ..... suitable order awaiting.'

This endorsement also shows that the investigation is almost over and only the draft charge sheet had to be prepared, before forwarding a final report to court.

15. Since I found that details, as recorded in the R.C. Book of the car M.S.W. 8458, had been noted by the respondent, I called for the production of the registration certificate of the car M.S.W. 8458, by the petitioner through his counsel, and the same was produced in court. The learned Additional Public Prosecutor was permitted to peruse the registration certificate. I have also carefully gone into the contents of the registration certificate, which are as follows :-

'The registration certificate shows that the original owner of M.S.W. 8458, a goods vehicle was R. C. Ganesan of Madras. It was initially a closed standard ten van manufactured in 1961. The registration certificate was issued on 9-3-1962. Subsequently it was transferred with effect from 10-7-1969 to Major S. A. Hakim, Madras, and later with effect from 30-10-1972 in the name of W. S. Riaz Ahamed, Madras-21. With effect from 25-11-1985 the transferee was S. A. Ahmed of Madras. The petitioner became the owner of this vehicle from 26-3-1986. With effect from 19-5-1987 alterations were made in the vehicle by which the goods vehicle was changed into a motor car and the fuel used was changed to petrol from diesel. There was a change in the engine number, but the chassis number remained the same. There was a slight difference in the unladen weight, after alteration.'

16. The power to quash a criminal proceedings, where the first information report ex facie makes out no offence, has been considered by the Supreme Court in a series of cases starting from Kapur's case : 1960 CriLJ1239 . The latest decision of the Supreme Court is reported in 1989 SCC (Crl.) 713 : 1989 CLJ 2301 decided by a Bench of three judges in State of U.P. v. R. K. Srivastava. The Supreme Court has observed that it was now a well settled principle of law, that if the allegations made in the FIR taken at their face value and accepted in their entirety do not constitute an offence, the criminal proceedings instituted on the basis of such FIR should be quashed. In R. P. Kapur v. State of Punjab : 1960 CriLJ1239 the Supreme Court held that the inherent jurisdiction of the High Court can be exercised to quash proceedings, in a proper case, either to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code and the High Court would be reluctant to interfere with such proceedings at an interlocutory stage. It was not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. Some of the categories of cases where inherent jurisdiction to quash proceedings can and should be exercised are (at page 1242 of 1960 Cri. LJ) : (1) Where the allegations in the first information report or the complaint even if they are taken at their face value and accepted in their entirety, did not constitute the offence alleged, in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not;

(2) Where the allegations made against the accused persons do constitute an offence alleged, but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. A clear distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence, which on its appreciation, may or may not support the accusation in question will have to be borne in mind; and

(3) Where there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged.

17. It is now fairly settled, that the broad proposition, that the Court can in no case interfere with the investigation of the case, does not appear to be justified. At the same time it admits of no doubt as observed in Nazir Ahmed's case that the power of investigation so far as it vests exclusively in the police or investigating agency is not to be interfered with, by the Courts and the investigating agency should be left to carry on investigation without any interference. This only postulates, that so long as the investigation is in accordance with law, it cannot be interfered with. That does not mean that immunity is given to investigation, which is not in consonance with the relevant provisions of law, governing the particular case. In a nutshell, there cannot be a blanket bar against the quashing of a proceeding at the investigative stage. If the High Court is convinced that the first information report does not disclose cognizable offence and that the continuation of an investigation, based on no foundation, would amount to an abuse of power of police, necessitating interference to secure the ends of justice the inherent power will have to be exercised. This statutory power under Section 482, Cr.P.C. has to be exercised sparingly with circumspection, in the rarest of rare cases, to do real and substantive justice for the administration of which alone it exists or to prevent the abuse of the process of the court.

18. Even in Emperor v. Nazir Ahmad , it was observed as follows :-

'No doubt if no cognizable offence is disclosed, and still more if no offence of any kind is disclosed, the police would have no authority to undertake an investigation and for this reason Newsam J., may well have decided rightly in M.M.S.T. Chidambaram v. Shanmugam Pillai AIR 1938 Mad 129 : 1939 CLJ 261. But that is not this case.'

The observation of Newsam, J., can also be usefully extracted, though it related to a private complaint.

'Since prevention is always better than cure, the obligation to prevent specious and spiteful criminal prosecutions for actions which, though strictly dishonourable, yet do not amount to crimes, is one that must never be shirked.'

19. Before going into the arena of the law laid down by the Supreme Court and other High Courts on the pre-requisites, for quashing a first information report, a scan of S. 154, Cr.P.C. indicates that on every information, relating to the commission of a cognizable offence, the power of the police to investigate sets in. In a non-cognizable case a police officer is barred from investigating without an order from the Magistrate. S. 156, Cr.P.C. furnishes the power to the Police Officer to investigate a cognizable case, without an order of the Magistrate, but it is confined to the local area within the limits of such station and within the jurisdiction of the Magistrate of the local area. S. 157, Cr.P.C. makes it abundantly clear that if, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered to investigate under section 156, Cr.P.C. he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers, to proceed, to the spot, to investigate the facts and circumstances of the case .... Therefore, the statutory sanction, which can form the foundation for a lawful investigation by the Police will be a reasonable suspicion of the commission of a cognizable offence. If the information that the police officer does not disclose any cognizable offence, the statutory mandate to commence investigation would be absence and lacking. Even if the first information report, which cannot be treated as an encyclopedia, contains only certain facts, which could genuinely lead to a reasonable belief that a cognizable offence had been committed, the High Court must be slow in exercising its inherent powers to quash the first information report and stifle the investigation. In other words, even if the first information report does not come within the ambit straightway of a cognizable offence, if the material collected subsequently disclose, the commission of a cognizable offence, the police cannot be halted in their tracks. If the first information report does not disclose a cognizable offence, the Court shall exercise its jurisdiction, once it is satisfied that even when challenged the investigating agency, on the basis of all the material collected, was unable to show any reasonable suspicion of the commission of a cognizable offence, and a patent harassment of the accused was obvious, amounting to clear abuse of power by the police. The salutary inherent poser will then have to be necessarily exercised, as otherwise the contemplation

to secure the ends of justice in S. 482, Cr.P.C. would become a dead letter.

a 320. In S. N. Sharma v. Bipen Kumar Tiwari : 1970 CriLJ764 , the Supreme Court observed (at page 767; 1970 Cri LJ) :

'It appears to us that, though the Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed in appropriate cases, an aggrieved person can always seek a remedy by invoking the power of the High Court under Art. 226 of the Constitution of India under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer mala fide, the High Court can always issue a Writ of Mandamus restraining the police officer from misusing his legal powers.'

21. The availability of power exercisable under section 482, Cr.P.C. in appropriate cases equally, as it could be done by the High Court acting under Art. 226 of the Constitution of India has been confirmed by the Supreme Court in : AIR 1975 SC495 (Delhi Development Authority v. Smt. Lila D. Bhagat). In that case the Supreme Court laid down the law by stating that in an appropriate case it may be, rather, is, permissible to protect a person from illegal and vexatious prosecution by grant of an appropriate writ or, in exercise of the inherent or revisional powers of the High Court. It is, therefore, certain that there is express authority that a proceeding initiated under the provisions of the Criminal Procedure Code, can be quashed by the High Court either under the extraordinary powers under Art. 226 of the Constitution of India or under the inherent powers under Section 482, Cr.P.C. or under the revisional power under section 397, Cr.P.C.

22. As observed by the Orissa High Court in Suresh Chandra Swain v. State of Orissa 1988 CLJ 1175 there can be no logic to say that powers which are exercisable in respect of proceedings, cannot be applied in respect of investigations, particularly when S. 482, Cr.P.C. itself does not clamp any limitations therein as suggested, though however, it may be true that under section 397 obviously an investigation cannot probably be quashed since that section empowers the High Court or the Sessions Judge, as the case may be, to call for and examine the records of any proceeding before any inferior criminal court only.

23. In Sejappan Madi Mallapon v. State of Mysore AIR 1966 Mys 152 : 1966 CLJ 677 a Division Bench of the Mysore High Court, while considering the amplitude of the power of the High Court under Section 561(A), Cr.P.C. (corresponding to S. 482, Cr.P.C.) held that the section was wide enough to enable it, in a proper case to stop the investigation which should never have commenced or to make which there was no power under the Criminal Procedure Code. It would, however be neither necessary nor possible to make an exhaustive examination of all those cases in which, the High Court could under the Section, exercise its inherent power with respect to an investigation commenced by the police. That power is always exercisable, where there is a misuse of power by the police, or there is the commencement of an investigation without the requisite authority and the High Court considered it necessary to exercise its inherent power, to secure the ends of justice. If, as noticed by the Supreme Court in S. N. Sharma's case an aggrieved person has a remedy by invoking Art. 226 of the Constitution, equally the enunciation of law by the Supreme Court in the State of Karnataka v. L. Muniswami : 1977 CriLJ1125 , with regard to the power under Section 482, Cr.P.C. extracted hereunder cannot be overlooked (at page 1128; 1977 Cri. LJ) :-

'..... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted degenerate into a weapon of harassment or prosecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material in which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.'

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And again, ... Considerations justifying the exercise of inherent powers for securing the ends of justice naturally vary from case to case and a jurisdiction as wholesome as the one conferred by S. 482 ought not to be encashed within the strait-jacket of a rigid formula.'

24. A Full Bench of the Punjab and Haryana High Court in Vinod Kumar v. State of Punjab , after extensively quoting the case law, held that, however, there was no reason why the identical relief which could be accorded to an aggrieved person under Art. 226 of the Constitution cannot be so accorded in the exercise of its inherent powers under Section 482, Cr.P.C., especially when the language of this provision was of a wider amplitude and has been authoritatively so held by the Supreme Court in the State of Karnataka v. L. Munuswamy : 1977 CriLJ1125 .

25. In the case of State of West Bengal v. Swapan Kumar Guha : 1982 CriLJ819 , after referring to the earlier pronouncements, Chandrachud, C.J. observed as follows (at page 828; 1982 Cri LJ) :

'The condition precedent to the commencement of investigation under section 157 of the Code, is that the FIR must disclose, prima facie, that a cognizable offence has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation under section 157 of the Code. Their right of inquiry is conditional by the existence of reason to suspect the commission of cognizable offence and they cannot, reasonably, have reason so to suspect unless the FIR, prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on and the rule in Khwaja Nazir Ahmed will apply. The Court has then no power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. On the other hand, if the FIR does not disclose the commission of a cognizable offences would be justified in quashing the investigation on the basis of the information as laid or received.'

In the same case Amarendra Nath Sen, J. had the following observations to make :-

'In my opinion, the legal position is well settled. The legal position appears to be that if an offence is disclosed, the Court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed; if, however, the materials do not disclose an offence, no investigation should normally be permitted. The observations of the Judicial Committee and the observations of this court in the various decisions which I have earlier quoted, make this position abundantly clear. The propositions enunciated by the Judicial Committee and this Court in the various decisions which I have earlier noted are based on sound principles of justice. Once an offence is disclosed an investigation into the offence must necessarily follow in the interests of justice. If, however, no offence is disclosed, an investigation cannot be permitted, as any investigation, in the absence of any offence being disclosed, will result in unnecessary harassment to a party, whose liberty and property may be put to jeopardy for nothing. The liberty and property of any individual are sacred and sacrosanct and the Court zealously guards them and protects them.'

26. In the same case the view of the Supreme Court was, that the disclosure of an offence or otherwise in the first information report, would depend on the facts and circumstances of each particular case. In the course of such consideration the Court has mainly to take into consideration the complaint or the FIR and may in appropriate cases take into consideration the relevant facts and circumstances of the case. On a consideration of all the relevant materials, the court has to come to the conclusion whether the offence is disclosed or not. If, on a consideration of the relevant material, the Court is satisfied that no offence is disclosed, it will be the duty of the Court to interfere with any investigation and to stop the same, to prevent any kind of uncalled for and unnecessary harassment to an individual. This power under S. 482, Cr.P.C. cannot be exercised in a routine case, where information of an offence or offences had been lodged and the investigation had commenced, search and seizure followed and the suspects arrested. However, in exceptional cases where noninterference would result to miscarriage of justice, the Court and the judicial process, should interfere at the stage of investigation. It will be very relevant at this stage to quote the observations of the Supreme Court in Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre : 1988 CriLJ853 :

'The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilised for any oblique purposes and where in the opinion of the Court chances of penultimate conviction are bleak, and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the Special facts of a case also quash the proceeding even though it may be at a preliminary stage.'

27. The authoritative enunciation of law having been narrated let us now turn to the facts of the case at hand. The contents of the first information report extracted earlier in the order, show that the first informant and the accused (Petitioner) had business dealings in finance and precious stones and in the course of such business about 3 years prior to 13-6-1989, the petitioner offered to take the Fiat Car MED 5814, belonging to the first informant, for a value of Rs. 53,000/- and towards the sale consideration, he agreed to discharge the hire purchase then in favour of a Financier at Bangalore and for the remaining, offered precious stones in the trade of which, both of them had incessant contacts in the past. The complaint does not speak about any deception practised by the petitioner. Nothing is stated about the fraudulent or dishonest inducement practiced, to deliver any property or about the intentional inducement to do or omit to do anything which the first informant otherwise would not have done. I am unable to find the averments in the first information report, disclosing an offence under section 420, IPC for which offence the crime has been registered. Further on the face of the complaint, it is clear that the car was taken away by the petitioner, from the first informant, at Dharmapuri and driven to Madurantakam. Prima facie, this averment would indicate, that the commission of the offence, if any, at all was at Dharmapuri and not within the local jurisdiction of the Madurantakam police. However, if the allegations in the FIR are taken at their face value, it only discloses a transaction in the course of trade dealings, between both the parties which may, if true, give rise to a civil liability and cannot be christened as a Crime.

28. At a late stage the learned Additional Public Prosecutor contended that the statements recorded under section 161, Cr.P.C. will show that the initial talk was at Madurantakam between the first informant and the petitioner, and the car had been taken away on 10-4-1985 and not in 1986 as alleged in the complaint. This argument was countered, by contending that in fact the car had been taken away by the petitioner on 10-4-1985, the inaction of the first informant after 24-4-1985, when he was directed to be enlarged on bail, in the event of arrest was inexplicable. The complaint would then be belated by 4 years and 2 months.

29. The very pattern, in which the complaint received by post, had been taken emergent notice, of leading to an alleged impossible visit to Dharmapuri, Vellore and Conjeevaram on the same night and the subsequent arrest of the petitioner, a day prior to the hearing of his private complaint against the Deputy Superintendent of Police-in-charge of the District, within whose jurisdiction Madurantakam Police Station is situated, indisputably indicates that on a complaint, which does not disclose any cognizable offence, action had been taken, with an oblique motive. The manner in which similar complaints regarding cognizable offences of this nature are dealt with by the police, cannot escape judicial notice, and on facts if everything prior to the arrest of the petitioner had been so stage managed, the process of justice cannot but raise its eyebrows. That is not all. There cannot be even a reasonable suspicion of the commission of a cognizable offence, because the first information report itself discloses, that at the instance of the petitioner, the first informant was prosecuted and the proceedings were pending in Court.

30. The one other averment in the complaint that the petitioner was using the Fiat Car MED 5814 belonging to the first informant, with a fake R.C. book did entail anxious consideration, about the possibility of not halting investigation at this stage. I specifically questioned the learned Additional Public Prosecutor on this aspect and attempted to find out if the R.C. book concerning the other Fiat Car MSW 8458 had any bearing on this averment. After being instructed by the investigating officer, the learned Additional Public Prosecutor submitted that MSW 8458 was a goods vehicle and not a car and that is what had been alleged in the affidavit filed by the Sub-Inspector of Police, to vacate the order of stay of investigation made by this Court at the time of the admission of this petition. It will

be very dangerous to arrive at a decision on the basis of the affidavit of the petitioner or the counter affidavit of the investigating officer, to consider about the scope of the exercise of the inherent power. Since I had noticed in the investigation record, entries regarding MSW 8458, which showed that the vehicle, which was a van originally, had been converted into a car. I directed the learned counsel for the petitioner to produce the registration certificate of MSW 8458. A perusal of the contents of the registration certificate shows that the petitioner is the owner of this car with effect from 26-3-1986. The registration certificate also shows that alterations had been made to this van even in 1987 and all that form part of the entries in the said book. It is not as though the investigating officer was not aware of these details, for I find an entry in the record produced about the conversion of this goods vehicle into a car. Thus the two cars have no connecting link.

31. One other aspect, which the learned Additional Public Prosecutor submitted on the basis of the affidavit of the investigating officer is that the Financier did not produce the Registration Certificate of the Car MED 5814, in spite of several notices and even when the investigating Officer met the Financier in person on several occasions with a request to produce the R.C. Book. The notice to the Financier had been given on 31-7-1989, 9 days prior to the order of stay made by this Court and it passes one's comprehension, if the investigating agency was so helpless, in not being able to seize the registration book from the Financier if, in fact, there was any seriousness about this matter, after the arrest of the petitioner. There is not even an averment in the FIR that the Financier at Bangalore had complained of non-payment of hire charges, or was insisting the first informant to pay the dues. In the event of non-payment of hire charges, it will be rather add, that the Financier did not take efforts to seize the car, which was within his power under the hire purchase agreement. All these factors are stated, for if we look at from any angle, there cannot be any reasonable suspicion, in the mind of the police officer, about the commission of a cognizable offences. The case records produced show that the investigation was almost complete and a draft charge sheet was to be prepared and meanwhile, the High Court had stayed the proceedings. If that be so, it is very clear that there is no material whatsoever even to base a foundation, that the Car MED 5814 was being used by the petitioner with

a fake R.C. book. The investigating officer, who must have noticed from the records produced the order of bail obtained by the first informant from this court, on a complaint made by the petitioner even in a April, 1985, should have at least then indicated that there was no reason whatsoever to continue the investigation further, but an unfortunate stand has been taken, that vital clues were revealed in the investigation done so far, which is not at all reflected in the material produced before court.

32. The learned Additional Public Prosecutor submitted that the jurisdiction of the police officer to investigate could not be gone into at this stage, since the statement recorded under section 161, Cr.P.C. at Dharmapuri, from the first informant, disclosed that the initial talk by the petitioner, of taking the first informant's car, took place at Madurantakam, though the car was taken from the first informant's possession at Dharmapuri.

33. The Allahabad High Court in Bholanath v. State (1956 ALJ 700) held that under section 156, Cr.P.C. a police officer in charge of a police station can investigate only those cases which relate to the local area. Under this section the police officer is not empowered to investigate cases which do not relate to his circle. The detailed facts, as stated earlier, would inevitably show that there was an anxiety on the part of the Madurantakam police to clutch at jurisdiction, which they did not possess.

34. The observation of the Supreme Court in the State of West Bengal v. Swapan Kumar Guha : 1982 CriLJ819 certainly permits this Court in appropriate cases to take into consideration the relevant facts and circumstances, after mainly taking into consideration the complaint or the FIR. The Patna High Court in Subhash Agarwal v. State of Bihar 1989 C.LJ 1752 has observed that the materials subsequently collected in the course of investigation, could also be taken note of, apart from the contents of the FIR to arrive at a conclusion whether the continuation of the investigation would amount to an abuse of power by the police, necessitating interference to secure the ends of justice. The Full Bench of Punjab and Haryana High Court in Vinod Kumar v. State took the view that the requisite pre-conditions for the exercise of the power would stand satisfied under the

following circumstances without being exhaustive those were briefly summaried as under (at page 382 P. & H.; AIR 1982 :-

(i) when the first information report, even if accepted as true, discloses no reasonable suspicion of the commission of a cognizable offence :

(ii) when the materials subsequently collected in the course of an investigation further disclose no such cognizable offence at all;

(iii) When the continuation of such investigation would amount to an abuse of power by the police thus necessitating interference in the ends of justice; and

(iv) that even if the first information report or its subsequent investigation purports to raise a suspicion of a cognizable offence, the High Court can still quash if it is convinced that the power of investigation has been exercised mala fide.'

35. On a careful, deep and anxious consideration, after excluding the factual details, which cannot be gone into at this stage, the inescapable conclusions are :-

(a) The first information report does not disclose a cognizable offence;

(b) Even the material collected during investigation, which from the endorcement made, indicate that the investigation has reached the stage of drafting the charge sheet, does not disclose a reasonable suspicion of the commission of a cognizable offence.

(c) The very manner in which an unusually quick and spontaneous investigation had been commenced in the background of several infirmities pointed out, without an possible or attempted explanation, portrays abuse of police power; and

(iv) That even if the first information report purported to raise a suspicion of the commission of a cognizable offence of the user of a fake registration book, the subsequent investigation has negatived it and the power to quash has to be necessarily exercised, for the investigation commenced and pursued lacks bona fides.

This is one of those rarest of rare cases, where the liberty of an individual, so sacred and sacrosant has to be protected zealously by the court as observed by Amarendra Nath Sen, J., in the State of West Bengal v. Swapan Kumar Guha : 1982 CriLJ819 .

36. In view of the discussion above, I am constrained to quash all the proceedings taken in pursuance of the first information report registered in Crime No. 284 of 1989, since there is no legal sanction either to initiate investigation or to further continue it. Crl.M.P. No. 8989/89 is allowed. No order is necessary in Crl.M.P. Nos. 8990 and 15798 of 1989 in view of the orders passed in Crl.M.P. No. 8989 of 1989.

37. Order accordingly.