

**HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR**

**Supplementary Cause List
(During Coronavirus List)
(Video Conference from Jammu)**

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CRM(M) no.52-A/2020
EMG-Crl(M) no.62-A/2020

Reserved on: 20.05.2020

Pronounced on: 27.05.2020

Mohammad Shafi Dar

..... Petitioner(s)

Through: Mr M.Y.Bhat, Advocate

Versus

Union Territory of J&K and others

.....Respondent(s)

Through: Mr B.A.Dar, Sr. AAG

CORAM: HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. Exercise of inherent powers stemming from the provisions of Section 482 of the Code of Criminal Procedure, aiming at setting at naught and quashing First Information Report no.04 of 2020 dated 8th March 2020, lodged by Anti-Corruption Bureau (for brevity "ACB"), with a direction to respondents to restrain from interfering with the management of J&K Cooperative Bank (for short "*the Bank*") or harass petitioner, is implored for in the petition on hand.

2. What is emanating from the petition on hand is that petitioner was working as Chairman in J&K State Cooperative Bank.
- 2.1. Petitioner claims in the petition that River Jehlum Cooperative Housing Building Society Limited, Srinagar, (hereinafter called as “*the Society*”) approached the Bank for grant of loan for converting land measuring 257 Kanals 18 Marlas, situated at Shivpora, Srinagar, into a Satellite Township. A representation is said to have been moved by aforesaid Society before the Bank in January 2018; process on which was going on slowly so that all formalities and other things would have been checked and verified. The Bank wanted to know status of land before taking any action on representation of Society. It is averred that a simultaneous application filed by aforesaid Society was processed by Registrar Cooperatives and that the Society also approached the Government in February 2019 for settling its case. Copy of representation of aforesaid Society was forwarded is stated to have been forwarded by Secretary, Cooperative, and on its receipt office of Registrar Cooperative forwarded the same to the Bank.
- 2.2. It is also maintained in the petition that case of aforesaid Society was placed before Board of Director of the Bank and in its meeting held

on 21st March 2019 Board of Directors sanctioned loan in favour of the Society as was also approved by General Body on 8th September 2018 when earlier representation of the Society was processed and considered in General Body meeting of the Bank.

2.3. Petitioner has claimed that the management of the Bank, i.e. General Body as well as Board of Management, was of the opinion that project was viable one and the Bank could earn huge amount by granting the loan and therefore, the Board of Management had no option but to authorise the Committee constituted in terms of General Body decision for settling the issue. Petitioner in his capacity as Chairman of the Bank, in pursuance of General Body decision dated 8th September 2018, constituted a Committee for looking into the whole process and in terms of order dated 14th November 2018, a Committee of four officers was constituted. The General Body decision dated 8th September 2018 could not be acted upon earlier and in the meantime, Managing Director was of the opinion that because of Winter season it would not be good to release the loan amount in favour of said Society till end of financial year, i.e. 31st March 2019, therefore Board of Director meeting was again held on 21st March 2019, which approved grant of loan in favour of

aforesaid Cooperative Society against the abovementioned big chunk of land and therefore, it is the decision of General Body and Board of Directorate of the Bank, which was acted upon by the Committee constituted as per decision of General Body dated 8th September 2018, issued by petitioner as Chairman of the Bank vide order dated 24th November 2018.

2.4. It is asserted by petitioner that after taking the decision, aforesaid Society was asked to execute required documents and accordingly it was being monitored by the Committee constituted and Kashmiri Pandits executed a Power of Attorney in favour of Hilal Ahmad Mir – Chairman of aforesaid Society, authorising him to transfer the land and raise finances in lieu of thereof and execute any document for creating lien in favour of Bank over the said landed property. Petitioner also avows that the Society was also authorised by Kashmiri Pandits to alienate property to any person or person or in favour of aforesaid Society. According to petitioner it is also mentioned in the Power of Attorney that above Hilal Ahmad Mir executed a perpetual Lease Deed in favour of River Jehlum Cooperative Housing Building Society Limited, Srinagar, which was registered on 11th June 2019 and in the said Lease Deed also it

was specifically provided that the Lessee, i.e. River Jehlum Cooperative Housing Building Society, Srinagar, shall be entitled to occupy the aforesaid land and raise any kind of construction therein and sublet or assign the interest to any lessee or assignee or any other Cooperative or Financial Institution. Accordingly lien with respect to land measuring 257 Kanals 18 Marlas was created in favour of the Bank and Tehsildar, South Srinagar, marked lien in favour of the Bank and in this regard an Agreement was also executed on 22nd April 2019, agreeing and undertaking therein that the Bank would be free to create lien in favour of the Bank and to that effect an Affidavit was also executed on 25th April 2019.

- 2.5. In the sanction order, as stated by petitioner, the Bank imposed a condition that as and when any plot is disposed of in favour of any person, the amount of such plot would be deposited in the Bank having first charge over such land and the Society was required to deposit daily sale proceeds in the cash credit account of the Bank and the Bank would have every access and right to visit and inspect the project and can have access to the books of accounts of the Society and in case Society commits any default the Bank would have full right to take over the said land and auction or dispose off

the same for recovering the loan amount. In the said process an amount of Rs.223.00 Crores was released in favour of the Society, which was opened in the Bank itself and that amount was directly transferred to the accounts of land owners, i.e. Kashmiri Pandits. By applying the said concrete process, the entire loan amount stands taken by land owners in lieu of the said land and the Bank is authorised to make sale of the said land by whatever means in case the Society fails to abide by the terms and conditions of the Agreement executed.

2.6. It is claimed by petitioner that some locals, who had an eye on the land, made complaints under false pretexts before all authorities and also filed two suits against land owners and the Society, who tried their best to restrain the Society from converting the aforesaid land into Satellite Township while the Society as well as the Bank was doing their best to help protect interests of Kashmiri Pandits. Petitioner states that anonymous complaint was intentionally filed before the Government, even not signed by anybody claiming therein that the Society was not registered.

2.7. It is also stated by petitioner that the Government on one hand asked the Crime Branch to ascertain as to whether the Society is registered

and on the other hand also constituted a Committee of three members to look into the matter. The Committee did not conduct any proceedings and did not associate the Bank or the Society and without following due process of law, a report was prepared by one of the Committee members, namely, Syed Ashiq Hussain, of his own saying therein that no records with regard to registration of the Society were available in the office of Registrar, when factually the same officer had forwarded registration and representation of the Society to the Bank through fax. On the basis of Enquiry Report, Registrar Cooperative Societies, because of his personal interests wrote a letter to ACB, Jammu, which was followed by registration of FIR. The Crime Branch has been conducting simultaneous inquiry in the matter when the Chief Judicial Magistrate, Srinagar, had directed it to registered FIR on the allegation of fake registration certificate.

2.8. Petitioner's further submission is that entire amount of Rs.223.00 Crores stands taken by land owners as loan and huge amount of interest of Rs.2.54 Crores per month is being charged against the Society. ACB has been investigating the matter, which has registered FIR only on the allegation that the Bank has failed to

check as to whether the Society was a registered Cooperative Society or not but the amount involved has not been treated as illegal or ill-gotten money and, therefore, ACB is investigating the matter only to the extent to ascertain as to whether the Society was registered or not. The loan amount, as claimed by petitioner, is secured by creating lien against the land and the said loan amount can be utilized and there is absolutely no allegation of bribe or embezzlement.

- 2.9. Petitioner also avers that the Bank is governed by its own byelaws, rules and regulations and it has followed the laws and rules while granting the loan against the lien of land measuring 257 Kanals 18 Marlas, which costs more than Rs.490.00 Crores and thus the loan amount of the Bank is secured. The Society cannot sell it unless and until it does not take consent from the Bank and in case of failure by the Society, the Bank can take over the land and that there is no violation of any rule or byelaw or regulation.
- 2.10. According to petitioner, the Bank is a private Bank established under Cooperative Societies Act and Rules and the money involved does neither belong to Government nor to any nationalised Bank or NABARD and therefore, respondents, being authority of J&K

Union Territory, have no power or authority to interfere in the business of the Bank.

2.11. The management committee including Chairman of the Bank is elected body in terms of provisions of J&K Cooperative Societies Act, and the said Management Committee of the Bank being Apex Cooperative Bank, is free to function and exercise discretion as they deem fit which cannot be controlled by substitutive opinions.

3. The grounds of challenge taken by petitioner in petition on hand are:

- 3.1. that the whole process has been conducted as per law and rules governing the field and petitioner has not committed any wrong whatsoever and neither has violated any rule;
- 3.2. that there is no allegation of any bribe being involved nor any allegation of personal gains by petitioner and in absence of even such allegation, no offence under Prevention of Corruption Act is made out. The allegations are merely vague and superficial and not sufficient to constitute commission of offence by petitioner;
- 3.3. that allegations in FIR are otherwise absolute absurd and highly improbable. All the procedural formalities have been complied with by the Bank and there can be no second opinion that there is no

sufficient ground for continuation of investigation/proceedings against petitioner;

- 3.4. that there is absolutely no involvement of petitioner in the whole process and FIR also does not disclose any part taken by him except for mentioning his name inasmuch as the matter was duly placed before Board of Directors in terms of recommendations made by Government and General Body as well as Board of Directors approved grant of loan and petitioner has only issued an order for constituting a Committee in terms of directions of Board of Directors and, therefore, no role having been played by petitioner;
- 3.5. that there is no specific allegation against petitioner as to what illegality he has committed. The action in question was an action by the Bank in terms of rules and law duly approved by Board and thus no question of commission of any illegality by petitioner arises;
- 3.6. that in terms of settled law, a Company/Society is a legal person and responsible for its actions and omissions and thus it is the Bank which must have been accused in FIR and petitioner could at the most have been held vicariously liable being a part of management. In such cases, FIR has to be directly lodged against company and management is to be made co-accused with definite allegations that

they, being managing the body, are vicariously liable for the act of company/ society. FIR merely against management without such specific allegation is not sustainable;

- 3.7. that there is no allegation that whole transaction was initiated with an intention to defraud government/public exchequer and in absence of the same, no FIR would lie;
- 3.8. that when a person from management is made vicariously liable, it is vital for sustenance of FIR that there are specific allegations sufficient to prima facie show vicarious liability of said person, which has not been done in the instant case;
- 3.9. that only prime thing to be taken in consideration is that Board of Management shall protect interests of the Bank by fully securing the loan granted so that the Bank does not face problems in recovering the loan in case of default;
- 3.10. that registration certificate of the Society in question to whom loan has been sanctioned is communicated to the Bank by custodian of the record itself, i.e. Registrar Cooperative Societies, and only thing to be seen in FIR is as to whether the Society is registered or not and by applying general principle of law even in that case no offence is made out against Board of Management or petitioner;

4. I have heard the learned counsel for the parties and considered the matter.
5. Subject-matter of challenge in instant petition is FIR no.04/2020 dated 8th March 2020, under Section 5 (1)(d) read with Section 5(2) P.C. Act and Section 465, 467, 468, 471, 120-B RPC P/S ACB Srinagar (*Annexure I to petition*). It would be, thus, profitable to reproduce impugned FIR infra:

“Preliminary enquiry No.SLK-09/2020 was conducted by Anti Corruption Bureau Jammu into the allegations that Mohammad Shafi Dar R/o Majeed Bagh Barzula Srinagar, Chairman J&K State Cooperative Bank Ltd., for fraudulently sanctioning loan to the tune of Rs.250.00 Crore in favour of a non-existent Cooperative Society named “River Jehlem Cooperative house Colony at Shivpora Srinagar”. The said loan has been sanctioned on the pretext of construction of a satellite town ship at Shivpora Srinagar and till 01.05.2019, Rs.223.00 Crores have been fraudulently released to the said non-existent cooperative society by the Bank through its Chairman. The enquiry conducted further revealed that one Hilal Ahmed Mir S/o Kh. Samudllah Mir R/o Magarmal Bagh Srinagar, Chairman of River Jhelum Cooperative House Building Society Ltd had approached the Administrative Department of Cooperative Societies through an application dated 01.01.2018 wherein he sought direction from the Department to J&K Cooperative Bank Ltd Srinagar for grant of financial assistance to the tune of Rs.300.00 Crores for taking over possession of 300 Kanals of proprietary land located in the outskirts of Srinagar city for purpose of construction o a satellite township. The Secretary to the Government Cooperative Department endorsed the aforesaid application to Shri M.M. Rehman Ghasi KAS, the then Registrar Cooperative Societies, J&K, for taking up the matter with the concerned Bank. Accordingly vide letter RCS/SS/Housing-Kmr/5478-79 dated 26.03.2019 the case of the applicant was recommended by the then Registrar to the Manging Director, JKSTCB along with the photo

Copy of Certificate of Registration purportedly issued in favour of River Jhelum Cooperative Housing Building Society Ltd., Magarmal Bagh Srinagar under No.ARK/SS3 dated 31.03.1994 by the then Addl. Registrar Cooperative Societies, Kashmir. On the receipt of application from Registrar Cooperative Societies, the J&K Cooperative Bank, Srinagar, sanctioned loan to the tune of Rs.230.00 Crores without obtaining the details of the society, viz. balance sheet, profit and loss account, business/activities being done by the society, PAN No. Income tax return, details of Constitution of the board, Board resolution etc and without obtaining any proper collateral. The enquiry conducted revealed that River Jhelum Cooperative House Building Society has not been registered with Registrar Cooperative Society, J&K. The Chairman of the so called River Jhelum Cooperative House Building Societies Ltd namely Hilal Ahmed Mir S/oSanullah Mir @ Samdullah R/o Magarmal Bagh Srinagar by acting in league with the Chairman of J&K Cooperative Bank Srinagar and others has prepared a fake and fictitious registration certificate of River Jhelum Cooperative House Building Society Ltd and then after approaching the Govt. for financial assistance from the Jammu State Cooperative Bank managed the disbursement and fraudulent sanction of the loan amount of Rs.223 crores in convince with Chairman of Jammu State Cooperative Bank and other bank officials. Enquiry conducted has revealed that the loan was sanctioned in a single day on the basis of simple note that was initiated on 24.04.2019 for an amount of Rs.250 crore. As per the loan Manual of the bank the maximum limit to be sanctioned under cash credit for an individual was only Rs. 1 crore and this amount of Rs.250 crore has been sanctioned to the Society in the absence of any cash credit facility for societies in the loan Compendium of the Bank and in violation of the Bank's Credit lending policy and that too by taking a loan of Rs. 223 Crores out of the FD's of the Bank with J&K Bank amounting to Rs.242 Crores for this purpose for ulterior motives and by abusing his official position to confer undue pecuniary advantage upon the so called Chairman of the fake Society without following the proper procedures and guidelines for grant of such loan. Physical verification has also revealed that the said society is not in existence at the given address and the purported office bearers including the Chairman have neither run so called fake society nor have the knowledge of the functioning of the society. The above-mentioned acts of omission and commission on the part of Hilal Ahmed Mir S/o

Sanullah Mir R/o Magarmal Bagh Srinagar. Mohd Shafi Dar, Chairman J&K State Cooperative Bank Rajbagh Srinagar and others constitute the commission of offences U/S 5 (1)(d) r/w Section 5(2) of J&K PC Act and section 45, 467, 468, 471, 120-B RPe for causing a loss of Rs.223 Crore to the bank. Accordingly a case is registered in P/S ACB Srinagar and investigation is entrusted to Rameez Rashid Bhat Dy.SP, JKPS.”

6. From impugned FIR, it comes to fore that the Society is alleged to have been given a huge amount of Rs.250.00 Crore without following basic and fundamental prerequisites by the Bank, which was headed by petitioner. It also accuses that the Society is not registered with Registrar Cooperatives, J&K. Even the Society does not exist anywhere.
7. The report of Enquiry Officer (Deputy Registrar (Counsel) Cooperative Societies J&K) dated 5th February 2020 (*Annexure VII to petition*) is self-explanatory and speaks of voluminous, and if discussed here would open a pandora box for discourse, discussion and threadbare examination and trial, which is the exclusive domain of Investigating Agency and Trial Court, and not that of this Court in exercise of inherent powers under Section 482 Cr.P.C.
8. It is in the backdrop of above discussion to say that Section 482 of Code of Criminal Procedure provides that nothing in the Code shall be deemed to limit or affect inherent powers of the High Court to

make such order as may be necessary to give effect to any orders under the Code, or to prevent abuse of process of any Court or otherwise to secure ends of justice. While exercising powers under Section 482 of Cr. P.C., the Court, however, has to keep in mind that it should not ordinarily embark upon an enquiry whether evidence in question is reliable or not or whether on a reasonable appreciation of it, accusation would not be sustained. This is the function of Investigating Agency/Trial Court. Though judicial process should not be an instrument of oppression or needless harassment but the Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances in consideration before issuing process under Section 482, lest the Section becomes an instrument in the hands of accused persons to claim differential treatment only because accused persons can spend money to approach higher forums. This Section is not an instrument handed over to an accused to short circuit a prosecution and bring about its sudden death.

9. It is not impertinent to mention here that it has been emphasized times without number through the authoritative judicial pronouncements that inherent powers under Section 482 Cr.P.C. are

to be exercised rarely, sparingly and with due circumspection. The power cannot be used to stifle investigation or even prosecution as the law is to be allowed to have its own course and investigation or prosecution to be taken to its logical end. A very limited scope is available to find out as to whether a case falls within broader parameters as provided and envisaged under Section 482 Cr. P.C.

9.1. Section 482 of the Code of Criminal Procedure provides:

“Saving of inherent power of High Court- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

9.2. The Code of Criminal Procedure is the *premier* adjective law for administration of criminal justice. Its importance is social, legal, political and historical. Social security and social peace are *sine qua non* for a civilized society. Law is the most efficacious medium for social engineering. Whatever be the provisions in the substantive law, a clear and conscientious procedure is required to secure the ends of justice. The provisions for inherent powers of the High Court contained in Section 482 of the Code of Criminal Procedure articulate the means to realise justice. The powers of the High Court under Section 482 Cr. P.C are partly administrative and partly

judicial. When it was felt that High Courts were unable to render complete justice, even if in a given case illegality was palpable and apparent, it was added by the Code of Criminal Procedure (Amendment) Act of 1923.

- 9.3. The cardinal objective of inherent powers is to safeguard virtues of justice. This is evident from the fact that the occasion for invoking inherent powers of the High Court is before commencement of trial. Comparative studies of criminal trials in different legal systems have been unanimous in the opinion about sanctity of fair procedure. It borders on the theme of human rights. In India it is stressed in the context of the provisions contained Part III and Part IV of the Constitution.
- 9.4. In pretrial stage, question of police powers becomes irrelevant. Therefore, question of human rights comes; and it would lead our attention to the sociological dimensions of criminal law. Crimes predate human society. Even in prehistoric period, neo-historic period or puranic or mythological period, crimes existed.
- 9.5. Most treacherous offences of today were prevalent in the ancient societies also. Man's innate propensity to dominate his fellow beings, his endeavour to amass property and acquire position, his

intolerance of alien faith all resulted in behaviour injurious to others and detrimental to the society.

9.6. The State as guardian of society stands sentry to protect social interest, mores and values. Even when individual freedom is recognised as fundamental, inalienable and inextricable, care is taken to limit such freedom on the basis of the public good.

9.7. Article 19 of the Constitution of India recognises individual freedom of persons. These freedoms are subject to reasonable restrictions. The State while recognising the worth of man also protects the unity of the society. Rights and freedom do not mean licence and impertinence. For every *jural* correlative there is *jural* opposite. If there is right, there is duty; if there is power, there is liability; if there is immunity, there is disability.

9.8. In this context, criminal justice system is most significant. The type of laws prevalent in a society must be according to requirement of its people. *Ubi Societas Ibi jus* (as is the society, so is the law) is principle. The harshness of a legal system is often measured by the character of its penal laws. Substantive criminal law would be broadly same in all legal systems. The basic difference is in procedure. A body of procedural laws for administration of criminal

justice, based on rational principles, is required to inspire confidence in public. Securing ends of justice should be ultimate objective of laws. The Code of Criminal Procedure, 1973, contains provision for adjudicating criminal cases. It provides for every reasonable situation contemplated in advance. Still there can be circumstances unimagined by the authors of the Code.

9.9. It was in the aforesaid milieu the Courts must have legislative mandate to act effectively and convincingly. It is in this context that one has to view inherent powers of the High Courts under Section 482. It is a privilege against incrimination available to accused in India. Inherent powers of the High Court are saved in Section 482 of the Code. It is distinguished from general scheme of the Code through a non-obstante clause. *“Nothing in this Code shall be deemed to limit or affect the inherent powers of High Court”*. Inherent powers are unlimited and unaffected by provisions of the Code. No provision can be deemed to override inherent powers. The inherent powers are specifically for three purposes:

- i. Powers to make such orders as may be necessary to give effect to any order under the Code.
- ii. Power to prevent abuse of the process of any court.
- iii. Power otherwise to secure the ends of justice.

9.10. If one searches for generalizations in applying inherent powers there is difficulty. It is essentially something which is to occur to the deciding judge. The principles enshrined in Section 482 Cr.P.C., enumerated above are general, universal and eternal ingredients for justice of high quality. Essentially, there is only one major dogma, i.e. justice. Three ways are suggested to reach justice. Think justice, act justice and reach justice. The reason for suggesting that there is one major dogma, Justice is because justice is the objective of inherent powers. In Section 482 Cr.P.C., it is not an enumeration of the ingredients of inherent powers. It is an elaboration of the concept of inherent powers.

9.11. Section 482 Cr. P.C. is a sort of reminder to the High Courts that they are not merely courts in law, but also courts of justice and possess inherent powers to remove injustice". The inherent power of the High Court is an inalienable attribute of the position it holds with respect to the courts subordinate to it. They are necessarily judicial when they are exercisable with respect to a judicial order and for securing the ends of justice. The jurisdiction under section 482 is discretionary, therefore, the high court may refuse to exercise the discretion if a party has not approached it with clean hands.

9.12. Inherent powers under Section 482 of Cr.P.C. include powers to quash FIR, investigation or any criminal proceedings pending before the High Court or any Courts subordinate to it and are of wide magnitude and ramification. Such powers can be exercised to secure ends of justice, prevent abuse of the process of any court and to make such orders as may be necessary to give effect to any order under this Code, depending upon the facts of a given case. Court can always take note of any miscarriage of justice and prevent the same by exercising its powers under Section 482 of Cr.P.C. These powers are neither limited nor curtailed by any other provisions of the Code. However, such inherent powers are to be exercised sparingly and with caution.

10. The Supreme Court in *State of Haryana v. Bhajan Lal* AIR 1992 SC 604 as also in the cases reported as AIR 1992 SC 892, AIR 1996 SC 309, AIR 1996 SC 2983, AIR 1999 SC 3596, AIR 1999 SC 1044, AIR 1999 SC 1216, AIR 2002 SC 671, AIR 2004 SC 3967, AIR 2005 SC 3212, SLJ 2005 (I) 118: 2004 (3) JKJ 609 [HC], 2008 AIR SCW 1003, 2008 AIR SCW 1993, 2008 AIR SCW 1998, 2008 AIR SCW 4614, 2008 AIR SCW 7680, 2008 AIR SCW 2778, AIR

2010 SC 201, has discussed the scope of Section 482 Cr. P.C. and has laid down following tests:

- a. where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;
- b. where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;
- c. where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;
- d. where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;
- e. where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion

that there is sufficient ground for proceeding against the accused;

- f. where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;
 - g. where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.
11. The Supreme Court has also held in *Bhajan Lal's* case (supra) that the power of quashing criminal proceedings should be exercised very sparingly. Paragraph 109 thereof is profitable to be reproduced hereunder:

“109. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer any arbitrary jurisdiction on the court to act according to its whim or caprice.”

12. In *Som Mittal v. Govt. of Karnataka* 2008 AIR SCW 1003, and *M.N. Ojha v. Alok Kumar Srivastav* AIR 2010 SC 201, while laying down the tests, the Supreme Court has held that remedy under Section 482 Cr.P.C and inherent power should not be exercised by the Courts in a routine manner, rather should be exercised sparingly, carefully with caution and in rarest of rare cases. The Court has not to function as a court of appeal or court of revision.
13. This Court in a case *Mian Abdul Qayoom v. State & ors. 2011 (I) JKJ 470 (HC)* has held that the Court should refrain from making prima facie decision at infancy stage or in a case where all the facts are incomplete and hazy.
14. It may not be out of place to mention here that inherent power cannot be naturally invoked in respect of any matter covered by a specific provision of the Code. It is only after the High Court is satisfied that either an order passed under the Code would be rendered ineffective or that the process of any court would be abused or that the ends of justice would not be secured, then the High Court must exercise its inherent powers under Section 482 Cr. P.C. This power can be invoked only in an event when aggrieved party is unnecessarily harassed and has no other remedy open to it. The power under section

482 is not intended to scuttle justice but to secure justice. In the present case, the matter pending trial before the court below is at the infancy stage and therefore, need not be interfered with.

15. Another imperative aspect of the matter deserves notice. Impugned FIR has been lodged on 8th March 2020. Investigation thereon has just commenced and petitioner has come up with petition on hand beseeching quashment of FIR when it is at its infancy stage. No report as contemplated under the Code of Criminal Procedure has been submitted by concerned agency to the court empowered to take cognizance of the offences. Section 482 Cr.P.C. saves inherent powers of the High Court and such a power can be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice. This power can be exercised to quash criminal proceedings pending in any Court but the power cannot be exercised to interfere with the statutory power of police to conduct investigation in a cognizable offence. This question has been examined in detail by the Supreme Court in *Union of India v. Prakash P. Hinduja and another*, (2003) 6 SCC 195, in which after referring to *King Emperor v. Khwaja Nazir Ahmad*, AIR 1945 PC 18; *H.N.Rishbud & Inder Singh v. The State of Delhi*, AIR 1955 SC 196; *State of West Bengal*

v. SN Basak, AIR 1963 SC 447; Abhinandan Jha and others v. Dinesh Mishra, AIR 1968 SC 117; and State of Bihar and another v. JAC Saldanha and others, (1980) 1 SCC 554, it was observed as under:

“20. Thus the legal position is absolutely clear and also settled by judicial authorities that the Court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the First Information Report till the submission of the report by the officer in charge of police station in court under Section 173 (2) Cr.P.C., this field being exclusively reserved for the investigating agency.”

16. From the above it unambiguously emerges that the High Court should not interfere with the investigation or during course of investigation till the time the report is submitted by the police concerned as this field being exclusively reserved for investigating agency.

17. The Supreme Court in *State of Karnataka and another v. Pastor P. Raju, AIR 2006 SC 2825*, in clear cut terms held that once case was still under investigation and police was in the process of collecting evidence, sweeping remark made by the Karnataka High Court in petition under Section 482 Cr.P.C. seeking quashment of criminal proceedings emanating from an FIR, in the circumstances of the

case, was wholly unjustified and after holding so the Supreme Court set-aside the judgement and order of the High Court.

18.I have gone through impugned FIR, particularly the documents enclosed with the petition and considered rival submissions of learned counsel for parties and the principles enunciated above in the cases of *State of Haryana v. Bhajan Lal* (supra) and *State of Karnataka v. Pastor P. Raju* (supra). In my considered opinion, the instant petition is bereft of any merit and petitioner fails to make out a case for exercise of inherent powers under Section 482 Cr. P.C. to quash the FIR. The case is still under investigation and concerned agency is in the process of collecting evidence. The investigation is necessary and the same cannot be stopped, at this stage, in the proceedings under Section 482 Cr.P.C. As a sequel thereof, instant petition is **dismissed**.

(**Vinod Chatterji Koul**)
Judge

Srinagar

27.05.2020

Ajaz Ahmad, PS

Whether approved for reporting? Yes