IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 7779 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KISHORSINH (KABHAI) MALUJI CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

MR ND NANAVATI FOR MR YOGESH S LAKHANI for Petitioners

MR AD OZA, PP WITH MR PRADIP D BHAATE APP for Res. No. 1

MR RAMNANDAN SINGH for Res. No. 2

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 30/09/2004

ORAL JUDGEMENT

1. Upon the joint request of the learned counsels

appearing for the parties, the matter is heard and decided finally at the admission stage.

2. This Criminal Misc. Application is filed by two of the accused of First Information Report registered before Panigate Police Station vide CR No. I-398 of 2003 for quashing the said First Information Report under Section 482 of the Criminal Procedure Code. Although, vide amendment, a prayer is also made to direct the investigation of the complaint being CR No. I-398 of 2003 to be investigated by any independent agency not under the control of Vadodara Police Commissioner.

3. Essential facts of the chequered history of this litigation are as under :

3.1 A plot of land, situated at village Savad, District Baroda, bearing Revenue Survey No. 295 and 292/2 TP Scheme No. 5, Final Plot No. 622, admeasuring 3205 sq. meters is owned by Kalidas Chhotabhai Mali, Motibhai Shankarbhai Mali, Mangalbhai Josingbhai Mali and other owners, and they intended to sell the above said plot of land. A public notice was got published in a newspaper dated 11th of May, 2002 through Advocate Vijaykumar J. Shirke, purporting to be on behalf of purchaser, declaring that his client was interested in the said plot of land, and if anybody has any kind of interest in the said land, may contact at the office of said Advocate, who was to give Title Clearance Certificate in respect of said land. Learned Counsels appearing for the parties stated that the said 3205 sq. meters land if converted into square feet, it comes to 34,489 sq. feet. Upon the said land, 11 persons named as (1) Rahimaben Anwarbhai Vora, (2) Mohanbhai Lakhabhai Savaliya (present respondent No.2), (3) Dharmendra Punamchand Parmar, (4) Sanabhai Devjibhai Parmar, (5) Nanubhai Muljibhai Parmar, (6) Champaben Valjibhai Purshottambhai Shrimali, (7) Dineshkumar Premjibhai Barot, (8) Baldevbhai Muljibhai Pandya, (9) Anwarbhai Mohammadbhai Vora, (10) Jayantilal Ambalal Prajapati and (11) Pravinbhai Dalsukbhai Shah, were staying in their houses constructed on some portion of the above said land. Some of them including present Respondent No.2 belong to scheduled caste. One of them, through his Advocate, also objected the said notice published on 11th of May, 2002 through learned Advocate Mr.Vijakumar Shirke.

3.2 On apprehension that they might be thrown out of their houses constructed on the said land forcibly, all 11 persons above named, approached Police Commissioner, Baroda City, on 11th of December, 2003 with an

application. They stated in the application that the said plot of land was owned by the four persons i.e. Mangalbhai Jesingbhai Mali (deceased), Dahiben Maganbhai Mali (deceased), Kalidas Chhotabhai Mali and his brothers and (4) Motibhai Shankarbhai Mali, etc. They stated that before 20 years, through a registered document in the said land, they have constructed their houses which are independent and separate houses of each individual. Each of them were also awarded property cards through City Service Office, but the owners of the land and intended purchaser present petitioner No.1 being headstrong persons and petitioner No.1 being suspended P.I. and had been dealing in disputed properties, frequently threatened them to hand over the possession of the land after vacating the houses in which they resided. It was also averred that owners as well as petitioner No.1 sent headstrong persons to their houses and those persons threatened them. Therefore, it was requested that the original owners and the petitioner No.1 herein be prevented from committing anything wrong in respect of their property in government and semi government offices. They also produced along with the application the property card and other details. The said application dated 11th of December, 2003 was signed by all 11 above named persons.

3.3 It appears that on receiving the said application Commissioner of Police directed these above named 11 persons to the Investigating Team, office of which is situated near the Office of Commissioner of Police. The Special Investigating Team, cause to be recorded different and separate 11 First Information Reports and sent them to respective Police Stations. Out of which, 8 First Information Reports were registered at Panigate Police Station, Baroda, while other three came to be registered before DCB Police Station, Baroda City, vide separate Crime Register Numbers at different time on 12th of December, 2003.

3.4 Thereafter six persons out of above mentioned 11 persons, on 15th December, 2003, again submitted an application to the Police Commissioner, Baroda City, in respect of their earlier application, which they had preferred on 11th of December, 2003. It was averred by these six persons after referring their earlier application dated 11th of December, 2003 and contents therein that in the earlier application, they never alleged that present petitioner No.1 or his son petitioner No.2 had been to their houses and on the said land and did not directly gave threats. They also averred in the said Application that in pursuance of

earlier application dated 11th of December, 2003 when First Information Reports were registered and investigation started, they came to know that in said all First Information Reports, something else was recorded which they did not aver in application dated 11th of December, 2003. They also stated that in those circumstances they were compelled to give this application (15th December, 2003).

3.5 However, in respect of above said 11 offences registered against the present petitioners and original owners of the land, in all 18 persons, respective Investigating Agency started investigation.

3.6 The present petitioners, therefore, approached this Court with Criminal Misc.Applications No. 10420/03 to 10431/03, l1 in all, in respect of each First Information Report recorded against them with a prayer under Section 482 of the Criminal Procedure Code to quash and set aside each of the eleven First Information Report recorded at Panigate Police Station as well as DCB Police Station.

3.7 However, vide order dated 28th of January, 2004, all those 11 Criminal Misc. Applications No. 10420/2003 to 10431 of 2003 came to be dismissed by this Court.

3.8 Being aggrieved and dissatisfied by the above said judgment and order of this Court, present petitioners filed petitions being Special Leave to Appeal (Criminal) No.616 to 626 of 2004 before the Hon'ble Supreme Court of India. On request of learned counsels, Supreme Court of India was pleased to grant interim protection to the petitioners to the extent that the petitioners would not be arrested under the Prevention of Anti Social Activities Act, 1985 (PASA) nor would they be arrested in any of the offence based on each First Information Report, but Hon'ble Supreme Court permitted investigation in all the Fist Information Reports to be continued.

3.9 Before this Court in the above said Criminal Misc. Application and also before the Hon'ble Supreme Court in Criminal Appeal Nos. 787 to 797 of 2004 arising out of SLP (Criminal) Nos. 616 to 626 of 004, anxiety on the part of the petitioners was that 11 FIRs and 11 offences were registered against them because they might be detained under the Prevention of Anti Social Activities Act, 1985. The final decision of the Supreme Court in Criminal Appeal Nos.787 to 797 of 2004, is placed on record of this petition at Page 82 "Annexure'L"

and as observed by the Supreme Court, the State made a declaration that the Commissioner of Police instructed the Investigating Officers that the incident of 11th of December, 2003 should be considered only in one FIR i.e. CR No. I-398 of 2003 for the purpose of fixing criminal culpability and for arresting the accused. It was also submitted by the State before the Supreme Court that the allegations in all the complaints would be investigated only in one First Information Report above noted and the accused would be arrested only in the said FIR in accordance with law. The Hon'ble Supreme Court further observed that :

" this means that all the F.I.R.s would be considered as one being part and parcel of C.R. No. I-398/03. In view of this position, it is not necessary to quash the remaining F.I.R.s on the ground that all of them arise out of the same incident. We may note that in the affidavit of the respondent above referred, it is their own case that it was a common incident of 11th of December, 2003. Under these circumstances, there is no basis for the apprehension of the appellants that separate complaints were registered with a view to invoke PASA against them."

3.10 The petitioners through their learned Senior Counsel requested the Supreme Court to quash the remaining FIRs as the the matter between the complainants and the petitioners was settled. In this respect, the Hon'ble Supreme Court pleased to observe as under:

"We are unable to accept the contention at this stage since there appears to be some dispute about facts which may have to be gone into at an appropriate stage by an appropriate forum. In this connection, Mr. Madhukar, learned counsel for the State has drawn our attention to the public notice dated 11 May, 2003 which refers to an intention to purchase land of an area of 3205 sq. meters (34489 sq. ft) whereas the agreement to sell is in respect of about 16,000 sq. ft. Further, according to submissions made by learned counsel for the State, the appellants and their henchmen have committed the offences and the matter is still to be fully investigated. In this state of affairs, we express no opinion except observing that in case a petition is filed for quashing the F.I.R. on the ground that the matter has been settled, the same would be

decided on its own merits uninfluenced by the impugned judgment of the High Court or this court."

3.11 It is important to note that before the Supreme Court, out of those 11 persons, Mohanbhai Lakabhai Savaliya (present respondent No.2), Dharmendra Poonamchand Parmar, Sanabhai Devjibhai Parmar, Nanubhai Muljibhai Parmar, Champaben Valjibhai Purshottambhai Shrimali, Dineshkumar Premjibhai Barot, Baldevbhai Muljibhai Pandya, Anwarbhai Mohammadbhai Vora, Jayantilal Ambalal Prajapati and Pravinbhai Dalsukhbhai S Shah, preferred affidavits, copy of which are placed on record at page 62 as Annexure-'K'. It is also pertinent to note that all these persons preferred affidavits before this Court in said Criminal Misc. Applications, copies of which are produced at page 15 as Annexure-"E". In affidavits filed before the High Court the stand of these persons, was, after the notice was published, certain persons who were looking dangerous persons started coming and threatening to house owners by stating that they were the men of Kavabhai Chauhan (petitioner No.1), they used to give threat to vacate from this house and hand over the possession of the house, but none of them had ever seen either present petitioner No.1 or petitioner No.2 personally and none of the present petitioners administered threats to any of the above 11 persons. While before the Hon'ble Supreme Court in the affidavits, it was maintained that public notice issued by original owners of the land was objected by them and they had filed a common representation before the Commissioner of Police on 11th December, 2003. It is also maintained in the affidavit by each of these persons that the First Information Reports contained certain statements, which none of them had made before the Commissioner of Police and, therefore, an application before the Police Commissioner by six persons was tendered on 15th December, 2003. Ultimately, it was also maintained that none of the petitioner came at the place of dispute and threatened any of them. It was also stated that none of them had any grievance against present petitioners if they did not seek to take possession of their land.

3.12 It is pertinent to note also that out of 34489 sq. feet of the said land, present petitioner No.2 vide one agreement to sell dated 11th August, 2003, agreed to purchase only 16,000 sq. feet pit land from original owners of the land, which obviously, did not include the land, on which the houses of said 11 persons were standing. A copy of the said agreement is placed on record as Annexure-"G" at page 39 of compilation of this

petition. It is also pertinent to note that both the petitioners before this Court in said Criminal Misc. Application, filed undertakings to the effect that they have purchased only 16,000 sq. feet pit land and were not concerned with the land on which the houses of said 11 persons were standing.

3.13 On the above factual matrix and in pursuance of the observations made by the Hon'ble Supreme Court that in respect of one FIR i.e. I-398/03 in case a petition is filed for quashing the said FIR on the ground that matter has been settled, the same would be decided on its own merits uninfluenced by the impugned judgment of the Supreme Court or this Court, this Criminal Misc. Application is preferred by the petitioners.

3.14 It is pertinent to state the facts of First Information Report, registered as Crime Register No. I-398/2003, which is subject matter of this Petition. Free translation of the said FIR is as under :

The FIR is lodged on 12th December, 2003 at 1.25 hours, wherein the occurrence of offence is indicated at 21.00 hours on 10th December, 2003. There are in all 18 accused including present petitioners.

Respondent No.2 herein Mohanbhai Lakhabhai Savaliya launched this First Information Report and stated that he resided at Mitimatru, Vadanana, near Jangleshwar Mahadev Kishanwadi, Ajwa Road,Vadodara. He ran rationing shop at his house. In addition to that, he was Ex-councillor of Congress and social worker. The house in which he resided owned by his wife Maniben Madhurbhai Parmar @ Maniben Mohanbhai Savaliya. To construct house, they purchased land from (1) Mangalbhai Jesingbhai Mali, (2) Dahiben Maganbhai Mali, (3) Kalidas Chhotabhai Mali, (4) Shankar Jesingbhai Mali, vide registered Document dated 17th March, 1983, and described as TP Scheme No.5, 5075 sq. feet out of Final Plot No.622 and the document was possessed by him. They resided at this place from 1980. They were owners of land and house through registered document and, therefore, the houses registered in their names as owners in City Survey Record. They belonged to Scheduled Caste.

On 11th May, 2003, in Gujarati Newspaper

"Gujarat Samachar" daily, the owners of the land gave one public notice through their Advocate Shri V.J. Shirke for title Clearance about the land, on which they (respondent No.2) and other persons resided and other land surrounding to their land with the intention that the land owners intended to sell the said land. Therefore, they preferred objection application and came to know that the whole land including the land owned by them totalling to 3205 sq. meters land was purchased by suspended Police Officer Kabhai Chauhan (petitioner No.1). Thereafter, the land in which one pond was there was being developed after drawing water from the pond by Kabhai Chauhan, his son Brijesh Chauhan, brokers Chandrasekar Ganapatrai Bhatekar and other persons though they were not concerned with said pit land. However, two brokers and Brijesh Chauhan frequently came to him and two other house owners, and used to give threats stating that the whole area had been purchased by them and all the house dwellers including him to vacate the house and to resile from the area or else, Kabhai Chauhan had authorised them that if house dwellers refused to vacate the houses, then they should be killed and authorised to do anything, and that he (Kabhai Chauhan) would take care of everything. On giving threats like that, on 4th September, 2003, Vijay, son of informant had quarreled with opposite party and they preferred a complaint in court for this. The opposite party also quarreled with Anwarbhai Mohammadbhai Vora, residing in that area and they filed Chapter Case. Similar threats were administered by opposite party to Dineshkumar Premjibhai Barot also and hence threats were administered to them to vacate the houses and to hand over the land. Informant with other residents of the area on 10th December, 2003 at 9'O clock at night discussed about what legal steps should be taken, which was over-heard by one Moti Shankar Mali residing nearby. Moti Shankar Mali conveyed discussion to Brijesh Chauhan and, therefore, on the day of incident, i.e. on 11th December, 2003, at about 7.30 in the morning, Moti Shankar Mali came to his shop for purchasing kerosene and started to pick up quarrels and stated that the informant had become a leader but leadership would be made costly to him. In the meantime, (1) Mahiji Mangal Mali, (2) Kalidas Chhota Mali, (3) Govind Chhota Mali,

(4) Mohan Chotta Mali, (5) Shana Chhota Mali, (6) Sukha Chhota Mali, (7) Shantaben Kalidas Mali, (8) Ashok Kalidas, (9) Ramesh Kalidas, (10) Mohan Shankar Mali, (11) Vithal Shankar Mali, (12) Mukesh Vithal Shankar, (13) Prakash Motibhai, (14) Santosh Vithal, came at the shop of the informant and Chandrasekar Bhatekar and Mukesh Parmar also came there. At that time, Kabhai Chauhan stood in the mohalla and sent his son Brijesh, and all of them quarreled with informant (respondent No.2). (1) Rahimaben Anwarbhai Vora, (2) Pravinbhai Dalsukbhai Shah, (3) Jayantilal Ambalal Prajapati, (4) Nanubhai Muljibhai Parmar, (5) Dineshbhai Premjibhai Barot, (6) Revaben Manilal Parmar, (7) Sanabhai Devjibhai Parmar, (8) Baldevbhai Muljibhai Pandya, (9) Champaben Valjibhai Shrimali, (10) Saradaben Punamchand Parmar and gave dirty abuses, threatened to kill all the residents of that mohalla. It was stated by the accused that if the residents of mohalla did not vacate the houses, the houses would be burnt and their families would also be burnt. When this quarrel pick up serious turn, the accused ran away from the spot.

Therefore, Kabhai Chauhan, who is government officer to extort their property with the help of his son Brijesh Chauhan and brokers Chandraksekar Bhatekar and Mukesh Parmar, instigated heirs of land owners and administered filthy abuses and threatened to burn all of them in their houses and threatened to vacate the houses. All of them met Police Commissioner and represented in person. Police Commissioner sent him to the Police Station for lodging an FIR and therefore they gave this complaint.

3.15 Assistant Commissioner of Police, Vadodara City, Mr. R.J. Pargi, filed affidavit-in-reply, which is at page 108 and further additional affidavit which is at page 117 to the compilation of the petition. Rejoinders to the affidavits are also filed by the petitioners at page 112 and at page 124 of the compilation of this petition.

4. Learned Senior Counsel Mr. N.D. Nanavati on behalf of the petitioners, learned Public Prosecutor Mr. A.D. Oza for Respondent No.1 State and learned Advocate Mr. Ramnanadan Singh for Respondent No.2 were heard at marathon length.

5.1 Main stress of the contentions raised on behalf of the petitioners is on resolution of skirmishes between the petitioners and 11 persons. The first and foremost contention was raised that since the matter has been amicably settled between the parties, no useful purpose is going to serve to allow to continue the investigation and thereafter prosecution. My attention was drawn to various affidavits filed by informants of First Information Reports wherein categorically they stated that none of the petitioner ever approached to any of the 11 informants and threatened. It was therefore argued that even if at the end of investigation if the charge sheet is at all filed, there are bleak chances for conviction. For this contention, heavy reliance is placed on a decision of the Supreme Court in the matter of B.S. JOSHI AND OTHERS vs. STATE OF HARYANA AND ANR., as reported in (2003) 4 SCC 675. My attention was drawn to paras 8, 9, 10 and 11 of the decision of the Supreme Court wherein in a matrimonial matter, when a husband approached High Court to quash First Information Report filed by wife in respect of offence registered against the husband and his relatives under Sections 498-A, 323, and 406 of the Indian Penal Code on the ground of amicable settlement between husband and wife, and when High Court refused to quash the said First Information Report on preferring Appeal to Supreme Court, in this decision, the Apex Court observed that for the purpose of securing the ends of justice, quashing of the FIR becomes necessary. It was also observed that Section 320 of the Code of Crimina Procedure would not be a bar to the exercise of power of quashing. My attention was also drawn to the observation of the Supreme Court in para-9, wherein the Apex Court observed that it was, however, to be borne in mind that in the said case the appellants had not sought compounding of the offences, but they approached the court seeking quashing of FIR under the circumstances stated. It was also urged placing reliance on the observations made by the Apex Court in the above said decision in paras 10 and 11 after relying on the decision of the Supreme Court in the matter of State of Karnataka vs. L. Muniswamy, as reported in (1977) 2 SCC 699 and in the decision of Madhavrao Jiwajirao Scindia vs. Sambhajirao Chandrojirao Angre, as reported in (1988) 1 SCC 692, that in such eventuality, there would almost be no chance of conviction, and it would not be proper to decline to exercise power of quashing on the ground that it would be permitting the parties to compound non-compoundable offences. It was, therefore, contended that even if the trial is proceeded against the petitioners, the informers in view of the affidavits they have placed on record of this Court and on the record of

the Supreme Court, are not likely to support the prosecution case and there are no chances at all of conviction, therefore, no purpose would be served in continuing the investigation reaching upto the stage of launching prosecution. It was contended that it would be in the interest of justice, in other words to secure the ends of justice, to quash the FIR on the ground of settlement arrived at between the informants and present petitioners. It was stated that the present petitioner No.1 is suspended P.I. He has some conflict with his Department and for venting some other grudge, Police Department, even after clear and categorical declarations made by the informants, as above said, objects quashing of First Information Report and continues the investigation to harass the present petitioners. It was contended that when parties have decided to live in peace, after settling their skirmishes, the State must not object to maintaining peace between the parties.

5.2 The First Information Report in question is also challenged on the ground that the said FIR does not disclose prima facie commission of offence by the petitioners. It was urged that the petitioners along with other accused are charged with offences punishable under Sections 166, 387, 504, 506, 143 and 114 of the Indian Penal Code as well as some charges under the Scheduled castes and the Scheduled Tribes Prevention of Atrocities Act, 1989. It was urged that there is no whisper at all in the First Information Report as to attract any of the ingredients of offence constituting under Section 166. Petitioner No.2 is not even a public servant while petitioner No.1 is suspended P.I. It was contended that in view of the affidavits filed by respondent No.2 before the High Court, Supreme Court and in this proceeding, the allegation against present petitioners has now become groundless in view of the fact that in express terms respondent No.2 stated in the affidavit that none of the petitioner approached them nor gave any threat to them. It was therefore contended that there were no ingredient at all of the offence constituting the offence of extortion as defined by Section 383 of the Indian Penal Code and made punishable under Section 387 of the Indian Penal Code. It was urged that the offence under Sections 504 and 506 of the Indian Penal Code are also minor and otherwise also compoundable under Section 320 of the Code of Criminal Procedure. Though, according to contention raised, no such ingredients, prima facie, reveals from the First Information Report, but when the main offence punishable under Section 387 is not made out, the quashing of FIR could not be impeded on the ground of such minor

offences. It was in this connection also urged that investigation might have been completed by now, and nothing worth the name to put the petitioners to the trial appears to have been revealed during investigation. Therefore, it was urged that this First Information Report is required to be quashed on this ground also that it does not disclose prima facie offence against the petitioners.

5.3 It was contended that the fact with other contentions is required to be considered that it was never intention of the petitioners to purchase the whole land including the land on which the houses of those 11 persons are standing. It was contended that vide copy of agreement produced on record it is clear that only 16,000 sq. feet land which is a pit land is agreed to be purchased by petitioner No.2 and conjoint consideration reveals that by some misunderstanding, a representation on 11th December, 2003 was submitted to the Commissioner and on that misunderstanding being made clear by the petitioner, six out of 11 persons submitted further representations to the Commissioner of Police on 15.12.2003 that the First Information Reports registered in between contains certain facts which was not stated in application dated 11.12.2003. It was contended that in this perspective, the settlement was arrived at between the parties, which is required to be considered and, therefore, conjoint consideration would lead to the conclusion that First Information Report did not disclose prima facie commission of offence against the petitioners.

5.4 It was urged that out of 11 First Information Reports, which is one incident, in CR No. I-405 of 2003, the Investigating Officer was pleased to submit "C" Summary report before the competent Court. The copy of the said "C" Summary Report is placed at page 90-A of the compilation of this proceedings. It was stated that the facts of the said FIR and present one is the same and when for the same incident, in one FIR when "C" Summary is submitted by the Police, the same itself is sufficient ground, to quash the present FIR.

5.5 It was also urged that the investigation carried on by the Investigating Officer against the petitioners is nothing but wrecking of vengeance against them for some earlier departmental conflict because petitioner No.1 who is suspended P.I. of Police Department. It is urged that knowing fully well that only one incident has taken place as if some serious crime is committed, investigating team was prepared and 11 FIRs were got

registered. This was done with only mala fide purpose to book the petitioners under the Prevention of Anti Social Activities Act, 1985 and this shows malicious purposes and wrecking of vengeance by the Department against the petitioners. The FIR in question, it was urged is required to be quashed on this ground as well.

6. It was contended that the case of the petitioners is covered by Category No. (3) and (7) as indicated by the Supreme Court vide para-8 of celebrated decision in the matter of STATE OF HARYANA vs. Ch. BHAJAN LAL, as reported in AIR 1992 SC 604 to the extent that FIR and material collected if uncontroverted, does not disclose commission of any offence and that wrecking of vengeance and mala fide is obvious on the part of the Investigating Officer. It is requested that on this ground also the First Information Report in question is required to be quashed. Learned Counsel for the appellant has also relied upon certain decisions, as under :

(i) In the matter of TEK CHAND AND ANOTHER vs. TEK CHAND, SUPDT. OF POLICE & ORS., as reported in 1986 (supp) SCC 533, wherein the Supreme Court in para-2 held that no useful purpose will be served in setting aside the order of the Chief Judicial Magistrate as affirmed by the High Court and in directing the prosecution to proceed as there was no chance of ultimate conviction. It was contended that when there is no chance of ultimate conviction, the question of continuance of investigation and prosecution would not arise.

(ii) A decision of the High Court of Delhi, in the matter of MAJ. BHIM RAJ SHARMA vs.STATE & ORS., as reported in 1992 (3) Crimes 62 is relied upon to substantiate the contention that when parties have settled the dispute and have entered into the compromise it would be proper to quash FIR and further proceedings. In paras 6 and 8 the observations made are relied upon.

(iii) A decision of the Punjab and Haryana High Court in the matter of MOHINDER SINGH KHOSLA vs. STATE OF UNION TERRITORY OF CHANDIGARH, as reported in 1996 Cri. L.J.1247, is also relied upon because in para-12 it is observed that when parties have settled their disputes and differences, it would be futile to file charge sheet because the complainant and his witnesses would resile from their previous statements,

which would mean encouraging perjury and the quashing was held right.

(iv) A decision of the Supreme Court in the matter of AJAY MITRA vs. STATE OF M.P, as reported in (2003) 3 SCC 11, is also relied upon. Paras 19 and 20 were pressed into service wherein the Supreme Court quashed the FIR because the First Information Report did not disclose constituting a commission of cognizable offence.

Ultimately, it is urged that totality of the contentions raised, one of them is ground of settlement clause, calls for quashing of the FIR and further proceedings.

7. Learned Public Prosecutor Mr. A.D. Oza read the contents of the First Information Report and contended that it is obvious that the prima facie commission of offence under Sections 387, 504 and 506 of the IPC is disclosed. Drawing attention of this Court on affidavits filed by the persons before the High Court in earlier applications, it was urged that in affidavits also, the happening of the incident, has not been denied by the respondent No.2 and others, and they entered into compromise only because the petitioners herein filed undertaking before the High Court in earlier petitions. It was stated that investigation is in progress and it would not be proper to interfere with that at this stage on account of so called settlement also. It was contended that such settlement is barred even by law as per Section 320 of the Code of Criminal Procedure. A decision of this Court in the matter of STATE OF GUJARAT vs. SHANKERJI CHATURJI, as reported in 1996 (3) GLR 755 is relied upon for the proposition that the offences which are not compoundable, cannot be compounded under exercise of power under Section 482 of the Criminal Procedure Code. It was urged that quashing FIR on that count would amount to compounding the offences which are not compoundable. My attention is drawn to the affidavits filed by the Assistant Commissioner of Police where a statement of one of the the co-accused is recorded. It was urged that this is not an ordinary case but a case of land grabbing having serious consequence and that private parties be not allowed to compromise such grave offences. It was stated that law may take its own course if at all after investigation if the charge sheet is filed, it may not also be ruled out that complainants may support their First Information Report. It is contended that the decision of the Supreme Court in the matter of B.J. Joshi vs. State of Haryana (supra)

would not, therefore, be attracted in the facts and circumstances of this case. It is also urged that the Investigating Officer has collected material but except one accused, none of the accused are found or cooperating with the investigation and on the contrary, they are tampering with the witnesses as to hamper the investigation. It was urged that, ultimately, consequences of this offence would be economic on the society at large and such cases cannot be allowed to be closed on the ground of compromise for which learned Public Prosecutor relied upon a decision of the Hon'ble Supreme Court in the matter of RAM NARAIN POPLY vs. CENTRAL BUREAU OF INVESTIGATION, as reported in AIR 2003 SC 2748.

8. While learned Advocate Mr. Ramnandan Singh for respondent No.2 informant of the FIR in question stated that they have settled the matter with the petitioners and for some misunderstanding, representation of 11th December, 2003 was made to the Police Commissioner. It was stated that the copy of the FIR was not made available to the respondent No.2 and the facts mentioned in that, were not made known to them. He narrated pathetic plight of complainant that on account of settlement, they have arrived at, they are called by the Police often and on wee hours and made to sit in Police Station for no purpose. It was urged ultimately that the court may quash the FIR on account of settlement entered into between them.

9. In reply, learned Senior Counsel Mr. Nanavati has stated that after investigating papers are made available to the Court, the copies of the same should be made available to the petitioners because in the adversary system and particularly within the scope of Section 482 of the Criminal Procedure Code petitioners are entitled to copies of those papers. It is urged that the court may not rely upon those statements. It is further contended that from the State it is not clarified that whether any useful purpose was likely to be served to send the petitioners to the trial and that the background in which the grievance was made before the Commissioner, and in view of further clarification of misunderstanding between the parties, why this First Information Report should not be quashed.

10. Having heard all the parties to their fullest satisfaction, and having considered the material on record, taking the first and foremost contention of settlement into consideration, the question arises whether in the facts and circumstances narrated above,

the First Information Report and investigation can be quashed in exercise of power conferred under Section 482 of the Criminal Procedure Code.

11. The scope of the jurisdiction of High Court under Section 482 of the Code of Criminal Procedure in brief has been explained by the Hon'ble Supreme Court in the matter of JANATA DAL vs. H.S. CHOWDHARY, as reported in 1993 SCC (Cri) 36. Paras 131 and 132 are relevant which are reproduced hereunder :

> 131. Section 482 which corresponds to Section 561-A of the old Code and to Section 151 of the Civil Procedure Code proceeds on the same principle and deals with the inherent powers of the High Court. The rule of inherent powers has its source in the maxim "quadolex ali-quid alicui concedit, concedere videtur id sine quo ipso, ess uon potest" which means that when the law gives anything to anyone, it gives also all those things without which the thing itself could not exist.
>
> 132 The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles.

The powers possessed by the High Court therefore are very wide and the very plenitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles.

12. The contention to quash FIR on the ground of settlement arrived at and that now no useful purpose is likely to serve to send the petitioners to trial because

chances of convictions are none, is required to be put to the anvil of sound principles of law. The ratio as laid down by the Supreme Court in the case of R.P. KAPOOR VS. STATE OF PUNJAB, as reported in AIR 1960 SC 866 and thereafter in the matter of STATE OF HARYANA vs. CH. BHAJAN LAL, as reported in AIR 1992 SC 604, is uninterrupted and till today offers guidance to decide the cases under Section 482 of the Code of Criminal Procedure. The powers are plenary and of plenitude and great caution and care is required to be taken in exercise of such powers. When the offence is grave, by which society is likely to suffer, First Information Reports cannot be quashed on the ground of settlement arrived at between the parties. In this respect, two decisions of the Hon'ble Three Judges' Bench of the Supreme Court hold the field. It is pertinent to reproduce the observation of the Apex Court to decide the issue. In the matter of STATE OF U.P. vs. O.P. SHARMA as reported in (1996) 7 SCC 705, in para-11, the Hon'ble Supreme Court was pleased to observe as under :

"11. The question then is: whether the High Court is right in its exercise of inherent power under Section 482 Cr.PC? This Court in State of H.P. v. Pirthi Chand held as under :

" It is thus settled law that the exercise of inherent power of the High Court is an exceptional one. Great care should be taken by the High Court before embarking to scrutinise the FIR/charge-sheet/complaint. In deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter whether the allegations constitute the offence. It must be remembered that FIR is only an initiation to move the machinery and to investigate into cognizable offence. After the investigation is conducted (sic concluded) and the charge-sheet is laid, the prosecution produces the statements of the witnesses recorded under Section 161 of the Code in support of the charge-sheet. All that stage it is not the function of the court to weigh the pros and cons of the prosecution case or to consider necessity of strict compliance of its provisions which are considered mandatory and its effect of non-compliance. It would be done after the trial is concluded. The court has to prima facie consider from the averments in the charge-sheet and the statements of witnesses on the record in

support thereof whether court could take cognizance of the offence on that evidence and proceed further with the trial. If it reaches a conclusion that no cognizable offence is made out, no further act could be done except to quash the charge-sheet. But only in exceptional cases, i.e. in rarest of rate cases of mala fide initiation of the proceedings to wreak private vengeance process of criminal is availed of in laying a complaint or FIR itself does not disclose at all any cognizable offence - the court may embark upon the consideration thereof and exercise the power.

When the remedy under Section 482 is available, the High Court would be loath and circumspect to exercise its extraordinary power under Article 226 since efficacious remedy under Section 482 of the Code is available. When the court exercises its inherent power under Section 482, the prime consideration should only be whether the exercise of the power would advance the cause of justice or it would be an abuse of the process of the court. When investigating officer spends considerable time to collect the evidence and places the charge-sheet before the court, further action should not be short-circuited by resorting to exercise inherent power to quash the charge-sheet. The social stability and order requires to be regulated by proceeding against the offender as it is an offence against the society as a whole. (Emphasis supplied) This cardinal principal should always be kept in mind before embarking upon exercising inherent power. The accused involved in an economic offence destabilizes the economy and causes grave incursion on the economic planning of the State. When the legislature entrusts the power to the police officer to prevent organized commission of the offence or offences involving moral turpitude or crimes of grave nature and are entrusted with power to investigate into the crime in intractable terrains and secretive in concert, greater circumspection and care and caution should be borne in mind by the High Court when it exercises its inherent power. Otherwise, the social order and security would be put in jeopardy and to grave risk. The accused will have field day in destabilizing the economy of the State regulated under the relevant

provisions."

The other decision of Hon'ble Three Judges' Bench of the Supreme Court in the matter of RASHMI KUMAR (SMT) vs. MAHESH KUMAR BHADA, as reported in (1997) 2 SCC 397, also reiterates the same principle. In para 16, the Hon'ble Three Judges' Bench of the Apex Court observed as under:

"16. The question, therefore, whether it is a continuing offence and limitation began to run everyday loses its relevance, in view of the above finding. The decisions cited in support thereof, viz. Vanka Radhamanohari v. Vanka Venkata Reddy and Balram Singh v. Sukhwant Kaur, hence need not be considered. It is well-settled legal position that the High Court should sparingly and cautiously exercise the power under Section 482 of the Code to prevent miscarriage of justice. In State of U.P. v. Pirthi Chand, two of us (K. Ramaswamy and S.B. Majmudar, JJ) composing the Bench and in State of U.P. v. O.P. Sharma, a three judge Bench of this Court, reviewed the entire case-law on the exercise of power by the High Court under Section 482 of the Code to quash the complaint or the charge-sheet or the first information report and held that the High Court would be loath and circumspect to exercise its extraordinary power under Section 482 of the Code or under Article 226 of the Constitution. The Court would consider whether the exercise of the power would advance the cause of justice or it would tantamount to abuse of the process of the court. Social stability and order required to be regulated by proceedings against the offender as it is an offence against the society as a whole. This cardinal principle should always be kept in mind before embarking upon the exercise of the inherent power vested in the court. [Emphasis supplied] Same view is taken in State of Haryana v. Bhajan Lal and G.L. Didwania v. ITO., etc. "

13. Therefore, the question is at this stage when investigation is in process and ongoing, in this type of facts and circumstances, whether this Court is permitted to assess the material placed before it. Whether the Court will undertake the exercise as a pre-trial court. In this respect, a decision of the Hon'ble Supreme Court in the matter of STATE OF BIHAR v. P.P. SHARMA, as reported in 1992 SCC (Cri) 192 provides necessary

guidance. The Supreme Court there was concerned about a complaint filed against respondents in respect of Sections 409, 468, 469, 471, 120B IPC and Section 7 of the Essential Commodities Act. The investigation was in progress, the accused approached the High Court with certain documents with a prayer to quash the first information report filed against them on the strength of the documents produced. In this background, in paras 16, 32, 33 and 68 the Court was pleased to observed as under:

"16. It is thus obvious that 'the annexures' were neither part of the police reports nor were relied upon by the Investigating Officer. These documents were produced by the respondents before the High Court along with the writ petitions. By treating 'the annexures' and affidavits as evidence and by converting itself into a trial court the High Court pronounced the respondents to be innocent and quashed the proceedings. The least we can say is that this was not at all a case where High Court should have interfered in the exercise of its inherent jurisdiction. This Court has repeatedly held that the appreciation of evidence is the function of the criminal courts. The High Court, under the circumstances, could not have assumed jurisdiction and put an end to the process of investigation and trial provided under the law. Since the High Court strongly relied upon "the annexures" in support of its findings, we may briefly examine these documents.

Having referred to the observations of the High Court of Patna made in the decision impugned before the Supreme Court, it observed as under in paras 32 and 33 as under :

32. The Directors of the firm who are also accused persons in this case had approached the Rajasthan High Court for the quashing of the FIR and prosecution against them. The Rajasthan High Court dismissed the writ petition with the following order:

"Sri Bhandari states in this matter chalan has already been filed in court. The Writ petition has, therefore, become infructuous. The writ petition is dismissed as having become infructuous. No order as to costs."

33. The above order was brought to the notice of the Patna High Court but the High Court refused to be persuaded to adopt the same course. We are of the considered view that at a stage when the police report under Section 173 Cr.PC has been forwarded to the Magistrate after completion of the investigation and the material collected by the Investigating Officer is under the gaze of judicial scrutiny, the High Court would do well to discipline itself not to undertake quashing proceedings at that stage in exercise of its inherent jurisdiction. We could have set aside the High Court judgement on this ground alone but elaborate argument having been addressed by the learned Counsel for the parties we thought it proper to deal with all the aspects of the case.

68. Another crucial question is whether the High Court, in exercise of its extraordinary jurisdiction under Article 226 of the Constitution, would interfere and quash the charge-sheet. The High Court found that the document relied on by the respondents/accused were not denied by the State by filing the counter affidavit. Therefore, they must be deemed to have been admitted. On that premise the High Court found that no prima facie case was made out on merits and chances of ultimate convictions "bleak".[Emphasis supplied] The court is not passive spectator in the drama of illegalities and injustice. The inherent power of the court under Article 226 of the Constitution of India is permitted to be resorted to. When the documents relied on by the respondents "demonstrate that no prima facie office is made out on the face value of those materials, then the criminal prosecution should not be allowed to continue and so it should be quashed," and "in such a situation and circumstances the petitioners who had got a right under the Constitution for the protection of their liberty have rightly approached this Court and this Court in these circumstances has no option but to grant the relief by quashing the FIR and both the charge-sheets." Accordingly it quashed them. If this decision is upheld, in my considered view startling and disastrous consequence would ensue. Quashing the charge-sheet even before cognizance is taken by a criminal court amounts to "killing a stillborn

child". [Emphasis supplied] Till the criminal court takes cognizance of the offence there is no criminal proceedings pending. I am not allowing the appeals on the ground that alternative remedies provided by the Code as a bar. It may be relevant in an appropriate case. My view is that entertaining the writ petitions against charge-sheet and considering the matter on merit in the guise of prima facie evidence to stand an accused for trial amounts to pre-trial of a criminal trial under Article 226 or 227 even before the competent Magistrate or the Sessions Court takes cognizance of the offence. Once the proceedings are entertained the further proceedings get stayed. Expeditious trial of a criminal case is the cardinal rule. Delay feeds injustice to social order and entertaining writ petitions would encourage to delay the trial by diverse tricks. It is not to suggest that under no circumstances a writ petition should be entertained. As was rightly done by Rajasthan High Court in this case at the instance of the directors of the company, wisdom limes to keep the hands back and relegate the accused to pursue the remedy under the Code. In several cases, this Court quashed the criminal proceedings on the sole ground of delay. In a case FIR filed in 1954 for violation of the provisions of the Customs Act and Foreign Exchange Regulation Act was challenged in the Allahabad High Court. It was deliberately kept pending in the High Court and in this Court till 1990. The accusation was violation of law by named persons in the name of non-existing firm. The FIR was quashed in the year 1990 by another Bench of which I was a member solely on the ground of delay. He achieved his object of avoiding punishment. This would show that an accused with a view to delay the trial, resorts to writ proceedings, raises several contentions including one on merit as vehemently persisted by Sri Jain to consider this case on merits and have the proceedings kept pending. The result would be that the people would lose faith in the efficacy of rule of law. Documents relied on by the respondents are subject to proof at the trial and relevancy. If proved to be true and relevant then they may serve as a defence for the respondents at the trial. The State quite legitimately and in my view rightly did not choose to file the counter affidavit denying or contradicting the version of

> the respondents, in those documents. The commission of offence cannot be decided on affidavit evidence. The High Court has taken short course "in annihilating the stillborn prosecution" by going into the merits on the plea of proof of prima facie case and adverted to those facts and gave findings on merits. Grossest error of law has been committed by the High Court in making pre-trial of a criminal case in exercising its extraordinary jurisdiction under Article 226. After the charge-sheet was filed, the FIR no longer remains sheet-anchor. The charge-sheet and the evidence placed in support thereof from the base to take or refuse to take cognizance by the competent court. It is not the case that no offence has been made out in the charge-sheets and the first information report. It is, therefore, not necessary to consider all the decisions dealing with the scope of Power of the High Court either under Section 482 Cr.P.C. or Article 226 of the Constitution to quash the first information report."

14. Thus, therefore, to assess the material under the guise of the compromise arrived at between the parties, and come to the conclusion that there are no chances of conviction, would amount in my humbly view improper exercise of the powers under Section 482 of the Criminal Procedure Code. It is not permissible nor open to the High Court to analyze the case before the trial to find out whether the case would end in conviction or acquittal because it would amount to pre-trial of a case and in clear violation of provisions of law as engrafted in the Criminal Procedure code for conducting a trial. True it is that there are no restrictions on the powers of the High Court to quash complaint/FIR in circumstances mentioned in the decision of the Hon'ble Supreme Court in the matter of B.J. Joshi vs. State of Haryana (supra) because in said case society at large is not involved and only individual litigants seek redress from technicalities of law. Therefore, in the said decision in para-12 the Hon'ble Supreme Court was pleased to observe that "the special features to such matrimonial matters are evident. It becomes the duty of the court to encourage genuine settlements of matrimonial disputes." Again in para 13, it is observed by the Supreme Court that courts otherwise are very apt for determining the matrimonial dispute and it should be endeavour of all concern to settle down young couple in life and live peacefully and in those circumstances a complaint arising out of matrimonial skirmishes came to be quashed by the

Supreme Court having regard to the special features of the matter. The ratio laid down cannot be made applicable to the facts of the present case. True it is that, offence may not be compoundable as per the law and it is always open that despite non-compundability of an offence, party may urge for quashing of the FIR/complaint and in proper cases like matrimonial skirmishes, such FIR/complaint may also be quashed. Decision in the matter of Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre (supra) is relied on by the Supreme Court in the matter of B.S. Joshi v.State of Haryana (supra) and by learned counsel for the petitioners also, but the decision is explained by the Supreme Court in latter decision in the matter of State of Bihar & Anr. vs. P.P. Sharma, as reported in 1992 SCC (Cri) 192 (supra). In para -70 of the said decision, the Supreme Court observed as under :

"70. Madhavrao J. Scindia v. Sambhajirao C. Angre also does not help the respondents. In that case the allegations constituted civil wrong as the trustees created tenancy of trust property to favour the third party. A private complaint was laid for the offence under Section 467 read with Section 34 and Section 120-B IPC which the High Court refused to quash under Section 482. This Court allowed the appeal and quashed the proceedings on the ground that even on its own contentions in the complaint, it would be a case of breach of trust or a civil wrong but no ingredients of criminal offence were made out. On those facts and also due to the relation of the settler, the mother, the appellant and his wife, as the son and daugher-in-law, this Court interfered and allowed the Appeal. This Court found thus :

"..... the court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is 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."

Therefore, the ratio therein is of no assistance to the facts of this case. It cannot be considered that this Court laid down as a proposition of law that in every case the court

would examine at the preliminary stage whether there would be ultimate chances of conviction on the basis of allegation and exercise of the power under Section 482 or Article 226 to quash the proceedings or the charge-sheet. [Emphasis supplied] In Sirajuddin case, the Madras High Court and this Court, though noticed serious infirmity committed in the course of investigation by the investigating officer did not quash the charge-sheet."

15. Thus, this is not a case wherein when investigation is in progress, on account of settlement even if informants filed affidavits before this Court, the FIR should be quashed. Firstly, because it would amount to conduct pre-trial and secondly because when it is the duty of the trial court to appreciate the evidence at relevant stage, under the scope of Section 482 of the Cr. Procedure code, High Court should not assume the role of the Trial Court or investigating agency.

16. In this connection, to fortify and buttress my conclusion, one more decision of the Supreme Court is required to be quoted in the matter of STATE OF KERALA vs. O.C. KUTTAN, as reported in (1999) 2 SCC 651. While the Supreme Court was dealing with an FIR filed by the prosecutrix under Sections 366-A, 372 and 376 read with Section 344 IPC, observed in para-6 as under :

"At the outset, there cannot be any dispute with the proposition that when allegations in the FIR do not disclose prima facie commission of a cognizable offence, then the High Court would be justified in interfering with the investigation and quashing the same as has been held by this Court in Sanchaita Investments case. In the case of State of Haryana v. Bhajan Lal this Court considered the question as to when the High Court can quash a criminal proceedings in exercise of its powers under Section 482 of the Code of Criminal Procedure or under Article 226 of the Constitution of India and had indicated some instances by way of illustrations, though on fact it was held that the High Court was not justified in quashing the first information report. This Court held that such powers could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down and precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid

formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. But as an illustration, several circumstances were enumerated. Having said so, the Court gave a note of caution to the effect that the power of quashing the criminal proceedings should be exercised sparingly 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 an arbitrary jurisdiction on the court to act according to its whim or caprice. It is too well settled that the first information report is only an initiation to move the machinery and to investigate into a cognizable offence and, therefore, while exercising the power and deciding whether the investigation itself should be quashed, utmost care should be taken by the court and at that stage, it is not possible for the court to sift the materials or to weigh the materials and then come to the conclusion one way or the other. In the case of State of UP vs. OP Sharma, a three-Judge Bench of this Court indicated that the High Court should be loath to interfere at the threshold to thwart the prosecution exercising its inherent power under Section 482 or under Articles 226 and 227 of the Constitution of India, as the case may be, and allow the law to take its own course. The same view was reiterated by yet another three-Judge Bench of this Court in the case of Rashmi Kumar v. Mahesh Kumar Bhada, where this Court sounded a word of caution and stated that such power should be sparingly and cautiously exercised only when the court is of the opinion that otherwise there will be gross miscarriage of justice. The Court had also observed that social stability and order is required to be regulated by proceeding against the offender as it is an offence against society as a whole. Bearing in mind the parameters laid down in the aforesaid judgments and on a thorough scrutiny of the statement of Seema dated 23.7.1986, which was treated as an FIR and on the basis of which a criminal case was registered and her subsequent statements dated 24.8.1996 and 25.8.1996, we have no hesitation to come to the conclusion that the High Court committed gross error in embarking upon an

> enquiry by sifting of evidence and coming to a conclusion with regard to the age of the lady on the date of alleged sexual intercourse she had with the accused persons and also in recording a finding that no offence of rape can be said to have been committed on the allegations made as she was never forced to have sex but, on the other hand, she willingly had sex with those who paid money. We do not think it appropriate to express any opinion on the materials on record as that would embarrass the investigation as well as the accused persons, but suffice it to say that this cannot be held to be a case where the Court should have scuttled investigation by quashing the FIR particularly when the criminal case had been registered under several provisions of the Penal Code as well as under the Immoral Traffic Act. We also do not approve of the uncharitable comments made by the High Court in para (12) of the judgment against the woman who had given the FIR. It is not possible and it was not necessary to make any comment on the character of the lady at this stage. We also have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction to record a finding that the lady exercised her discretion to have sex with those whom she liked or got money and she willingly submitted herself to most of them who came to her for sex. We refrain from making any further observations in the case as that may affect the investigation or the accused persons but we have no hesitation to come to the conclusion after going through the statements of the victim lady that the High Court certainly exceeded its jurisdiction in quashing the FIR and the investigations to be made pursuant to the same so far as the respondents are concerned. We, accordingly, set aside the impugned order of the High Court and direct the investigating agency to proceed with the investigation and conclude the same as expeditiously as possible in accordance with law. These appeals are accordingly allowed."

In the said case also after recording of FIR some material was brought to light prompted respondents of the said case to approach the High Court for quashing of the FIR. It appears from para-5 of the said decision that the offence came to be committed on 23.7.1996 wherein the names of the respondents were not given by the informant. Further statements of the prosecutrix was recorded on

24th August, 1996 and 25th of August, 1996, wherein it was disclosed that the prosecutrix was above the age of 16 and the offence was committed with consent. In these circumstances also, the Supreme Court denied to assess the material as was pressed into service by the accused to come to the conclusion whether there was any chances of conviction of the accused.

17. This is a clear law laid down by the Supreme Court that at the juncture when investigation is open at large, assessing the material of investigation or even the say of informant that they have settled the dispute, would not permit the High Court to quash the First Information Report in question. This is so because as observed earlier that from the long time decisions of the Supreme Court mandates that at the stage of quashing of FIR/Complaint, the High Court would not be justified in embarking upon an inquiry as to the probability, reliability or genuineness of the allegations made therein. Therefore, even if respondent No.2 say that he entered into a settlement with the petitioners herein, it would not be proper for this court to embark upon to assess about the genuineness of the same and come to some conclusions, which can be reached only at end of trial after following due process of law. Thus, the contention that the First Information Report and investigation in pursuance thereof is required to be quashed, has to be negatived.

18. It is equally true that when complaint/FIR does not disclose any prima facie commission of offence, FIR must be quashed. It is contended that in view of the affidavits filed by respondent No.2, FIR does not disclose commission of prima facie offence under Section 387 or of any other charge. As stated above, at this stage, whether settlement has been arrived at or not is not to be assessed and, therefore, in this respect First Information Report will have to be judged alone and independently. Going through the FIR without dwelling upon the details, it is clear that prima facie ingredients of offences of Sections 387, 506 and 504 are disclosed and, therefore, on that count the FIR cannot be quashed.

19. Once again if we examine the scope of the powers under Section 482 of the Code of Criminal Procedure, it is clear that by this provision in the name of inherent powers, no fresh or new powers are conferred upon the High Court. It only saves the powers of the court which the court possessed before passing of the enactment of the Code in 1973 and, therefore, the exercise of powers

must be in three categories (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of the court, and (iii) to otherwise secure the ends of justice and a caution is always sounded in almost all decisions under Section 482 that this power must be exercised with circumspection carefully and with caution. The doctrine which governs is quodolex ali quid alicui concedit, concedere videtur id sine quo ipsa, ess uon potest meaning thereby that when the law gives a person anything it gives him that, without which it cannot exist and to fulfil this dictum of law, a provision is made in shape of Section 482 of Criminal Procedure Code. Adverting to the present case, the same can fall in category three as mentioned above i.e. whether the powers can be exercised to secure the ends of justice because the facts are not such, that would fall within the categories 1 and 2 above. Now, what is the abuse of process of law and what is the securing ends of justice means, is required to be examined. In the matter of ARUNSHANKAR SHUKLA vs. STATE OF U.P. as reported in (1999) 6 SCC 146, the Hon'ble Apex Court observed in para 2 as under :

" It appears that unfortunately the High Court by exercising its inherent jurisdiction under Section 482 of the Criminal Procedure Code (for short "the Code") has prevented the flow of justice on the alleged contention of the convicted accused that it was polluted by the so called misconduct of the judicial officer. It is true that under Section 482 of the Code, the High Court has inherent powers to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of process of any court or otherwise to secure the ends of justice. But the expressions "abuse of the process of law" or "to secure the ends of justice" do not confer unlimited jurisdiction on the High Court and the alleged abuse of the process of law or the ends of justice could only be secured in accordance with law including procedural law and not otherwise. Further, inherent powers are in the nature of extraordinary powers to be used sparingly for achieving the object mentioned in Section 482 of the code in cases where there is no express provision empowering the High Court to achieve the said object. It is well-nigh settled that inherent powers is not to be invoked in respect of any matter covered by specific provisions of the Code or if its exercise would infringe any

specific provision of the Code. In the present case, the High Court overlooked the procedural law which empowered the convicted accused to prefer statutory appeal against conviction of the offence. The High Court has intervened at an uncalled for stage and soft peddled the course of justice at a very crucial stage of the trial."

20. When the Criminal Procedure Code prescribes provisions to deal with investigations, trials, etc. and overreaching that process of law, exercise of powers under Section 482, would amount to exceeding the jurisdiction and limits of the powers conferred. In one more decision, in the matter of SATVINDER KAUR vs. STATE (GOVT. OF NCT OF DELHI) as reported in (1999) 8 SCC 728, wherein the Supreme Court was dealing with an appeal filed against an order of High Court quashing the FIR on the ground of lack of territorial jurisdiction of Investigating Officer, was pleased to observe as under in paras 13 and 14 as under :

"13. This Court in State of W.B. v. S.N. Basak, dealt with a similar contention wherein the High Court had held that the statutory powers of investigation given to the police under Chapter XIV were not available in respect of an offence triable under the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 and hence the investigation was without jurisdiction. Reversing the said finding, it was held thus:

" The powers of investigation into cognizable offences are contained in Chapter XIV of the Code of Criminal Procedure. Section 154 which is in that chapter deals with information in cognizable offences and Section 156 with investigation into such offences and under these sections the police has the statutory right to investigate into the circumstances of any alleged cognizable offence without authority from a Magistrate and this statutory power of the Police to investigate cannot be interfered with by the exercise of power under Section 439 or under the inherent power of the court under Section 561-A of the Criminal Procedure Code. As to the powers of the judiciary in regard to statutory right of the police to investigate, the Privy Council in King

Emperor v. Khwaja Nazir Ahmad (IA at p.212) observed as follows --

" The functions of the judiciary and the police are complementary, not to overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course subject to the right of the court to intervene in an appropriate case when moved under Section 491 of the Criminal Procedure code to give directions in the nature of habeas corpus. In such a case as the present, however, the court's functions begin when a charge is preferred before it, and not until then. It has sometimes been thought that Section 561-A has given increased powers to the court which it did not possess before that section was enacted. But this is not so. The section gives no new powers, it only provides that those which the court already inherently possesses shall be preserved and is inserted, as their Lordships think, lest it should be considered that the only powers possessed by the court are those expressly conferred by the Criminal Procedure Code and that no inherent power had survived the passing of that Act."

With this interpretation, which has been put on the statutory duties and powers of the police and of the powers of the Court, we are in accord. The High Court was in error therefore in interfering with the powers of the police in investigating into the offence which was alleged in the information sent to the officer in charge of the police station."

14. Further, the legal position is well settled 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 the FIR, prima facie, discloses the commission of offence, the court does not normally stop the investigation, for, to do so would be to trench upon the lawful power of the police to

> investigate into cognizable offences. It is also settled by a long course of decisions of this Court that for the purpose of exercising its power under Section 482 Cr.PC to quash an FIR or a complaint, the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se; it has no jurisdiction to examine the correctness or otherwise of the allegations."

21. The contention that the case falls within the category No.3 and 7 of the Bhajan Lal's case, is yet required to be examined. In category 3, it is mentioned by the Supreme Court that where the uncontroverted allegation made in the FIR or complaint and the evidence collected in support of the same, do not disclose the commission of offence and make out a case against the accused, the First Information Report would be quashed. Firstly it is required to be clarified that in my humble view, this category applies to the cases wherein the charge sheet is filed before the Trial Court and where the FIR and material collected during investigation is available to the accused. When FIR and collected material did not disclose any commission of offence at that stage, then FIR can be quashed within the third category as mentioned in Bhajan Lal's case in para 108. This is more so because if the stage for this was envisaged before filing of the charge-sheet, then it may amount to violation of provisions of law because before filing of the charge-sheet, the accused would not have any access to investigation papers and the assessment by the court as afore-stated is not permitted. Therefore, as contended, the present case would not fall within category three of Bhajan Lal's case. In this respect also, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusation made, and a case where there is legal evidence which on appreciation, may or may not support the accusation. Therefore, at this stage, it is not open to the High Court to embark upon an inquiry whether evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. While category (7) refers to criminal proceedings and not the case which is at hand. There may be private complaints attended with mala fide or malicious intention, can be quashed under category (7) prescribed by the Bhajan Lal's case. The present FIR on that scope also is not required to be quashed. It is also important to note that application tendered by 11 persons on 11.12.2003 to the Commissioner of Police was not invited

by Police Department. There is no whisper anywhere that the whole episode was initiated by Police Department, much less by malicious intention to wreck vengeance upon petitioners. It is unfortunate that petitioner No.1 happens to be suspended P.I. and an accused at the same time. Attempts, may be feeble, are being made by investigating agency to bring the end of legal process of investigation. Though it may not be strictly falling within the scope of this petition, but if what is contended by learned Counsel for the respondent No.2 is correct about pathetic plight of those house dwellers, then it is shocking and eye-opener that how the Police machinery in the State is functioning. Out of 18 accused, only one could be arrested. Police Machinery perhaps neither wrecking vengeance against the accused and is far away from the duty of witnesses protecting programme. They have their own style to discharge their duties, much less wrecking vengeance on accused.

22. The above discussion covers the whole contentions raised on behalf of the petitioners. The latest law on this aspect is propounded by the Hon'ble Supreme Court in the matter of STATE OF A.P. vs. GOLCONDA LINGA SWAMY AND ANOTHER, as reported in (2004) 4 SCC 522. The Hon'ble Supreme Court in the said decision summarized the ratio flown right from R.P. Kapur's case till today and propounded important law of the land. In para-5 of the decision, the Supreme Court summarized the powers of the court as under :

" Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely : (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely

> recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alique concedit, conceditur et id sine quo res ips esse non potest (when the law gives a person anything, it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

In para-7 the Supreme Court observed that when exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an inquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial judge. Judicial process, no doubt, should not be an instrument of oppression, or , needless harassment. The section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death.

In para -8 the Supreme Court observed as under :

" As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of its power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage (See Janata Dal v. H.S. Chowdhary and Raghubir Saran (Dr.) v. State of Bihar). It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognisance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint/FIR has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant or disclosed in the FIR that the ingredients of the offence or offences are disclosed and there is no material

to show that the complaint/FIR is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceeding."

In the above said decision - State of A.P. vs. Golconda Linga Swamy (supra), the Supreme Court was concerned about an FIR filed against the accused under the Andhra Pradesh Excise Act, 1968 and the Andhra Pradesh Prohibition Act, 1995 because the accused was concerned with the transporting and storing of black jaggery/molasses. The contention which was raised before the Supreme Court was that on mere surmises and conjectures that black jaggery/molasses being transported or stored for the purpose of manufacturing illicit distilled liquor, the FIR was lodged. It was further contended that suspicion however strong cannot be a ground to initiate criminal proceedings. In this background, the Supreme Court in para - 10 observed as under :

" In all these cases there were either statements of witnesses or seizure of illicit distilled liquor which factors cannot be said to be without relevance. Whether the material already in existence or to be collected during investigation would be sufficient for holding the accused persons concerned guilty has to be considered at the time of trial.[Emphasis supplied] At the time of framing the charge it can be decided whether prima facie case has been made out showing commission of an offence and involvement of the charged persons. At that stage also evidence cannot be gone into meticulously. It is immaterial whether the case is based on direct or circumstantial evidence. Charge can be framed, if there are materials showing possibility about the commission of the crime as against certainty. That being so, the interference at the threshold with the FIR is to be in very exceptional circumstances as held in the R.P. Kapur and Bhajan Lal cases.

23. Thus, this is the law of the land as propounded by the Apex Court as to how to exercise powers under Section 482 of the Code of Criminal Procedure by High Court. This is not a case wherein this Court should exercise powers to quash First Information Report and investigation. This is not the rarest of rare case wherein prosecution should be scuttled in its inception. Prima facie, as narrated above, FIR does disclose offence under Section 387 against the accused and the FIR is not required to be quashed. Therefore, on that ground, though the first informants declared more than once before this Court and Supreme Court that their misunderstanding with the petitioners cleared and set at rest, but the fact that the informant resiled, would not result in to come to the conclusion that the chances of conviction is bleak on this ground and no useful purpose is likely to be served in sending the accused to trial. On the contrary, wisdom lies to keep the hands back and relegate the accused to pursue the remedy under the Code because the investigation is in progress and this is not a case from its own facts that it bears peculiar and special features as to dispute between two individuals, but the facts mentioned in the First Information Report is disquieting and the social stability and order requires to be regulated by proceedings against the offender as it is found that the dispute is not mere individual. It is also not permissible to sift the evidence collected by the Investigating Officer injuxtaposition with the affidavits filed by the informants at this stage. On charge-sheet being filed, the accused will get all opportunities to defend themselves on all counts. The evidence and material collected will be appreciated by concerned court at relevant juncture. Permitting the short circuit remedy to the accused, would amount to killing a still born child. It is necessary now to refer to the affidavit-in-reply filed by the Assistant Commissioner of Police Mr.R.J.Pargi, which is placed at Page 117 of the compilation of the petition. In Para-3 (ii) the Assistant Commissioner of Police stated as under :

"3(ii) Secondly, as per the statement of accused Chandrakant Ganpatrai Bhatekar, in the month of April, 2003, he and Mukesh Chhotabhai Parmar along with the Mali brothers and a Talati named Saiyed had gone to meet Kabhai Chauhan at his office located at Alkapuri, Vadodara. They had explained to Kabhai Chauhan the various encumbrances attached to the land in question, that is the 16,000 square feet of Talav/pond

land, and also informed him about the various claimants to the same plot of land. Despite hearing about these disputes and encumbrances to the acquirement of this land of the pond/talav, Kabhai Chauhan had instructed them to give a notice seeking title clearance for 3205 square meters, that is, 34,489 square feet of land, which included the land owned by the complainants in these cases. He had said that when the objections come, subsequent to the public notice, "we shall see".

From the facts stated above, it is quite apparent that the plea of the misunderstanding made by the complainants is a feeble attempt to save the accused, because the sequence of events shows that it was a deliberate and calibrated effort to grab the land of the complainants."

True it is that statement of the co-accused is not admissible piece of evidence, but so far as investigation is concerned, the same is very important material. In para-6 of the Affidavit-in-reply of the Assistant Police Commissioner, stated as under:

" The fact that the complainants have filed affidavits in the High Court of Gujarat absolving the petitioners of any wrong doing clearly shows the influence and reach of the accused. It is an indisputable fact that these same complainants made a representation to the Commissioner of Police against the petitioners on 11.12.2003 on their own volition. The fact that they had done a volte-face within four days, evidently proves that they had done it out of pressure. The criminal record of Kabhai Chauhan shows clearly that he wins over witnesses and gets FIR's filed through final reports asking for summary and not charge-sheet or gets acquitted in Court. Kabhai Chauhan is known in Gujarat for money as well as power. In addition, he is a Police Inspector, albeit under suspension since June 2000."

Though these facts are denied by the petitioners through their affidavits filed in rejoinder, but there is sufficient material, in my humble view to allow the investigation to continue even if the informants have changed their stand.

24. Learned Senior Counsel Mr. Nanavati stated that if the Court relies on the papers of investigation, then

in adversary system, especially within the scope of Section 482 of the Criminal Procedure code, the petitioners are entitled to copies of it. The submission cannot be accepted for simple reason that under Article 226 of the Constitution of India, this Court has ample power to look into and to rely upon investigation papers without giving copies of the same to the accused. Filing of 'C' Summary in one of the First Information Report i.e. in Crime Register No. I-405/03 cannot also be a ground to quash the present First Information Report because it appears that the informant of CR No. I-405/03 was not at all present when the incident took place, and 'C' Summary came to be filed by the Police in her complaint and, therefore, at this juncture, neither this Court should embark upon in an inquiry as to reliability and credibility of the material collected and come to the conclusion that there are bleak chances of conviction of the accused nor this Court should interfere with the legitimate investigation by the Police on the ground that settlement between the parties have been arrived at, and no useful purpose is likely to serve in continuing the investigation and thereafter prosecution.

25. In the result, for the reasons stated in the judgment, this Criminal Miscellaneous Application stands dismissed.

(J.R. VORA, J.)

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