Sr. No. 02
Supplementary list

IN THE HIGH C0URT 0F JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 06.11.2024.
Pronounced on 27.11.2024

CRM(M) 562/2024
C/W
Bail App 105/2024
CRM(M) 643/2024

…Appellant(s)/Petitioner(s)

Through: Mr. Z. A. Shah, Sr. Advocatewith
Mr. Surjeet Singh, Advocate
Mr. Khowaja Siddiqui, Advocate.
Mr. J.K. Khera, Advocate.
Mr. Sohail Khan, Advocate.

...Respondent(s)

Vs.

1. **Union Territory of Jammu & Kashmir, through Station House Officer, Police Station Budgam**
2. **Fg. OFFR XXX 37086-G EDN C/O Air Station Srinagar Budgam**

Through: Mr. Mohsin Qadri, Sr. AAG
with Mr. Zahid Qais Noor, GA for R-1
MS. Ayeshia, Advocate. For R-2.

CRM(M) 643/2024

Union of India, Ministry of Defence through Air Cmde AOC 1 Wing Air Force Station, Srinagar C/O 56 APO

...Petitioner(s)

Through: Mr. T. M. Shamsi, DSGI with
Mr. Faizan Ahmad Ganie, Advocate.

Vs.

1. **UT of J & K through…Respondent(s) Principal Secretary**

Home Department, J & K Civil Secretariat, Srinagar.

2. **Inspector General of Police, Kashmir Srinagar.**
3. **Sr. Superintendent of Police, Budgam SHO Police Station Budgam.**
4. **XYZ**
5. **Wingh Commander**

R/O Air Force Station, Srinagar

.Respondent(s)

Through: Mr. Mohsin S. Qadri, Sr. AAG with
Mr. Mr. Zahid Qais Noor, GA, for R-1 to 3
Ms. Ayeshia, Advocate, for R-4
Mr. Z. A. Shah, Sr. Advocate with
Mr. Surjeet Singh, Adv, for R-5.

CORAM:
HON'BLE MR. JUSTICEJAVED IQBAL WANI, JUDGE

JUDGMENT

The instant petitions arise from a common incident of alleged sexual assault by P.K. Sehrawat, petitioner in CRM(M) 562/2024 and respondent 5 in CRM(M) 643/2024 against respondent 2 in CRM(M) 562/2024 and respondent 4 in CRM(M) 643/2024.

CRM(M) 562/2024

Facts

1. On a complaint filed by respondent 2 herein, FIR No. 0370/2024 (For short "the impugned FIR")came to be registered on 08.09.2024 at Police Station Budgam against the petitioner herein for commission of offence punishable under Section 376 (2) of the Indian Penal Code 1860, which is being impugned by the petitioner herein in the instant petition while invoking inherent power of this Court enshrined in Section 528 of BNSS.
2. The petitioner herein has pleaded in the instant petition that he came across with the respondent 2 herein in the year 2023 and upon noticing her professional conduct, pointed out to the various mistakes on several occasions stating further that on 23.01.2024 the respondent 2 herein filed a false and frivolous complaint of sexual harassment against the petitioner herein before the authorities of the Air Force, whereupon, a Court of Inquiry came to be constituted for enquiring into the said complaint vide SRO No. 08/2024 dated 25.01.2024 and that the filing of the said complaint

came to the knowledge of the petitioner herein on 26.01.2024, whereafter, the petitioner came to be summoned by the Court of Inquiry on 29.01.2024 in which Court of Inquiry, the respondent 2 herein made a statement, which statement was neither coherent nor made any sense pointing towards the artificiality of the allegations in the complaint which were also noticed in the said Court of Inquiry, and, according to the petitioner herein this forced the respondent 2 herein to fabricate a protest and seek quashment of the proceedings on the ground of violation of Regulation 788 (a) of the Regulations of the Air Force and that the said proceedings of the Court of Inquiry came to be cancelled vide SRO 10/2024 and on the very same date, petitioner herein was removed from the President Mess Committee duties.

3. It has also been pleaded by the petitioner herein that he was informed that a new Internal Committee has been constituted by the Competent Authority upon the demand of the respondent 2 herein, whereupon, the petitioner herein came to be called upon to file a statement to the fresh, improved and a back dated complaint filed by the respondent 2 herein after a delay of 20 days and the said Internal Committee after considering the statement of the parties and their respective witnesses recorded a finding in its report dated 15.05.2024 that the allegations against the petitioner herein had not been established, and, therefore, the Internal Committee was of the opinion that the subject matter remains inconclusive and not proven against the petitioner herein and no action thereupon was required to be taken in the matter.

4. The petitioner has also pleaded that after a period of 3 months of the conclusion of the proceedings of the said Internal Committee, the impugned FIR came to be registered against the petitioner herein at the instance of the

respondent 2 herein on the same set of allegations as were looked into earlier by the Court of Inquiry and Internal Committee.

5. The petitioner herein while maintaining the instant petition has urged following grounds of challenge against the impugned FIR:-

   a. That it is pertinent to mention here that the Petitioner has not committed any such offence as alleged in the FIR and the present FIR deserves to be quashed.
   b. That all the allegations leveled against the Petitioner as mentioned in the above-mentioned FIR registered by the Respondent NO.2, are false and frivolous, the Petitioner herein has neither committed is nor related with the commission of offences as mentioned in the FIR, as mentioned above.
   c. That once the Concerned Authority initiates inquiry, the Criminal Court then have no jurisdiction to try and investigate the Civil offences as mentioned in Section 71 and 72 Of the Air Force Act, 1950 more specifically section 71 as the complainant and the proposed accused are subject to Air force Act, 1952 .
   d. That the Hon'ble High Courts in number of judgments have given a finding that the jurisdiction to try civil offences has also been conferred on the Court Marshall Of Concerned Authority, in View Of the and exigencies known to the Armed Forces. The IC in the present case had the jurisdiction to try and decide the present complaint and the findings will be binding on the subject concerns of the particular inquiry.
   e. That as per Section 72 of the Air Force Act, 1950 ("Act") which states that any offences pertaining to murder, rape or culpable homicide not amounting to murder, committed by any member Of the Air Force on Active Service can be tried by "Court martial" under the Act.
   f. That as per Section 124, it is worthwhile to extract those provisions below: "Section 124. Choice between criminal court and court- martial" "When a criminal court and a

court martial have each jurisdiction in respect of an offence, it shall be in the discretion Of [the Chief Of the Air Stan, the officer commanding any group, wing or station in which the accused prisoner is serving of such other officer as may be prescribed to decide before which court the proceedings shall be instituted, and, if that officer decides that they should be instituted a court-martial, to direct that the accused person shall be detained in Air force custody."

g. That as per Section 124 of the Act, the officer commanding any wing, group or station have jurisdiction to try offences relating to civil offences.

h. That as per Section 125 of the Act, the Criminal Courts/PoIice can only assume jurisdiction to try offences mentioned under Section 72 of the Act only after giving a written notice to the concerned authority Of the Air Force.

i. That the Criminal Court and Competent Authority under the Act have concurrent jurisdiction to try offences under Section 72 of the Act, however, if the Competent Authority has the trial/proceedings and has come to a finding, then the Criminal Court have no jurisdiction or power to try and entertain the same.

j. That if any offence is committed against a person who is also subject Of the Military, Navy and Air Force then the Court Martial cannot excluded from exercising his 13 option to assume jurisdiction. In the present case Petitioner is also a subject of Air Force and hence, the Court Martial has the jurisdiction to try the present matter.

k. That the Hon’ble High Court has stated that *"Though the system of Court Martial appears to be an in-house mechanism, proceedings before the Court Martial are not mere disciplinary præeedings but they are akin to criminal proceedings before a regular Criminal Court and hence the Court Martial has been conferred with the power of a Session Judge".*

l. That in **Som Dat Datta vs Union Of India and Others (AIR 1969 SC 414)** States that's once an option under section 124 is exercised there is no necessity to continue or complete investigation by the Police and hence an order should be passed that the police shall not continue the investigation unless it is expressly desired by the Competent Authority. In the present case, the Competent Authority have undertaken the investigation and after considering the facts, evidences and the witness have come to a conclusion/findings and therefore, the Police investigation is not required.

m. That the present FIR is nothing but an act Of animus and vengeance against the Petitioner as the Respondent No.2 has improper conduct and the Petitioner being PMC had rightly corrected her indisciplined conduct.

n. That the complaint by Respondent No. 2 is motivated from her own dismal record of service and likelihood Of serious disciplinary actions initiated against her in other on disciplinary matters.

6. The respondents herein have filed reply to the petition wherein the petition has been opposed.

7. **<u>In the objections filed respondent 1 herein</u>**, it has been averred that on 08.09.2024, the complainant respondent 2 herein approached the Police Post Humhama along with a complaint alleging therein that during the intervening night of 31.12.2023/01.01.2024, she was raped by the petitioner herein at 01 Wing Air Force Station Srinagar, after the culmination of New Year celebration party, having stated further in the complaint that the matter was brought in the notice of the senior officers of the Air Force Station Srinagar, and a Court of Inquiry was ordered followed by an Inquiry by an Internal Committee against the petitioner herein, however, nothing concrete came out of the said enquiries and consequently both were closed on frivolous grounds.

It is further stated in the objections that upon the receipt of the complaint, the FIR under challenge came to be registered at Police Station Budgam, and, in view of the sensitivity of the case, a Special Investigation Team headed by Additional Superintendent of Police Budgam was constituted and entrusted with the investigation of the case and during the course of investigation the petitioner herein has been found involved in the heinous crime of rape and that the petitioner herein is trying to mislead the Court by referring to the provisions of Sections 71, 72 and 124 of the Air Force Act 1950.

8. **In the objections filed by the respondent 2 herein**, the petition has been opposed, *inter alia,* on the premise that the answering respondent herein got the impugned FIR registered *qua* the commission of offence of rape committed by the petitioner herein against her after nothing concrete came out in two inquiries conducted by the Senior Officers of the Air Force Station Srinagar, stating further that the FIR under challenge is detailed and graphically explaining the incident of rape as it occurred with the answering respondent on the intervening night of 31.12.2023/01.01.2024, and, upon taking up the investigation in the matter, by the police, the statement of the answering respondent came to be got recorded before a Magistrate by the Investigating Agency in terms of Section 183 BNSS 2023 and that the offence committed by the petitioner herein was initially confided in two lady officers immediately upon its commission by the answering respondent and that the Court of Inquiry proceedings were cancelled only after two days of its commencement on account of gross procedural lapses, whereupon, another inquiry was undertaken by the Internal Committee upon a fresh application filed by the answering respondent herein and the said Internal Committee opined on 14.05.2024 that the occurrence or non-

occurrence of the alleged incident cannot be confirmed, against which opinion, the answering respondent filed a representation which representation was not considered and instead complete lack of propriety came to be shown by the Internal Committee during the conduct of its proceedings, especially hasteful recommendations came to be made by it contrary to the findings given on the next date i.e. 15.04.2024, without considering the representation of the answering respondent, leaving no option available to the answering respondent except to seek lodgment of an FIR in the matter against the petitioner herein.

Lastly in the objections filed by the respondent 2 herein, the grounds urged in the petition have been opposed and consequently the dismissal of the petition is sought.

Heard learned counsel for the parties and perused the material on record including the CD file produced by the Investigating Agency.

9. It is significant to mention here that notwithstanding more than ten grounds of challenge urged in the petition by the petitioner herein, Mr. Z. A. Shah Senior Advocate, appearing counsel for the petitioner herein restricted his arguments to the grounds enumerated in Section 528 of BNSS for its exercise being "**to give effect to any order under the Sanhita, to prevent abuse of the process of any Court and to secure the ends of justice"**.

In addition thereto, Mr. Shah would also urge the application of the provisions of Section 124 of the Air Force Act 1950 to the matter and would seek transfer of the investigation in the FIR under challenge along with the instant matter to the jurisdiction of the authorities under the Air Force Act 1950.

10. In so far as the contention of Mr. Shah qua the application of Section 124 of the Act of 1950 to the case in hand is concerned, same would be dealt later

while considering CRM(M) No: 643/2024 wherein application of Section 124 supra is the central and core issue.

11. The gist of the arguments put forth by Mr. Shah insofar as the instant petition is concerned is that in view of the findings recorded by the Court of Inquiry and Internal Committee in the matter, the registration of impugned FIR is an abuse of process of Court and, thus, needs to be quashed in order to secure the ends of justice, in that complaint filed by respondent 2 herein which resulted in the registration of the impugned FIR was actuated with mala fides as the conduct of the respondent 2 herein was such so as to make her liable to disciplinary action, and, in order to shift attention of superiors from her conduct and to prevent any adverse order vis-à-vis her service, the impugned FIR came to be got registered by the respondent 2 herein which is false much like the previous complaints filed by the respondent 2 herein before the Court of Inquiry and the Internal Committee.

12. It is pertinent to note here that while considering the instant matter at its threshold, this Court vide order dated 12.09.2024 directed that the investigation shall continue pursuant to the impugned FIR, however, the charge-sheet shall not be filed.

13. As has been noticed in the preceding para pursuant to the order dated 12.09.2024 *supra* passed by this Court, the police has conducted investigation in the FIR and perusal of the CD file tends to show that same seems to be nearing completion.

14. Before proceeding further in the matter for the purposes of rendering a decision on the merits of the case, it would be appropriate and profitable to discuss the ambit and scope of the inherent power vested in this Court under Section 582 BNSS *pari materia* with Section 482 of Cr.P.C hereunder, which scope and exercise of inherent power in fact has been dealt with by

the Apex Court in a series of judgments including in case titled as "**Neeharika Infrastruture Pvt. Ltd. Vs State of Maharastra & Ors"** reported in **AIR 2021 SC 1918** wherein at Para 7 following has been laid down:-

> **7.** While considering the aforesaid issue, law on the exercise of powers by the High Court under Section 482 Cr.PC. and/or under Article 226 of the Constitution of India to quash the FIR/complaint and the parameters for exercise of such powers and scope and ambit of the power by the High Court under Section 482 Cr.PC. and/or under Article 226 of the Constitution of India are required to be referred to as the very parameters which are required to be applied while quashing the FIR will also be applicable while granting interim stay/protection.
>
> **7.1** The first case on the point which is required to be noticed is the decision of this Court in the case of R.P. Kapur (supra). While dealing with the inherent powers of the High Court under Section 561-A of the earlier Code (which is pari materia with Section 482 of the Code), it is observed and held that the inherent powers of the High Court under Section 561 of the earlier Code cannot be exercised in regard to the matters specifically covered by the other provisions of the Code; the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice; ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. After observing this, thereafter this Court then carved out some exceptions to the above-stated rule, which are as under:
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> > "(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.
> >
> > (ii) Where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of

looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not.

(iii) Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases 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 manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question.

In exercising its jurisdiction under Section 561- A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained."

7.2 In the case of Kurukshetra University (supra), this Court observed and held that inherent powers under Section 482 Cr.PC. do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice; that statutory power has to be exercised sparingly with circumspection and in the rarest of rare cases. In the case before this Court, the High Court quashed the first information report filed by the Kurukshetra University through Warden and that too without issuing notice to the University, in exercise of inherent powers under Section 482 Cr.PC. This Court noticed and observed that the High Court was not justified in quashing the FIR when the police had not even commenced investigation into the complaint filed by the Warden of the University and no proceedings were at all pending before any Court in pursuance of the FIR.

7.3 Then comes the celebrated decision of this Court in the case of Bhajan Lal (supra). In the said decision, this Court considered in detail the scope of the High Court powers under Section 482 Cr.PC. and/or Article 226 of the Constitution of India to quash the FIR and referred to several judicial precedents and held that the High Court should not embark upon an inquiry into the merits and demerits of the allegations and quash the proceedings without allowing the investigating agency to complete its task. At the same time, this Court identified the following cases in which FIR/complaint can be quashed:

> "102.(1) 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.
>
> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR 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.
>
> (3) 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.
>
> (4) 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.
>
> (5) 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.
>
> (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (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 Act concerned, providing efficacious redress for the grievance of the aggrieved party.
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> (7) 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."

7.4 In the case of Golconda Lingaswamy (supra), after considering the decisions of this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra) and other decisions on the exercise of inherent powers by the High Court under Section 482 Cr.P.C., in paragraphs 5, 7 and 8, it is observed and held as under:

"5. 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 recognises 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 ipsa 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.

7. In dealing with the last category, 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 accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry 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. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death…..

8. As noted above, 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. Court must be careful to see that its decision in exercise of this 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 [(1992) 4 SCC 305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892] and Raghubir Saran (Dr.) v. State of Bihar [AIR 1964 SC 1 : (1964) 1 Cri LJ 1] .] 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 the 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."

7.5 In the case of Zandu Pharmaceutical Works Ltd. (supra), in paragraph 11, this Court has observed and held as under:

"11. … 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. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The 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.

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 premise 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 cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the 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 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 that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint 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 proceedings."

7.6 In the case of Sanapareddy Maheedhar Seshagiri (supra), in paragraph 31, it is observed and held as under:

"31. A careful reading of the abovenoted judgments makes it clear that the High Court should be extremely cautious and slow to interfere with the investigation and/or trial of criminal cases and should not stall the investigation and/or

prosecution except when it is convinced beyond any manner of doubt that FIR does not disclose commission of any offence or that the allegations contained in FIR do not constitute any cognizable offence or that the prosecution is barred by law or the High Court is convinced that it is necessary to interfere to prevent abuse of the process of the Court.

In dealing with such cases, the High Court has to bear in mind that judicial intervention at the threshold of the legal process initiated against a person accused of committing offence is highly detrimental to the larger public and societal interest. The people and the society have a legitimate expectation that those committing offences either against an individual or the society are expeditiously brought to trial and, if found guilty, adequately punished. Therefore, while deciding a petition filed for quashing FIR or complaint or restraining the competent authority from investigating the allegations contained in FIR or complaint or for stalling the trial of the case, the High Court should be extremely careful and circumspect.

If the allegations contained in FIR or complaint disclose commission of some crime, then the High Court must keep its hands off and allow the investigating agency to complete the investigation without any fetter and also refrain from passing order which may impede the trial. The High Court should not go into the merits and demerits of the allegations simply because the petitioner alleges malus animus against the author of FIR or the complainant. The High Court must also refrain from making imaginary journey in the realm of possible harassment which may be caused to the petitioner on account of investigation of FIR or complaint. Such a course will result in miscarriage of justice and would encourage those accused of committing crimes to repeat the same. However, if the High Court is satisfied that the complaint does not disclose commission of any offence or prosecution is barred by limitation or that the proceedings of criminal case would result in failure of justice, then it may exercise inherent power under Section 482 CrPC."

7.7 In the case of Arun Gulab Gawali (supra), this Court set aside the order passed by the High Court quashing the criminal complaint/FIR which was even filed by the complainant. In the case before this Court, prayer for quashing the FIR before the High Court was by the complainant himself and the High Court quashed the FIR/complaint in exercise of the powers under

Section 482 Cr.P.C. Quashing and setting aside the judgment and order passed by the High Court quashing the FIR, this Court in paragraphs 13 and 27 to 29 has observed as under:

> "13. The power of quashing criminal proceedings has to be exercised very sparingly and with circumspection and that too in the rarest of rare cases and the Court cannot be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of allegations made in the FIR/complaint, unless the allegations are so patently absurd and inherently improbable so that no prudent person can ever reach such a conclusion. The extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice. However, the Court, under its inherent powers, can neither intervene at an uncalled for stage nor can it "soft-pedal the course of justice" at a crucial stage of investigation/proceedings.
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> The provisions of Articles 226, 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 (hereinafter called as "CrPC") are a device to advance justice and not to frustrate it. The power of judicial review is discretionary, however, it must be exercised to prevent the miscarriage of justice and for correcting some grave errors and to ensure that stream of administration of justice remains clean and pure.
>
> However, there are no limits of power of the Court, but the more the power, the more due care and caution is to be exercised in invoking these powers. (Vide State of W.B. v. Swapan Kumar Guha [(1982) 1 SCC 561 : 1982 SCC (Cri) 283 : AIR 1982 SC 949] , Pepsi Foods Ltd. v. Special Judicial Magistrate [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400] , G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513 : AIR 2000 SC 754] and Ajay Mitra v. State of M.P. [(2003) 3 SCC 11 : 2003 SCC (Cri) 703])
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> xxx xxx xxx
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> 27. The High Court proceeded on the perception that as the complainant himself was not supporting the complaint, he would not support the case of the prosecution and there would be no chance of conviction, thus the trial itself would be a futile exercise. Quashing of FIR/complaint on such a ground cannot be held to be justified in law. Ordinarily, the Court of Session is empowered to discharge an accused under Section 227 CrPC even before initiating the trial.

> The accused can, therefore, move the trial court itself for such a relief and the trial court would be in a better position to analyze and pass an order as it is possessed of all the powers and the material to do so. It is, therefore, not necessary to invoke the jurisdiction under Section 482 CrPC for the quashing of a prosecution in such a case. The reliance on affidavits by the High Court would be a weak, hazy and unreliable source for adjudication on the fate of a trial. The presumption that an accused would never be convicted on the material available is too risky a proposition to be accepted readily, particularly in heinous offences like extortion.
>
> 28. A claim founded on a denial by the complainant even before the trial commences coupled with an allegation that the police had compelled the lodging of a false FIR, is a matter which requires further investigation as the charge is levelled against the police. If the prosecution is quashed, then neither the trial court nor the investigating agency has any opportunity to go into this question, which may require consideration. The State is the prosecutor and all prosecution is the social and legal responsibility of the State. An offence committed is a crime against society and not against the victim alone. The victim under undue pressure or influence of the accused or under any threat or compulsion may resile back but that would not absolve the State from bringing the accused to book, who has committed an offence and has violated the law of the land.
>
> 29. Thus, while exercising such power the Court has to act cautiously before proceeding to quash a prosecution in respect of an offence which hits and affects the society at large. It should be a case where no other view is possible nor any investigation or inquiry is further required. There cannot be a general proposition of law, so as to fit in as a straitjacket formula for the exercise of such power. Each case will have to be judged on its own merit and the facts warranting exercise of such power. More so, it was not a case of civil nature where there could be a possibility of compromise or involving an offence which may be compoundable under Section 320 CrPC, where the Court could apply the ratio of Madhavrao Jiwajirao Scindia [(1988) 1 SCC 692 : 1988 SCC (Cri) 234 : AIR 1988 SC 709] .”

What emerges from the law enunciated by the Apex Court in the judgment supra *inter alia,* is that when a prayer for quashing of an FIR is made by an accused, the Court exercising power under Section 482 Cr.P.C

(now Section 528 BNSS) has only to consider whether the allegations under the FIR disclose commission of a cognizable offence or not and that the High Court must keep its hands off and allow the investigating agency to complete the investigation without any fetter and also refrain from passing any order which may impede the trial and also the High Court should not go into the merits and demerits of the allegations simply because the accused alleges *malus animus* against the author or FIR or the complainant and that quashment of an FIR has to be an exception and a rarity than an ordinary rule as the inherent power of the Court do not confer an arbitrary power or jurisdiction upon the High Court.

12. Coming back to the case in hand it is manifest that the conclusions of the Court of Inquiry as also the Internal Committee over which much emphasis and reliance has been placed by the counsel of petitioner herein while seeking quashment of the impugned FIR, seemingly have not conclusively determined that the petitioner herein is not guilty. A reference hereunder to the concluding para of the report of the said Internal Committee would be profitable;

> 15. After in depth analysis of the entire proceedings, the IC was not in a position to establish the occurrence (or non-occurrence) of the alleged incident. The act of misconduct charges against the Respondent based on the complaint by the Complainant have not been established. The IC is of the opinion that the subject matter remains inconclusive."
>
> Recommendations made by the Internal Committee are as follows:
>
> "2. The following recommendations are made:
>
> (a) Since the act of misconduct/charges against the Respondent (taking into consideration the entire proceedings) have not been established, it is concluded that the charges have not been proved and the case remains inconclusive. Therefore, no action is required to be taken in the matter.
>
> (b) Para 14 (a) and (b) of the finding highlights the incorrect methods adopted by the Complainant and Respondent. Necessary counselling may be rendered to both to refrain from such approach in future."

15. As is manifest from above, the Internal Committee has not been able to reach to any conclusion. Therefore, based on such inconclusive findings

and recommendations of the Internal Committee, the petitioner herein cannot be said to have been exonerated in the matter and in the process same would result in quashing of the impugned FIR, as in law, it is only in case of exoneration on merits where allegations are found to be not sustainable at all and a person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to lie on the basis of underlying principle being the higher standard of proof in criminal cases.

It is also revealed that the Investigation Agency has gathered evidence tentatively pointing towards the involvement of the petitioner herein in the commission of the alleged offence covered in the FIR. Besides above position obtaining in the mater, a plain reading of the impugned FIR manifestly demonstrates and discloses the commission of the alleged offence by the petitioner herein, so is also revealed from a deeper and closer examination of the CD file produced by the counsel for the respondent herein.

16. Having regard to what has been observed, considered and analyzed herein above inasmuch as the principles of law laid down by the Apex Court in the case of **Neeharika Infrastructure supra**, this Court is not inclined to exercise inherent jurisdiction, more so, in view of the latest law laid down by the Apex Court in case titled as "**Achin Gupta Vs. State of Haryana"** reported in **2024 SCC online SC 759,** wherein it has been held that the investigation of an offence is the field exclusive reserved for the Police Officers, whose powers in that field are unfettered, so long as the power to investigate a cognizable offence is legitimately exercised in strict compliance with the provisions under Chapter XII of the Cr.P.C.

17. Viewed thus, what has been observed, considered and analyzed herein above, the instant petition fails and is accordingly **dismissed**.

CRM(M) No. 643/2024.

1. In the instant petition filed by Union of India through Air Cmd AOC 1 Air Force Station Srinagar C/O 56 APO, inherent power of this Court enshrined in Section 528 of BNSS, has also been invoked.
2. The facts pleaded in the petition are that a Court of Inquiry was held at Air Force Station, Srinagar, between 6th December 2023 to 6th January 2024 which found the respondent 4 herein blameworthy on certain counts and the case accordingly came to be recommended by Headquarter Western Air Command, IAF for initiation of a suitable action against respondent 4 herein and, while the said Court of Inquiry was in progress, the respondent 4 herein submitted a complaint to AOC 1 Wing Air Force Station, Srinagar on 23rd January 2024 alleging inappropriate behaviour by the respondent 5 herein during the intervening night of 31st December 2023/1st January 2024 whereupon, a Court of Inquiry was ordered by AOC 1 Wing Srinagar, on 25th January 2024, however the respondent 4 herein submitted an application on 31st January 2024 requesting therein that instead of Court of Inquiry, an Internal Committee be constituted to investigate the matter, whereupon, the Internal Committee was constituted with an independent member from an NGO which Internal Committee investigated the matter from 29th March 2024 to 15th May 2024 and recorded its finding which thereafter came to be forwarded to the respondent 4 herein as also to the accused respondent 5 herein on 14th June 2024 for their comments and instead of submitting her comments the respondent 4 herein filed a complaint before the police agency which led to the registration of FIR No 370/2024 by police station, Budgam against respondent 5 herein for commission of an offence punishable under Section 376(2) IPC.
3. It is further stated in the petition that the police upon the registration of the FIR supra started its investigation and called the accused respondent 5 herein

to Police Station Budgam, and, after recording the statement of the respondent 4 herein under Section 164 Cr.P.C. (applicable then), before a Magistrate, respondent 3 herein on 11th September 2024 sought the custody of the respondent 5 herein for investigation, whereupon, the respondent 3 herein came to be informed by the petitioner herein that the case being of concurrent jurisdiction, the Air Force has opted to try the respondent 5 herein as per the provision of Air Force Law.

4. It is significant to mention here that though not stated in the instant petition, an application came to be filed by one Prabhat Malik AIR Cmde AOC 1 wing Air Force before the Chief Judicial Magistrate Budgam (For short, the court below) purported to be one under Section 124 of Air Force Act 1950 (For short, the Act of 1950) for taking over the case under Rule 5 of Criminal Courts and Courts Martial (Adjustment of Jurisdiction), Rules 1978 (For short the Rules of 1978). In the said application which was taken on record by this Court on 4th November 2024, it was pleaded that the complaint filed by the respondent 4 herein on 23rd January 2024 was enquired into initially by a Court of Inquiry, which was subsequently converted into an enquiry by the Internal Committee under the provisions of Prevention of Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal Act 2013) (for short the 'POSH Act') read with Air Force Order 3/2023 at the instance of the respondent 4 herein and the said Internal Committee has submitted its report and further action as per the provisions of the POSH Act has been initiated, therefore, in view of the exercise of option in terms of Section 124 of the Act of 1950, it came to be prayed that all the case documents be handed over to the duly authorized officer named in the application.

5. The Court below after entertaining the said application vide order dated 10th October 2024 disposed of the same directing the Incharge Police station Budgam, to stop investigation in the matter and handover all the case papers to the Competent Authority under the Act of 1950 or his duly authorized representative, however, subsequent to the passing of the said order dated 10th October 2024 , an application came to be filed by the Assistant Public Prosecutor before the Court below, seeking recalling of order dated 10th October 2024 on the ground that the said order is in direct conflict with the order dated 12th September 2024 passed by the High Court in the quashment petition filed by the accused respondent 5 herein by virtue of which the High Court had directed continuation of investigation by the Police, and the Court below, as such, consequently vide Order dated 16th October 2024 directed the police to follow the order passed by the High Court and continue with the investigation though observing that an order passed in exercise of criminal jurisdiction cannot be reviewed and by virtue of the same order dated 16th October 2024, the court below had put the above named Prabhat Malik Air Cmde AOC 1 Wing AF who had filed the application for transfer of case under Section 124 of the Act of 1950, to notice to show cause and explain as to why he suppressed the material fact *qua* passing of the order by the High Court dated 12th September 2024 supra.

6. The petitioner herein has questioned order dated 16th October 2024 passed by the Court of Chief Judicial Magistrate, Budgam primarily on three grounds, *firstly*, that the AOC, 1 wing who has been put to show cause by the Court below vide the impugned order for concealing the material fact of passing of order dated 12th September 2024 supra by this Court is not a party in the said petition, as such, cannot be said to have been aware of the same, *secondly*, that there is no provision in the BNSS which empowers the court

below to review or recall its order, and *thirdly*, in terms of Section 124 of the Act, 1950 the competent authority has the primary right to conduct the proceedings in view of the fact that besides the offence of the rape punishable under Section 376 of Indian Penal Code, the complaint filed by respondent 4 herein also allege commission of additional offences under Section 45 and 46 (A) of the Act 1950, which can only be enquired and tried in terms of the provision of the Act 1950.

7. This Court upon consideration of the instant petition on 25th October 2024 stayed the orders passed by the Court below dated 10th October 2024 and 16th October 2024 and directed the continuation of order of investigation dated 12th September 2024 passed by this Court in CRM(M) No. 562/2024 *supra* being the petition filed by the respondent 5 herein against FIR No 370/2024.

Heard learned counsel for the parties and perused the record.

8. The moot question that arises for consideration of this court in the instant petition is whether the Designated Authority under the Act of 1950 can invoke the provisions of Section 124 of the Act 1950, at the stage of investigation.

9. Before proceeding to advert to the said question, it would be appropriate to refer hereunder to sections 124 and 125 of the Act 1950 being relevant and germane to the controversy:-

> ***124***. *Choice between criminal court and court-martial.* -*When a criminal court and a court martial have each jurisdiction in respect of an offence, it shall be in the discretion of the Chief of the Air Staff, the officer commanding any group, wing or station in which the accused prisoner is serving or such other officer as may be prescribed to decide before which court the proceedings shall be instituted, and, if that officer decides that they should be instituted*

before a court-martial, to direct that the accused person shall be detained in Air force custody.

***125**. Power of criminal court to require delivery of offender.-(1) When a criminal court having jurisdiction is of opinion that proceedings shall be instituted before itself in respect of any alleged offence, it may, by written notice, require the officer referred to in section 124 at his option, either to deliver over the offender to the nearest Magistrate to be proceeded against according to law, or to postpone proceedings pending a reference to the Central Government.*

(2) In every such case the said officer shall either deliver over the offender in compliance with the requisition, or shall forthwith refer the question as to the court before which the proceedings are to be instituted for the determination of the Central Government whose order upon such reference shall be final.

What emanates from the plain reading of Section 124 *supra* is that it addresses a situation where an offence is committed by a person subject to the Act of 1950 and the said offence is triable by both a Criminal Court and a Court Martial and the provision vests discretion in the Designated Authority under the Act of 1950 to determine the Court before which proceedings for the offence shall be instituted, and such discretion ensures procedural flexibility and accommodates the peculiar circumstances of each case, particularly in light of the nature of the offence, the interests of justice, and the administrative and disciplinary needs of the armed force. However, such discretion has to be exercised, judiciously, adhering to the principles of fairness and ensuring that the accused is afforded an appropriate forum in tune with the statutory and constitutional mandates.

10. It is significant to mention here that the term **"instituted"** appearing in both Section 124 and 125 *supra* of the Act of 1950 thus assumes critical significance requiring interpretation as to whether the said term "instituted" denotes the act of filing, presenting or submitting the charge sheet before the Court, or the Courts act of taking cognizance thereof.

11. The Apex Court in case titled as **General Officer Commanding Vs. CBI and Another** reported in **2012 6 SCC 228** while interpreting the term "institution" has observed at para's 13, 18, 19, 20 and 21 as follows:-

> *"13. The meaning of the aforesaid term has to be ascertained taking into consideration the scheme of the Act/Statute applicable. The expression may mean filing/presentation or received or entertained by the court. The question does arise as to whether it simply means mere presentation/filing or something further where the application of the mind of the court is to be applied for passing an order.*
> *14...*
> *15...*
> *16...*
> *17...*
> *18. In Jamuna Singh & Ors. v. Bhadai Shah, AIR 1964 SC 1541, this Court dealt with the expression institution of a case and held that a case can be said to be instituted in a court only when the court takes cognizance of the offence alleged therein. Section 190(1) Cr.P.C. contains the provision for taking cognizance of offence (s) by Magistrate. Section 193 Cr.P.C. provides for cognizance of offence (s) being taken by courts of Sessions on commitment to it by a Magistrate duly empowered in that behalf. This view has been reiterated, approved and followed by this Court in Satyavir Singh Rathi, ACP & Ors. v. State through CBI, (2011) 6 SCC 1.*
> *19 A similar view has been reiterated by this Court in Kamalapati Trivedi v. The State of West Bengal, AIR 1979 SC 777, observing that when a Magistrate applies his mind under Chapter XVI, he must be held to have taken cognizance of the offences mentioned in the complaint. Such a situation would not arise while passing order under Section 156(3) Cr.P.C. or while issuing a search warrant for the purpose of investigation. In Devarapalli Lakshminarayana Reddy & Ors. v. V. Narayana Reddy & Ors., AIR 1976 SC 1672, this Court held that institution' means taking cognizance of the offence alleged in the chargesheet.*
> *20 Mere presentation of a complaint cannot be held to mean that the Magistrate has taken the cognizance. (Vide: Narsingh Das Tapadia v. Goverdhan Das Partani & Anr., AIR 2000 SC 2946).*
> *21. Thus, in view of the above, it is evident that the expression "Institution" has to be understood in the context of the scheme of the Act applicable in a particular case. So far as the criminal proceedings are concerned, "Institution" does not mean filing; presenting or initiating the proceedings, rather it means taking cognizance as per the provisions contained in the Cr.P.C.*

Thus, what emerges from the above interpretation of the term "instituted" it is clear that the same does not mean filling, presenting or initiating the proceedings, rather it means taking cognizance as per the provisions contained in the CrPc/BNSS.

12. Having regard to the aforesaid position qua the term "instituted" when both Court Marital and Criminal Court have concurrent jurisdiction over an offence, Section 124 of the Act of 1950, entrusts the discretion of choosing the appropriate forum to a Designated Officer who is empowered to decide before which Court the proceedings shall be instituted, and in this regard Section 124 supra further includes a connective condition, accentuated by the phrase, **"and, if that officer decides that they should be instituted before a Court Martial**…." meaning that the Designated Officer must first exercise his discretion to choose the forum, and if the decision is made in favour of the Court Marital, the Designated Officer must direct the accused to be detained under the custody of the Air Force, and this decision can only be made when there is material before him in the form of police report/charge sheet filed/presented by the police before a Magistrate after conducting investigation, and in fact this decision cannot be taken by the Designated Officer merely on the basis of an FIR.

Thus, from above it can safely be concluded that the discretion envisaged under Section 124 of the Act of 1950, can be exercised by the Designated Officer only upon completion of the investigation and the presentation of the police report/ charge sheet under Section 173 of the Code of Criminal Procedure (now Section 193 of BNSS), but before taking cognizance of the same by the Magistrate in view of the Judgment of the Apex Court passed in **General Officer Commanding** *supra*.

13. It is pertinent to mention here that though, Section 124 and 125 *supra* of the Act 1950 operate in different domains, yet a combined reading of Section 124 *supra* rules out the possibility of exercising of discretion by the Designated Officer during investigation and if read otherwise, same would render section 125 supra, otiose, in other words, if it is held that the Designated Officer can exercise the discretion under Section 124 supra at the stage of investigation, it would effectively preclude the police from completing the investigation, thereby preventing the preparation and submission of police report/charge sheet before the Magistrate and in absence of such report/charge sheet, the Magistrate would have no basis of forming an opinion under Section 125 *supra*, thus rendering the same redundant.

14. It is profitable to mention here that a situation may arise where, for any reason, the Designated Officer fails to exercise the power vested in him under Section 124 supra, however, such a scenario is contemplated under Section 475 of the Code of Criminal Produce, (now Section 521 of BNSS) which is an enabling provision and empowers the Central Government to frame rules regarding the cases involving individuals subject to Military, Naval or Air Force Law, or any analogous law, as to whether they shall be tried by a Criminal Court or a Court Martial.

Section 521 of BNSS is extracted hereunder for convenience:-

> *"(1) The Central Government may make rules consistent with this Code and the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950 and any other law, relating to the Armed Forces of the Union, for the time being in force, as to cases in which persons subject to military, naval or air force law, or such other law, shall be tried by a Court to which this Code applies or by a Court-martial; and when any person is brought before a Magistrate and charged with an offence for which he is liable to be tried either by a Court to which this Code applies or by a Court-martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the Commanding Officer of the unit to which he belongs, or to the Commanding Officer of the nearest*

military, naval or air force station, as the case may be, for the purpose of being tried by a Court-martial."

What emerges from above is that when a person subject to such law is brought before a Magistrate and charged with an offence triable either by a Court governed by the CrPc or a Court Marital, the Magistrate is mandated to act in accordance with rules framed under Section 475 Cr.P.C/Section 521 BNSS *supra* and in appropriate cases, the Magistrate shall deliver accused along with the statement of the offence charged, to the commanding officer of the relevant unit or the nearest Military, Naval or Air Force Station, as the case may be, for trial by a Court Martial. However, the Magistrate can forward the statement of offence charge to the commanding officer only when such a statement is filed or presented before the Magistrate by the police. The expression, "**shall deliver the accused, along with the statement of offence charged, to the Commanding Officer**" is to be interpreted as referring to the report/charge sheet filed or presented by the police before the Magistrate upon the conclusion of the investigation,

15. It is pertinent to note here that in exercise of power under Section 475 Crpc/Section 521 BNSS supra, the Central Government has notified **"Criminal Courts and Courts Martial (Adjustment of Jurisdiction) Rules 1978",** which provide a structured framework for resolving jurisdictional conflict between a Criminal Court and a Court Martial. The said Rules of 1978, come into play at the point where an accused, subject to the Army Act, 1950, the Navy Act, 1957 and the Air Force Act 1950, has been brought before the Magistrate and charged with an offence and in term of the said Rules, before proceeding to try the accused or to commit the case to the Court of Sessions, the Magistrate has to give a written notice to the Commanding Officer of the accused and refrain for the period mentioned in

the Rules from doing any of the act or making any order in relation to the trial of such an accused.

A reference in this regard to the Judgment of the Apex Court passed in case titled as **"State of Assam Vs. Jasbir Singh"** reported in **2022 volume 7 SCC 287** would be germane herein, wherein at para 34 following has been held:-

> *"34. An order of a two-judge Bench of this Court in **SK Jha v. State of Kerala,** (2011) 15 SCC 492 arose from a case where three naval officers were arrested for offences punishable under Sections 143, 147, 148, 452, 307, 326 and 427 read with Section 149 of the IPC. An application was filed by the Commanding Officer of the Naval Unit for handing over the accused for trial under the Navy Act 1957. The application was rejected by the Magistrate on the ground that the stage for consideration would only be on the completion of the police investigation. The order of the Magistrate was challenged before the High Court in revision and the challenge was rejected. The two-judge Bench held that the decision in **Som Datt Datta (supra)** governed the case and the option as to whether the accused should be tried before the criminal court or by a court-martial could be exercised only after the police had completed the investigation and submitted the charge-sheet. In that case, the police had merely commenced the investigation and hence the rejection of the request of the Commanding Officer by the Magistrate was upheld."*

16. Having held in the preceding para that the discretion of the Designated Authority under Section 124 of the Act of 1950 cannot be exercised at the stage of investigation, the question framed hereinabove is answered accordingly and the pleas raised by the appearing counsel for the parties supporting the applicability of the provisions of Section 124 of the Act of 1950 at the stage of investigation thus pale into insignificance and the judgment of the Apex Court passed in case titled as **"Som Datt Datta vs Union of India & Others"** reported in **AIR 1969 SC 414** as also the Judgment of the High Court of Madras passed in case titled as **"State Rep.**

by the Inspector of Police vs. Commandant, Air Force Administrative College" reported in **2023 SCC online Mad 4769**, relied upon by the said appearing counsel do not lend any support to their case being otherwise also quite distinguishable from the case in hand.

17. Even otherwise also in the application filed by Air Cmd AOC 1 Wing, AF, in terms of the Section 124 of the Act 1950 before the court below does not specifically state that it has been decided by the Designated Authority that the respondent 5 herein would be tried by a Court Martial, instead, what is stated in the application is that respondent 5 will be proceeded against in terms of the POSH Act, which cannot be said to be the exercise of discretion and taking of a decision under Section 124 supra of the Act of 1950 to try the respondent 5 herein before the Court Martial.

18. For what has been observed, considered and analyzed hereinabove, the instant petition thus is disposed in the following manner:-

    (i) The orders dated 10th October 2024 and 16th October 2024 passed by the Court of Chief Judicial Magistrate , Budgam shall stand quashed.

    (ii) The Special Investigation Team/Investigating Agency shall continue with and conclude the investigation in FIR No. 370/2024, and upon completing the investigation, shall file charge sheet strictly in terms of the relevant provision of Cr.Pc./BNSS, and

    (iii) Upon filling of such charge sheet, the Designated Authority under Section 124 of Air Force Act, 1950 shall be at liberty to invoke said Section 124, if it decides to try the respondent 5 herein in a Court Martial.

19. Disposed of.

20. A copy of this judgment shall be placed separately on the record file of both the petitions.

21. The original record produced by Mr. T. M. Shamsi, Counsel for the petitioner herein be returned back forthwith after retaining a xerox copy of the same on the record file of the instant petition.

Bail App No. 105/2024.

P. K. SEHRAWAT age 43 years …Applicant (s)
S/O R. S. Sehrawat
R/O Air Force Station, Srinagar.

Through: Mr. Z. A. Shah, Sr. Advocate with
Mr. Surjeet Singh, Advocate

Vs.

1. **Union Territory of Jammu & Kashmir,** ...Respondent(s)
through Station House Officer,
Police Station Budgam
2. **Fg. OFFR XXX**
37086-G EDN
C/O Air Station Srinagar Budgam

Through: Mr. Mohsin Qadri, Sr. AAG with
Mr. Bikramdeep Singh, Dy. AG for R-1
MS. Ayeshia, Advocate. For R-2.

The instant bail application is segregated and is directed to be listed on **10.12.2024**.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR
27.11.2024
Hilal Ahmad

Whether the Judgment is reportable? *Yes*

Whether the Judgment is speaking? *Yes*