

CRM-M-25915-2024

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-25915-2024

Date of decision: 23.05.2024

Supinder Singh alias Soni

...Petitioner

V/s

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Prabhjot Singh, Advocate for the petitioner.

SUMEET GOEL, J.

1. The present petition has been filed under Section 482 of Cr.P.C. of 1973 (hereinafter to be referred as "Cr.P.C., 1973") by the petitioner-Supinder Singh @ Soni for quashing of FIR No.0048 dated 25.06.2022 registered under Section 452 (wrongly mentioned in the FIR as Section "451" IPC), 354 of Indian Penal Code, 1860 and Sections 8 and 12 of Protection of Children from Sexual Offences Act, (Amended), 2012 (and Section 451 of IPC deleted and Section 354-A and 195-A of IPC added later on) at Police Station Sadar Rajpura, District Patiala, Punjab.

2. The factual matrix of the case, as relevant for consideration of the issue(s) in hand, is as follows:

(i) An FIR was got registered by the complainant-victim bearing No.0048 dated 25.06.2022 registered under Section 452 (wrongly mentioned in the FIR is Section "451" IPC), 354 of Indian Penal Code, 1860 and Sections 8 and 12 of Protection of Children from Sexual Offences Act,

(Amended), 2012 at Police Station Sadar Rajpura, District Patiala, Punjab.

The said FIR, as spelt out in the present petition, reads as follows:

“Copy of statement. Statement of Kajal D/O Sonu Ram R/O Sarai Bajaura, aged about 15 years. Mobile No.xxxxxxx, Stated that I am resident of above said address. I am getting study in 10th class in Government Senior Secondary School, Chandumajra. We are two sisters. My younger sister residing with my mother at Kaithal. I am residing with my grandmother Jarnail Kaur Wife of Gurdeep Singh as well as with my father Sonu Ram. Because of the summer vacations in the school, I used to stay at home. On dated 18.06.2022; my father and my grandmother have gone out of house due to some work. I was alone in the house and was laying on the bed and it will be 10 AM that Hardeep Singh @ Deepi son of Nirmal Singh who is resident of our village suddenly entered into my room. I stood up and he started molestation. He said to grab his urinary part and said to do everything and he will give money as much she will ask. When, I raised noise, Hardeep Singh @ Deepi ran away from the house. In the evening, I had told about this to my grandmother Jarnail Kaur. Because of the fear of defame in the society, my grandmother asked me to keep silence. Today, I along with my grandmother have gathered courage and were coming to inform you, you have met us near the firni of Sarai Banjara. I have recorded my statement before you, which has been read over to me and is correct. Action be taken against Hardeep Singh @ Deepi. Sd. Kajal. Statement verified by RTI Jarnail Kaur, Attested. Sd. Navdeep Kaur. S.I. P.S Sadar Rajpura. Dated: 24.06.2022.”

(ii) The challan (report under Section 173 of Cr.P.C. of 1973) was filed by the Police in which Section 451 of IPC was deleted and Sections 354-A and 195-A of IPC were added. The relevant portion of the said report, as spelt out in the petition, is as follows:

“Respected Sir, The brief facts of the case are to the effect that on dated 24.06.2022, Lady C. Navdeep Kaur 25/LPCT along with ASI Sukhwant Singh 3080/PTA, ASI Tarlok Singh 3111/Pta., PHG Fakir Nath 18159 were present at Village Sarai Banjara, then complainant of the case Kajal daughter of Sonu Ram resident of Village Sarai Banjara, Tehsil Rajpura, District Patiala along with her grandmother Jarnail Kaur wife of Hardeep Singh recorded her statement to C. Navneet Kaur, the contents of which as

follows: "Stated that I am resident of above address and studying in 10th Standard at Government Senior Secondary School, Chandumajra. We are two sisters. Younger sister Simran is residing at Kaithal along with my mother. Here I am residing with my grandmother Jarnail Kaur wife of Gurdeep Singh and my father Sonu Ram. Due to summer holiday from School I used to reside at home. On dated 18.06.2022 my father and my grandmother had gone out of the house for work, I was alone at home and was lying on the bed in my room. Then at about 10:00 AM, our villager Hardeep Singh alias Dipi son of Nirmal Singh suddenly came in my room. I stood up. He started doing obscene acts with me. He told me to hold his place of bathroom and do everything with me, I will give you money as much you want. When I shouted, then Hardeep Singh alias Dipi ran out of my house. I told all this to my grandmother Jarnail Kaur, then my grandmother told me to keep mum due to social shame. Today I and my grandmother have got courage and were going to give information you have met us at Sarai Banjara Phirni. I have recorded my statement to you, I have heard it, it is correct. From the above statement on finding commission of offences under Sections 451, 354 IPC, Sections 8, 12 POCSO Act, 2012, C. Navneet Kaur got registered case by sending statement at Police Station Sadar Rajpura against Hardeep Singh alias Dipi son of Nirmal Singh resident of Village Sarai Banjara, through ASI Tarlok Singh 3111/Pta. Then C. Navdeep Kaur on demarcation of victim girl Kajal inspected the place of incidence and prepared site map. During investigation on dated 25.06.2022 C. Navdeep Kaur along with fellow employees arrested the aforesaid accused Hardeep Singh alias Dipi as per law after interrogation in the above case. Memos of cause of arrest, intimation to heirs and personal search were separately prepared. Accused signed the memos and witnesses put their signatures and C. Navdeep Kaur recorded statements of witnesses. On dated 25.06.2022 medical of aforesaid accused Hardeep Singh alias Dipi aforesaid was got conducted from A.P. Jain Civil Hospital, Rajpura and aforesaid accused Hardeep Singh alias Dipi was presented in the Court of Sh. Jaspreet Singh, Ld. JMIC, Rajpura and a police remand of 02 days was obtained. On dated 25.06.2022 statement of victim girl aforesaid Kajal were got recorded under Section 164 Cr.P.C. in the Court of Sh. Jaspreet Singh Ld. JMIC, Rajpura. On return accused Hardeep Singh alias Dipi was got locked in lockup at Police Station. Further investigation was conducted by Lady C. Gurjeet Kaur 43/PRT. On dated 27.06.2022 C. Gurjeet Kaur got

conducted medical of the victim girl Kajal from A.P. Jain Civil Hospital, Rajpura and on dated 27.06.2022 aforesaid accused Hardeep Singh alias Dipi was produced in the Court of Sh. Jaspreet Singh Ld. JMIC, Rajpura, who ordered 14 days Judicial remand and to confine him at Central Prison, Patiala. On which aforesaid accused Hardeep Singh alias Dipi was got confined at Central Prison, Patiala. Further investigation was carried out by C. Davinder Singh Incharge Police Post Basantpura. Date of birth of the Complainant of the case was got verified from the Principal of Government Secondary School, Village Chandumajra. Victim girl Kajal recorded in her statement under Section 164 Cr.P.C. that accused Hardeep Singh and his friend Soni have threatened her Chachu/Uncle that if they do not affect compromise, they will kill my Chachu/Uncle by shooting with bullet of Rifle. C. Davinder Singh inquired about full name-address of the friend Soni of the accused Hardeep Singh and found that his full name is Supinder Singh alias Soni son of Tarsem Singh resident of Village Chotli Khedi, Police Station Badali Ala, District Fatehgarh Sahib. Spinder Singh alias Soni has committed an offence under Section 195- A IPC by extending threats to the Chacha/Uncle Jaswinder Singh of the victim. From the investigation of the case and statement of the victim under Section 164 Cr.P.C. offences under Sections 452, 354-A, 195-A IPC have been enhanced in the case and offence under Section 451 is deleted and Supinder Singh alias Soni son of Tarsem Singh resident of Village Chotli Khedi, Police Station Badali Ala Singh, District Fatehgarh Sahib is nominated as accused in the abovesaid case. Challan of accused of the present case aforesaid Hardeep Singh has already been presented in the Court on dated 29.08.2022. During investigation on dated 04.10.2022, C. Davinder Singh arrested the accused of the case accused Supinder Singh alias Soni as per order of Hon'ble Punjab and Haryana High Court, Chandigarh after inquiring as per law. Memos of cause of arrest, intimation to heirs and personal search were separately prepared. Accused signed the memos and witnesses put their signatures. Then C. Davinder Singh, as per order of Hon'ble Punjab and Haryana High Court, Chandigarh obtained personal bond and surety bond from the aforesaid accused Supinder Singh alias Soni and released him on bail and C. Davinder Singh recorded statements of witnesses. Regular bail of accused Supinder Singh alias Soni has been approved from the Hon'ble Punjab and Haryana High Court, Chandigarh. Arms license of aforesaid accused Supinder Singh alias Soni was got verified from Ld. District Magistrate,

Fatehgarh Sahib. Verification of investigation of the case is complete. From the statements of complainant of the case Kajal, statements of witnesses, Site Map, interrogation of the accused, from investigation of the case and my verification i.e. from the evidence appeared on the case file so far, a case for preparation of Challan is very well made out against accused Supinder Singh alias Soni for commission of above offences, upon which supplementary Challan form under Section 173 (8) Cr.P.C. has been prepared and is presented before Court of your good-self for trial. Trial may be conducted and accused may be punished accordingly. After trial, aforesaid accused Supinder Singh alias Soni may be sentenced adequately. Witnesses as per column No. 06, shall depose, who may be summoned by issuance of summons.

*SD/- SHO Police Station Sadar
Rajpura Dated 26.06.2023
Seal of : Police Station Rajpura,
District Patiala”*

(iii) The petitioner had earlier preferred a quashing petition before this Court vide CRM-M-51043-2022 which came to be decided on 01.04.2024. It has been averred in the petition in paragraph No.16 that:

“16. That the Petitioner has not filed any such or similar petition for grant of Quashing before this Hon’ble Court or before the Hon’ble Supreme Court of India except CRM-M-51043 of 2022 which was dismissed as withdrawn with liberty to file fresh one with better particulars.”

However, the earlier order passed by this Court in CRM-M-51043-2022 reads as under:

“Case called out twice since morning. No one appeared in support of the petition.

The petition stand dismissed for non-prosecution.”

(iv) Pursuant to above-said challan having been filed on 26.06.2023, the charges were framed against the petitioner as also his co-accused on 02.08.2023. The said order reads as under:-

“State of Punjab VS. HARDEEP SINGH @ DIPPI etc.

Present: Sh. Harminder Singh, Addl. PP for the state.

Accused Hardeep Singh @ Dipi on bail with Sh. Naveen Chawla, Advocate.

Accused Supinder Singh @ Soni on interim bail with Sh. Prabhjot Singh, Advocate.

Heard. From the perusal of the report U/s 173 Cr.P.C. and the documents attached thereto a clear prima-facie case U/s 452, 354, 354-A, 354-B and 195-A of IPC and section 8 of the POCSO Act is made out. The charge has been accordingly framed against the accused which has been explained to them in simple punjabi language. The accused pleaded not guilty and claimed trial.

Adjourned to 04.09.2023. PW's cited at Sr.No.1 and 2 in the list of witnesses be summoned for the date fixed. Surety bonds on behalf of the accused Supinder Singh @ Soni has not been furnished. Ld. Defence requested for an adjourned, which is allowed in the interest of justice. Requisite surety bonds on behalf of the accused Supinder Singh @ Soni be also furnished on the date fixed.

Date of Order: 2023- 08-02

(Harinder Sidhu)

Venus Goyal, Stenographer Gr-II

*Addl. Sessions Judge Fast Track Special Court,
Patiala*

UID NO. PB00130"

(v). Thereafter, prosecution evidence was led wherein testimony of the complainant/victim was recorded on 15.09.2023 (copy whereof has been appended with the present petition as Annexure P-5).

(vi). It is in this factual backdrop that the instant petition has been preferred seeking quashing of the FIR in question.

3. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the impugned FIR; the complainant/victim has already testified before the Court as a prosecution witness and her testimony is laced with inconsistencies and hence cannot be made as basis for conviction of the present petitioner & the trial proceedings, in respect of Section 195-A of IPC are illegal as the same have not been undertaken by following due procedure as prescribed in law. Thus, quashing of the FIR in question is sought for.

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4. I have heard learned counsel for the petitioner and have perused the available record.

Prime Issue

5. The prime issue that arises for consideration in the present petition is as to whether the FIR in question deserves to be quashed by this Court exercising its powers under Section 482 of Cr.P.C., 1973. The analogous legal issue that arises for consideration is whether this Court ought to exercise its powers under Section 482 of Cr.P.C., 1973 for quashing of the FIR in question in a case where material/substantial prosecution evidence has already been led before the trial Court.

Relevant Statutory provisions

6. Code of Criminal Procedure, 1973

Section 482 of Cr.P.C., 1973 reads as under:-

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

Relevant Case Law

7. The precedents, *apropos* to the matter(s) in issue are as follows:

I. *Re: Nature, Scope and Powers of High Court under Section 482 of Cr.P.C, 1973*

This Court in a judgment titled as ***Talima vs. State of Haryana and others, 2024(1) PLR 496=Neutral Citation 2024:PHHC:035176***, has held as under:

“9. To consider this aspect, it would be apposite to delve into the nature, scope and ambit of powers of the High Court under Section 482 of Cr.P.C., 1973.

9.1. Section 482 of Cr.P.C. of 1973 is, in fact, statutory recognition of the doctrine of inherent jurisdiction of a High Court. This doctrine received statutory recognition, for the first time, when Section 561-A was inserted in Criminal Procedure Code of 1898 by way of Code of Criminal Procedure (Amendment Act) of 1923. By way of introduction of Section 561-A in Cr.P.C., 1898, the legislature recognized the existence of inherent powers in a High Court and provided that nothing in the Code can be deemed to limit inherent powers of a High Court to make such order(s) as would be necessary to give effect to any order under the Code or to prevent abuse of process of any Court or to otherwise secure the ends of justice. The Hon'ble Supreme Court in the judgment of Mohammad Naim (*supra*) has held that this Section gives no new powers to a High Court; it only provides that powers which the High Court already inherently possesses, shall be preserved and a provision has been inserted into statute book lest it be misconstrued that only those powers are possessed by the High Court which are expressly conferred by the Code of Criminal Procedure & that all such inherent powers stand extinguished after the Code come into force. In essence, this provision refers to residuary plenary powers of High Court to do justice. It is notable that such inherent powers, which received statutory recognition at the end of legislature, empowers a High Court to exercise such inherent jurisdiction not only in respect of proceedings before it but also in respect of proceedings in the Subordinate Courts. The legislature, acknowledging the significance and importance of such inherent powers, chose to keep alive the provision of Section 561-A of Cr.P.C., 1898 in the Cr.P.C. currently in vogue i.e. Cr.P.C. of 1973 albeit only by renumbering the provision as Section 482.

9.2. The important aspect that immediately next craves attention is as to what are the "inherent powers of a High Court" recognized under Section 482 of Cr.P.C., 1973. At the outset, it deserves to be noticed that these inherent powers are not defined in the statute. Inherent powers are essentially those powers which ipso facto exist in the Court by virtue of its existence. The phraseology of inherent powers as defined in the dictionaries is as under:-

(a) Black's Law Dictionary defines 'inherent powers' as "Existing in something as permanent, essential, or characteristic attribute."

(b) Webster's New World Law Dictionary defines it as "A power that must be deemed to exist in order for a particular responsibility to be carried out."

(c) *Oxford (Advanced Learner's Dictionary)* defines "inherent" as "existing as a natural or permanent feature".

The Hon'ble Supreme Court in case of "Devendrappa" (supra) has relied upon the maxim of "quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae, esse non potest" (when the law gives a person anything it gives him that without which it cannot exist) to hold that the inherent powers of a High Court are all such powers which are necessary to do the right and to undo a wrong in course of administration of justice. The Hon'ble Supreme Court, in this judgment, has further referred to the maxim "ex debito justitiae" to say that such powers are ones given to do real and substantial justice for which purpose alone High Court exists. The Hon'ble Supreme Court in the judgment of Parbatbhai (supra) has held that the powers under Section 482 of Cr.P.C. of 1973 are aimed at preserving the inherent powers of the High Court to prevent an abuse of the process of any Court or to secure the ends of justice.

9.3 *A cumulative reading of the above said would show that the inherent powers of a High Court are powers which are incidental replete powers, which if did not exist so, the Court would be obliged to sit still and helplessly see process of law and Courts being abused for the purpose of injustice. These powers of a High Court hence deserve to be construed with the widest possible amplitude. It is trite posit of jurisprudence that though laws attempt to deal with all cases that may arise, the infinite variety of circumstances which shape events and the imperfections of language make it impossible to lay down provisions capable of governing every case which in fact arises. A High Court which exists for the furtherance of justice in an indefatigable manner should, therefore, have unfettered power to deal with situations which, though not expressly provided for by the law, need to be dealt with to prevent injustice or an abuse of the process of law and Courts.*

9.4. *Accordingly, it is unequivocal that the inherent powers of a High Court; recognized by way of Section 482 of Cr.P.C. of 1973; are powers which are unbridled, unfettered and plenary in nature. These powers are to be exercised keeping in view the following salutary purposes viz; (a) to give effect to any order passed under the code (b) to prevent abuse of process of any Court (c) to otherwise secure the ends of justice. It is neither conceivable nor desirable to lay down any exhaustive set of guideline(s) to govern the exercise of this plenary inherent jurisdiction, however alluring this aspect may be. Such exercise of power would definitely be dependent upon the factual matrix of the case which the court is seisin of."*

II. *Parameters of exercise of power of High Court under Section 482 of Cr.P.C., 1973 for evaluation of evidence.*

(i) In a judgment titled as ***State of Uttar Pradesh & Anr. vs. Akhil Sharda & Ors., 2022 Live Law(SC) 594 = 2022(3) RCR (Criminal) 841;***

the Hon'ble Supreme Court has held as under:-

"7. Having gone through the impugned judgment and order passed by the High Court by which the High Court has set aside the criminal proceedings in exercise of powers under Section 482 Cr.P.C., it appears that the High Court has virtually conducted a mini trial, which as such is not permissible at this stage and while deciding the application under Section 482 Cr.P.C. As observed and held by this Court in a catena of decisions no mini trial can be conducted by the High Court in exercise of powers under Section 482 Cr.P.C. jurisdiction and at the stage of deciding the application under Section 482 Cr.P.C., the High Court cannot get into appreciation of evidence of the particular case being considered."

(ii) In a judgment titled as ***Chilakamarthi Venkateshwarlu & Anr. vs. State of Andhra Pradesh & Anr., AIR 2019 SC 3913,*** the Hon'ble Supreme Court has held as under:-

"15. In exercising jurisdiction under Section 482 it is not permissible for the Court to act as if it were a trial Court. The Court is only to be prima facie satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate materials and documents on record, but it cannot appreciate the evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

*16. The High Court should not, in exercise of jurisdiction under Section 482, embark upon an enquiry into whether the evidence is reliable or not, or whether on a reasonable appreciation of the evidence the allegations are not sustainable, for this is the function of the trial Judge. This proposition finds support from the judgment of this Court in *Zandu Pharmaceutical Works Ltd. and Ors. v. Mohd. Sharful Haque and Another, 2004(4) RCR (Criminal) 937: (2005) 1 SCC 122.*"*

III. *Scope of exercise of powers by High Court under Section 482 of Cr.P.C. 1973 when substantial prosecution evidence has been led.*

A Division bench of Hon'ble Allahabad High Court in a judgment titled as ***Shueb Mahmood Kidwai @ Bobby vs. State of U.P. (2021 CriLJ 2167)***, has held as under:

“3. This case has been placed before this Division Bench in view of a reference made by a learned Single Judge of this Court vide his order dated 12.12.2017 which reads as under:-

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Keeping in view the judicial discipline, I think this matter should be heard by a Larger Bench to decide as to whether after framing of charge and where substantial part of prosecution evidence has been adduced, an application under Section 482 Cr.P.C. for quashing entire proceedings of that Session Trial on the behest of the accused specially in Sessions Trial would be maintainable or not.

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xxx xxx xxx xxx

24. *One needs to understand the distinction between the proceedings 'being not maintainable' and 'not liable to be entertained'. Not being maintainable would mean it will not lie in the first place. Whereas not liable to be entertained would mean, the application, though it can lie, is not liable to be entertained in the facts of the case. The distinction may seem fine and at times blurred but nevertheless it does exist and has to be understood and kept in mind. Of course it can be also said that an application is not maintainable hence not liable to be entertained but that would be the same as the first proposition about non-maintainability. The distinction with the second proposition remains. We can not say that, in the eventualities mentioned in the referred order, in no circumstances would an application under Section 482 Cr.P.C. be maintainable i.e. it will not lie. Whether such an application is to be entertained or not is a question to be considered and answered in the facts of each case and no general proposition or straight jacket formula can be laid down/provided in this regard. The guiding principle is as to whether in the facts of a case continuance of proceedings amount to abuse of the process of the Court and/or whether interference of the High Court is necessary to secure the ends of justice or not? Based on these two principles*

the facts of each case are required to be assessed by the High Court when the power and jurisdiction under Section 482 Cr.P.C. is invoked.

25. *We answer the reference accordingly and direct that the case be placed before the learned Single Judge who has been assigned applications under Section 482 Cr.P.C. for admission and disposal, as the case may be.”*

IV. *Whether events, subsequent to filing of a petition under Section 482 of Cr.P.C. 1973, can be looked into by the Court at the time of final adjudication of such petition.*

A three Judges Bench of the Hon’ble Supreme Court in the case of ***Pasupuleti Venkateshwarlu vs. The Motor and General Traders, AIR 1975 SC 1409***, has held as under:

“4. xxx xxx xxx xxx xxx xxx. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief for the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice - subject, of course, to the absence of other disentitling (actors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myraid. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed.”

Analysis (re law)

8. This Court has delved, *in extenso*, regarding the nature as also the scope and ambit of powers of High Court under Section 482 of Cr.P.C. The inherent powers of the High Court; statutorily recognized by way of Section 482 of the 1973 Code; are powers which are unbridled, unfettered and plenary in nature. It is unfathomable to even make a venture to exhaustively define the nature and extent of these powers, however alluring this idea may be. The powers under Section 482 of the Cr.P.C., 1973 are required to be exercised with the salutary purpose of giving effect to any order passed under the Code, to prevent abuse of process of any Court or to otherwise secure the ends of justice. The only restraint required to be exercised by the High Court while exercising such powers is that of *self-restraint*.

8.1. The Hon'ble Supreme Court has held; as is clear from the dicta of judgments in the cases of ***Akhil Sharda*** case (supra) and ***Chilakamarthi Venkateshwarlu*** case (supra); that the High Court, while exercising its jurisdiction under Section 482 of the Cr.P.C., 1973, is not required to evaluate the sufficiency or reliability of the evidence. Therefore, the indubitable unequivocal conclusion is that evaluation of the prosecution evidence is in the domain of the trial Court and a High Court ought not to ordinarily dilate upon the nature, reliability and sufficiency of prosecution evidence brought on record, during the course of trial, while adjudicating a quashing petition. Such a venture by the High Court would tantamount to be a mini trial which is an avertible course. It cannot be said; as a matter of absolute principle; that once substantial/important prosecution witness(s) have been examined, the High Court loses its powers under Section 482 of

the Cr.P.C., 1973 to even consider a plea for quashing of an FIR (as also the proceedings emanating therefrom). The Hon'ble Allahabad High Court in the case of *Shueb Mahmood Kidwai* case (supra); while answering a reference made by a Single Judge; has held that the powers of the High Court under Section 482 of the Cr.P.C., 1973 to entertain a plea for quashing of an FIR (as also the proceedings emanating therefrom) is not *ipso facto* ousted on account of prosecution witnesses having been examined. In the considered opinion of this Court, the “*maintainability of the petition*” vis-a-vis. “*desirability to entertain a petition*” are two distinct concepts wherein these differ *totocaelo*. In other words, the difference is as stark as between chalk and the cheese. Therefore, the unequivocal conclusion is that the High Court has powers under Section 482 of the Cr.P.C., 1973 to entertain a plea for quashing of an FIR (as also the proceedings emanating therefrom) even when substantial/material prosecution witnesses have been examined, during course of trial, but it would be desirable to entertain such a petition at such stage only if there are accentuating/exceptional facts warranting such intervention. This Court must hasten to add a word of caution herein *viz.*; such a plea is required to be considered by the High Court with utmost circumspection and caution since it would essentially involve ratiocinating upon the relevance, sufficiency and nature of prosecution evidence which has come on record during the trial proceedings. *Ergo*, the High Court *ordinarily* ought not to interfere in such a situation.

8.2. More often than not, this Court is called upon to deal with petition(s) filed under Section 482 of Cr.P.C., 1973 for quashing of an FIR wherein notice of petition had earlier been issued but no order for staying

proceedings was granted and while the petition remained pending adjudication, the trial Court proceedings have continued in the interregnum resulting in the recording of substantial/material prosecution evidence. While the mere continuation of trial Court proceedings and recording of substantial/material prosecution evidence should not, by itself, be the lone score for dismissing such petition; it nonetheless constitutes significant and relevant development(s) which must be considered by the Court at the time of final adjudication. It is not unknown that, petition(s) pending adjudication before Courts become unentertainable, due to efflux of time, especially when subsequent developments become significant *nay* pivotal. The Hon'ble Supreme Court, in a three Judges Bench judgment, in case of ***Pasupuleti Venkateswarlu*** (supra) has enunciated that subsequent events of fact which have material bearing on the case ought to be taken into consideration at time of final adjudication of such case. Therefore, the inevitable conclusion that emerges is that, where substantial/material prosecution evidence has been led even during pendency of a quashing petition before the High Court, it would be bounden upon the High Court to consider the aspect of such a petition having become unentertainable in view of this aspect of the matter. This Court must hasten to add a word of caution herein *viz.*; a quashing petition already pending adjudication before High Court, ought not to become unentertainable *nay* non-maintainable only on account of charge-sheet/challan (report under Section 173 of Cr.P.C., 1973) or framing of charges by trial Court during pendency of such a petition.

9. As a result of above discussion, the following postulates emerge:

- I) The powers of the High Court under Section 482 of Cr.P.C., 1973 are unbridled, unfettered and plenary in nature. The only restriction upon exercise of such powers is *self restraint*.
- II) i) A plea filed for quashing of an FIR (as also the proceedings emanating therefrom) filed before the High Court does not *ipso facto* become barred or non-maintainable in a case wherein substantial/material prosecution witnesses have already been examined.
- ii) In such a scenario, the High Court ought to exercise a high degree of circumspection and caution while dealing with such a plea since it would essentially involve adjudication upon the relevance, veracity & sufficiency of prosecution evidence brought on record during trial proceedings which ordinarily ought to be best left to be considered by the trial Court. *Ergo*, accentuating facts/circumstances ought to exist for exercise of such power by the High Court.
- iii) It is neither conceivable nor desirable to even venture to lay-down any exhaustive set of guideline(s) in this regard, however alluring this aspect may be. Such exercise of inherent powers ought to be best left to the discretion of the Court which is in seisen of the matter, as every case is *sui generis* in nature.

Analysis (re-facts of present case)

10. Now this Court reverts to the facts of the case in hand to ratiocinate thereupon.

10.1. The charges were framed against the petitioner on 02.08.2023 whereinafter testimony of the complainant/victim was recorded on 12.05.2023 and 15.09.2023 whereas present petition was on or about 17.05.2024. The said witness has also been cross-examined at length on behalf of the petitioner (herein). From the material available on record it is clear that the petitioner did not choose to challenge the order framing

charges passed on 02.08.2023. The submissions advanced by the leaned counsel for the petitioner in support of the quashing petition encompass issues of meticulous analysis of the prosecution evidence especially that of testimony of victim, that are best left open to be adjudicated in trial. These issues essentially involve a detailed critical appreciation of the evidentiary value and credibility of the testimony of the prime prosecution witness namely the victim. Engaging in such an analysis at this stage would amount to this Court undertaking a mini-trial, which is not appropriate especially at this juncture. Moreover, no compelling or accentuating facts have been brought forward that would persuade this Court to hold that continuation of trial proceedings are abuse of process of law or Courts. This is especially at this stage, where the testimony of the key prosecution witness, namely the victim, has already been recorded.

Accordingly, the instant petition deserves dismissal.

10.2 Before parting with the judgment, this Court deems it appropriate to look into another aspect of the matter. The petitioner had earlier preferred a petition before this Court for quashing of an FIR, which was dismissed for non-prosecution on 01.04.2024. The present petition has been filed on or about 17.05.2024. In the instant petition it has been averred, in para No.16, *“That the Petitioner has not filed any such or similar petition for grant of Quashing before this Hon’ble Court or before the Hon’ble Supreme Court of India except CRM-M-51043 of 2022 which was dismissed as withdrawn with liberty to file fresh one with better particulars.”* A copy of the order dated 01.04.2024 earlier passed by this Court has not even been appended with this petition. The said order dated 01.04.2024 reflects that

said petition was dismissed for non-prosecution. The inevitable conclusion, thus, is that a deliberate attempt has been made to mislead this Court. Such surreptitious attempt(s) need to be, indubitably, curbed with an iron hand. *Ergo*; the petitioner deserves to be saddled with costs, which ought to be veritable and real time in nature.

Decision

11. It is, thus, directed as hereunder:

(i) The instant petition filed under Section 482 of the Cr.P.C., 1973 seeking quashing of the impugned FIR is dismissed. There is no gainsaying that petitioner shall be at liberty to raise all pleas, as available to him in law, during trial proceedings.

(ii). The petitioner is saddled with costs of Rs.50,000/- which shall be deposited by him with trial Court within eight weeks from today. In case such costs are deposited; the trial Court shall have the same remitted to Punjab State Legal Services Authority, Mohali. In case the said costs are not deposited by the petitioner as directed for; the trial Court shall intimate the Deputy Commissioner, Patiala who accordingly shall have such costs recovered from the petitioner by all available lawful means, including as arrears of land revenue and upon realization thereof, the Deputy Commissioner, Patiala shall have the same submitted to the trial Court, for further remittance thereof to the Punjab State Legal Services Authority, Mohali. A compliance report be sent by the trial Court as also Deputy Commissioner, Patiala to this Court accordingly.

(iii) Registry is directed to transmit a copy of this judgment to the petitioner, the trial Court as also Deputy Commissioner, Patiala for requisite compliance.

12. Needless to say that anything observed herein above shall not be construed to be an opinion on the merits of the case.

13. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

May 23, 2024
Ajay

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No