118. Thus, from their testimony, a big question mark is raised about the veracity of the recoveries at the pointing out of the appellant Pankaj and makes it non-est. In view thereof, we are of the opinion that the conviction of the appellant, under Section 4/25 of the Arms Act also cannot be upheld and is accordingly set aside.

119. In view of the foregoing discussions, we are of the opinion that the instant appeal is liable to be allowed and is accordingly, allowed. The impugned judgment and order passed by the trial court is set aside. The appellant is already on bail. He need not to surrender. His bail bonds are cancelled and sureties are discharged subject to compliance of Section 437-A of Cr.P.C. to the satisfaction of the trial court.

120. Let a copy of this judgment and order be sent to the trial court alongwith trial court record for information and necessary compliance.

(2025) 5 ILRA 1277
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 27.05.2025

BEFORE

THE HON'BLE ARUN KUMAR SINGH DESHWAL, J.

Application U/S 528 BNSS No. 10997 of 2025

Shashank Gupta @ Guddu & Ors.
...Applicants
Versus
State of U.P. & Anr. ...Respondents

Counsel for the Applicants:
Sri Dharmendra Vaish

Counsel for the Respondents:
G.A.

Criminal Law - Criminal Procedure Code,1973- Section 155 (2) - Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 174 (2) -The mandate of Section-155 (2) Cr.P.C. (corresponding Section 174(2) of BNSS) - that police cannot investigate a non-cognizable offence-if the police continues to investigate an FIR-which does not disclose cognizable offence-it would be against the mandate of Cr.P.C./BNSS and in such case, court can interfere-or stop the investigation in exercise of its power u/s 528 BNSS (corresponding Section 482 Cr.P.C.)- legal principles established in the Full Bench decision of Ramlal Yadav - may no longer be applicable due to recent developments in the law as interpreted by the Apex Court-refer this matter to a Larger Bench comprising nine judges. (E-9)

List of Cases cited:

1. Ramlal Yadav & ors.Vs St. of U.P. & ors.1989 SCC OnLine ALL 73

2. St. of Har. & ors.Vs Bhajan Lal & ors.1992 Supp 1 SCC 335

3. Imran Pratapgadhi Vs St. of Gujarat & anr. in Criminal Appeal No.1545 of 2025

4. The King Emperor Vs Khawaja Nazir Ahmad 1944 SCC OnLine PC 29

5. S.N. Sharma Vs Bipen Kumar Tiwari & ors. reported in (1970) 1 SCC 653

6. Gulam Mustafa Vs St. of Karn. & anr., (2023) 18 SCC 265

7. Abhishek Vs St. of M.P. reported in (2023) 16 SCC 666

8. P. Ramachandra Rao Vs St. of Karn. (2002) 4 SCC 578

9. Padal Venkata Rama Reddy @ Ramu Vs Kovvuri Satyanarayana Reddy & ors.reported in (2011) 12 SCC 437,

10. Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur & ors. Vs St. of Guj. & anr. (2017) 9 SCC 641

11. Anand Kumar Mohatta & anr. Vs St. (NCT of Delhi), Department of Home & anr. (2019) 11 SCC 706

12. Mahmood Ali & ors.Vs St. of U.P. & ors.(2023) 15 SCC 488

13. Bhajan Lal (supra) and R.P. Kapur Vs St. of Pun., reported in A.I.R. 1960 SC 866

14. T.T. Antony Vs St. of Kerala & ors.(2001) 6 SCC 181

15. Janata Dal Vs H.S. Chowdhary & ors.(1992) 4 SCC 305

16. Neeharika Infrastructure Pvt. Ltd. Vs St. of Mah. & ors.(2021) 19 SCC 401

(Delivered by Hon'ble Arun Kumar Singh Deshwal, J.)

1. Heard Sri Dharmendra Vaish, learned counsel for the applicants, Sri Pankaj Saxena, learned AGA for the State, Amicus Curiae Sri Manish Tiwari, learned Senior Advocate assisted by Sri Raunak Chaturvedi and Amicus Curiae Sri Jitendra Kumar Shishodiya.

2. Present application was initially filed challenging the order dated 03.02.2025 passed by CJM, Chitrakoot, u/s 175(3) of BNSS (corresponding to Section 156(3) Cr.P.C.) by which, police were directed to register the first information report. Subsequently, an amendment was also made with the permission of the court seeking quashment of consequential FIR dated 26.02.2025 in case crime no.114 of 2025, u/s 498A, 323, 504, 506, 342 IPC read with Section 3/4 of D.P. Act, Police Station- Karvi, District- Chitrakoot.

3. However, learned AGA raised a preliminary objection that in view of the Full Bench judgement of Seven Judge's Bench in the case of **Ramlal Yadav and Others Vs. State of U.P. & Others reported in 1989 SCC OnLine ALL 73**, application u/s 528 of BNSS (corresponding Section 482 Cr.P.C.) for quashing the FIR is not maintainable as same could be challenged under Article 226 of the Constitution of India.

4. Per contra, learned counsel for the applicants has submitted that in view of the subsequent judgements of the Apex Court wherein it is observed that the FIR can be quashed in exercise of power u/s 528 of BNSS (corresponding Section 482 Cr.P.C.), the law laid down by the Full Bench in **Ramlal Yadav's case (supra)** is no more a good law and same is deemed to be overruled by the subsequent judgements of Hon'ble Apex Court in **State of Haryana And Others Vs. Bhajan Lal & Others** reported in **1992 Supp 1 SCC 335** as well as **Imran Pratapgadhi Vs. State of Gujarat And Anr.** in **Criminal Appeal No.1545 of 2025**.

5. In view of the above submission, an important legal question arises for determination is whether in view of the subsequent judgement of Apex Court, FIR can be challenged u/s 528 of BNSS (corresponding Section 482 Cr.P.C.) and the Full Bench judgement of **Ramlal Yadav (supra)** is deemed to be overruled by the subsequent judgements of Apex Court.

6. Considering the fact that important legal question has arisen, this court also requested Sri Manish Tiwari, learned Senior Advocate, Sri Raunak Chaturvedi as well as Panel Lawyer of High Court Legal Services Authority Sri Jitendra Shisodhia, who assisted the court as amicus curiae by addressing on the legal question that has been arisen herein.

Submission of learned counsel for the Applicants :

7. Sri Dharmendra Vaish, learned counsel for the applicants has submitted that the Full Bench judgement of **Ramlal Yadav (supra)** heavily relied upon the judgement of **The King Emperor Vs. Khawaja Nazir Ahmad reported in 1944 SCC OnLine PC 29** and by overlooking the relevant observations as well as incorrectly interpreting the judgement of the Khawaja Nazir Ahmad (supra) observed that the High Court cannot interfere in the exercise of power u/s 482 Cr.P.C. during investigation even if no cognizable offence is made out from bare perusal of FIR. Learned counsel for the applicants further submitted that even in the case of **Khawaja Nazir Ahmad (supra)**, the privy council has observed that though the police have unfettered power of investigation in cognizable offence, but if no cognizable offence is disclosed then police have no authority to investigate the same and therefore, in that case, permitted the court to interfere in such illegal investigation. Learned counsel for the applicants further submits that this court, in the case of **Bhajan Lal (supra)**, has observed that extraordinary power under Article 226 of the Constitution of India or inherent power u/s 482 Cr.P.C. can be exercised either to prevent abuse of process of court or otherwise to secure the ends of justice in the category of cases mentioned in paragraph nos.102(1) to 102(7).

8. learned counsel for the applicants also submitted that the Apex Court, in the recent judgement of **Imran Pratapgadhi (supra)** has observed in paragraph no.42(vii) that there is no absolute rule that investigation at the nascent stage cannot be interfered by the High Court in exercise of power u/s 482 Cr.P.C. which is equivalent to 528 of BNSS and if High Court finds that no offence is made out on the face of it then just to prevent the abuse of the process of court, it can always interfere even if the investigation is at the nascent stage. It is lastly submitted by learned counsel for the applicants that the High Court can quash the F.I.R. in the exercise of power u/s 528 of BNSS (corresponding Section 482 Cr.P.C.) as the Full Bench judgement of **Ramlal Yadav (supra)** has been impliedly overruled by the subsequent judgement of the Apex Court.

9. It is also submitted by learned counsel for the applicants that the Apex Court, in the case of Gulam Mustafa Vs. State of Karnataka And Another, reported in (2023) 18 SCC 265, observed that in appropriate cases, the High Court could quash the FIR in the exercise of its power u/s 482 Cr.P.C.

Submission of contention of Sri Pankaj Saxena, learned AGA

10. Sri Pankaj Saxena, learned AGA has submitted that 7 Judges Bench of **Ramlal Yadav (supra)**, after considering the judgement of the privy council in **Khawaja Nazir Ahmad (supra)**, has observed that the police has unfettered power to investigate the cognizable offence and the court cannot interfere during investigation in exercise of power u/s Section 482 Cr.P.C. (corresponding Section 528 BNSS), therefore FIR can only be challenged under Article 226 of the Constitution of India and not u/s 482 Cr.P.C. It is further submitted by learned AGA that power u/s 528 BNSS (corresponding Section 482 Cr.P.C.) can be exercised to give effect to any order under Cr.P.C. or to prevent the abuse of process of

any court or otherwise to secure the ends of justice but the registration of FIR and subsequent investigation does not fall within the above three categories. The FIR is information of cognizable offence registered u/s 154 Cr.P.C. and upon receiving such information about the cognizable offence, police can investigate as per Section 157 of Cr.P.C (corresponding Section 176 of BNSS). Therefore, FIR of cognizable offence cannot be considered as an order under Cr.P.C. or process of court because the same will come into the picture only after the chargesheet has been filed before the court. Therefore, power u/s 528 of BNSS (corresponding Section 482 Cr.P.C.) can be exercised only after the chargesheet has been filed before the court and cognizance is taken. It is also submitted by learned AGA that the category of securing the ends of justice is vast, but it cannot be interpreted in such a way in which the court may interfere during the investigation, and the same would come only after the proceeding is pending before the court. It is lastly submitted by learned AGA that the present application u/s 528 of BNSS challenging the FIR deserves to be dismissed on the ground of maintainability.

11. Sri Pankaj Saxena, learned AGA also submits that the judgement of Full Bench in **Ramlal Yadav (supra)** is binding on this court given the doctrine of stare decisis, and he further submitted that in case of disagreement with the Larger Bench, the court could not take a contrary view. It can refer the matter to the Larger Bench in appropriate cases wherein the judgement of the Larger Bench appears to be contrary to the Apex Court judgement. In support of his contention, learned AGA has also relied upon the Apex Court's judgement in the case of **Mishri Lal Vs. Dhirendra Nath reported in (1999) 4 SCC 11** and **Shanker Raju Vs. Union of India** reported in **(2011) 2 SCC 132**.

Contention of Amicus Curiae Sri Manish Tiwari, learned Senior Advocate

12. Sri Manish Tiwari, learned Senior Advocate, has submitted that the Full Bench judgement of **Ramlal Yadav (supra)** is essentially passed on the reasoning given in the judgement of the privy council in **Khawaja Nazir Ahmad (supra)**. He submits that in **Khawaja Nazir Ahmad (supra)**, the privy council clearly observed that if no cognizable offence is made out then police has no authority to investigate the offence at that stage and court can interfere if police proceeds to conduct such illegal investigation which is barred by Cr.P.C. itself. Therefore, the privy council observed in such cases, the High Court can exercise its power u/s 491 of Old Cr.P.C. corresponding to habeas corpus against illegal detention. Therefore, the entire interpretation in **Khawaja Nazir Ahmad (supra)** regarding the power of court u/s 561-A of the Cr.P.C. (Act No.V of 1898) (corresponding Section 482 Cr.P.C.) was concerning the illegal detention not with respect to the other fundamental right enshrined under Article 21 of the Constitution of India which is available at present and even otherwise there is no corresponding section in Cr.P.C., 1973 or BNSS, 2023 to Section 491 of Old Cr.P.C. Therefore, as of date, the court can interfere during the illegal investigation only u/s 528 of BNSS (corresponding Section 482 Cr.P.C.).

13. The learned Senior Advocate further submitted that FIR of cognizable offence is also an order under Section 173

of BNSS (corresponding Section 154 Cr.P.C., 1973) and investigation of the FIR of cognizable offence is also conducted as per the procedure of BNSS/Cr.P.C. Therefore, FIR as well as subsequent investigation of cognizable offence, can be interfered by the court in exercise of its inherent power for the enforcement of the order of the code, as the police cannot investigate the FIR where no cognizable offence is made out.

14. It is further submitted by the learned Senior Advocate, the extraordinary constitutional remedy should be exercised only after exhausting the statutory remedy and normal statutory remedy to secure the ends of justice, which is 528 BNSS/482 Cr.P.C. Therefore, in the normal course, FIR should be challenged under the statutory remedy of 528 BNSS/482 Cr.P.C. and only in extraordinary cases, the remedy under Article 226 of the Constitution of India may be availed. In support of his contention, learned Senior Advocate has also relied upon paragraph no.6 of Apex Court's judgement in the case of **Kim Wansoo Vs. State of Uttar Pradesh and Others** reported in **2025 SCC OnLine SC 17**, wherein the Apex Court observed that normally quashing of the criminal proceeding would be sought and would be done in exercise of the inherent power of High Court u/s 482 Cr.P.C. but certainly that does not mean that it could not be done in the invocation of the extraordinary power under Article 226 of the Constitution of India. Therefore, extraordinary power under Article 226 of the Constitution of India or inherent power u/s 482 Cr.P.C. can be exercised by the High Court either to prevent the abuse of process of court or otherwise to secure the ends of justice.

15. It is further submitted by Sri Manish Tiwari, learned Senior Advocate, the observations of the Full Bench judgement of **Ramlal Yadav (supra)** case made in paragraph no.22 that if the police officer conducts the investigation with malafide, same cannot be quashed under inherent power under Section 482 Cr.P.C. but under Article 226 of the Constitution of India is contrary to the judgement of the Supreme Court in **Bhajan Lal (supra)** wherein the Apex Court very clearly observed that in the exercise of power u/s 482 Cr.P.C. or in the exercise of Article 226 of the Constitution of India, the court can interfere where the FIR and investigation is manifestly tainted with malafide or where the proceeding is maliciously initiated with an ulterior motive for wreaking vengeance on accused.

16. Sri Manish Tiwari, learned Senior Advocate, further submits that the judgement of **Khawaja Nazir Ahmad (supra)** was correctly interpreted in the **State of West Bengal And Others Vs. Swapan Kumar Guha & Others** reported in **(1982) 1 SCC 561**. In that case, the Hon'ble Apex Court observed that the privy council in **Khawaja Nazir Ahmad (supra)** also permitted the court to interfere in the investigation where the report does not disclose the commission of cognizable offence and the court does not impose them a duty to enquiry in such cases. The Apex Court further observes that the condition precedent to the commencement of investigation u/s 157 Cr.P.C. is that the FIR must disclose prima facie a cognizable offence. Therefore, the police have no unfettered discretion to commence an investigation u/s 157 Cr.P.C. It is further submitted by learned Senior Advocate, Manish Tiwari, that the judgement of **S.N. Sharma Vs. Bipen Kumar Tiwari And Others** reported in **(1970) 1 SCC 653** which was relied upon by the Full Bench in

Ramlal Yadav (supra), was regarding the inherent power u/s 528 BNSS (corresponding Section 482 Cr.P.C.) but it only discusses about the power under Article 226 of the Constitution of India. Therefore, the observation in the Full Bench judgement of **Ramlal Yadav's case (supra)** that the FIR and consequential investigation cannot be quashed in the exercise of the inherent power u/s 482 Cr.P.C., is incorrect because no such observations has been made by the Apex Court in **S.N. Sharma (supra)**.

17. It is also submitted by Sri Manish Tiwari, learned Senior Advocate that at the time of delivery of judgement in **Ramlal Yadav (supra)**, there is no remedy like Section 491 of old Cr.P.C. and that is why the court observed that only remedy against the FIR is extraordinary remedy under Article 226 of the Constitution of India but subsequently on implementation of Section 438 Cr.P.C. regarding anticipatory bail, position has changed because after the enforcement of Section 438 Cr.P.C. in UP in the year 2019, protection against arrest has been granted as statutory remedy, therefore using the power under Article 226 of the Constitution of India for interim bail or protection is no more a necessity. Therefore, as on date, after the enforcement of Section 438 Cr.P.C. in U.P., remedy for quashing the FIR or consequential proceeding is inherent under Section 528 BNSS (corresponding Section 482 Cr.P.C.) is a normal statutory remedy which cannot be curtailed on the basis of the Full Bench judgement of **Ramlal Yadav (supra)**. It is lastly submitted by learned Senior Advocate, that the coordinate Bench of this court in the case of **Jawed Aslam in Application u/s 482 No.3380 of 2023** along with the connected cases, has considered the issue of maintainability of application u/s 482 Cr.P.C. for quashing the FIR wherein the Hon'ble court observed that in view of the subsequent judgement of the Apex Court in the case of **Abhishek Vs. State of Madhya Pradesh** reported in **(2023) 16 SCC 666**, application u/s 482 Cr.P.C. for quashing the FIR is maintainable.

18. It is also submitted by the learned Senior Advocate that power under Article 226 of the Constitution of India can be exercised where there is a violation of fundamental right or authority concerned, lack or excessive use of its jurisdiction, or to challenge the vires (validity) of a statutory provision or subordinate legislation. However, power under Section 528 of BNSS (corresponding Section 482 Cr.P.C.) can be exercised to prevent the abuse of the process of law and also to secure the ends of justice, and this power is much wider than the extraordinary power under Article 226 of the Constitution of India in a criminal proceeding.

Submission of Sri Jitendra Kumar Shishodia, Amicus Curiae

19. Sri Jitendra Kumar Shishodia, learned amicus curiae, has submitted that abuse of process of law also includes abuse of the process of the court. It is further submitted that the maintainability of application u/s 528 BNSS (corresponding Section 482 Cr.P.C.) was considered by the Apex Court in the cases of **P. Ramachandra Rao Vs. State of Karnataka** reported in **(2002) 4 SCC 578, Padal Venkata Rama Reddy alias Ramu Vs. Kovvuri Satyanarayana Reddy & Others** reported in **(2011) 12 SCC 437, Parbatbhai Aahir Alias Parbatbhai Bhimsinhbhai Karmur and Others Vs. State of Gujarat and Another** reported in

(2017) 9 SCC 641, Anand Kumar Mohatta And Another Vs. State (NCT of Delhi), Department of Home and Another reported in **(2019) 11 SCC 706 and Abhishek (supra).**

20. In the above judgements, Hon'ble Apex Court observed that FIR can be quashed in the exercise of inherent power u/s 528 of BNSS (corresponding Section 482 Cr.PC.). Therefore, the law laid down by the Full Bench of this court in **Ramlal Yadav (supra)** is deemed to be overruled by subsequent judgements of the Apex Court. It is further submitted by Sri Shishodia that the Apex Court, in the case of **Mahmood Ali And Others Vs. State of Uttar Pradesh and Others** reported in **(2023) 15 SCC 488** has observed that the stage of investigation or case is not relevant for quashing the same in exercise of inherent power u/s 528 of BNSS (corresponding Section 482 Cr.P.C.), if such proceedings are manifestly frivolous or vexatious or instituted with an ulterior motive for wreaking vengeance. Sri Shishodia lastly submitted that FIR as well as consequential proceedings, can be quashed either in exercise of inherent power u/s 528 of BNSS or in extraordinary power under Article 226 of the Constitution of India where the conditions as laid down by the Apex Court in the cases of **Bhajan Lal (supra)** and R.P. Kapur Vs. State of Punjab, reported in **A.I.R. 1960 SC 866** are satisfied.

Contention of Amicus Curiae Sri Raunak Chaturvedi

21. Sri Raunak Chaturvedi, has submitted that the Full Bench of **Ramlal Yadav (supra)** is essentially based on the **Khawaja Nazir Ahmad (supra)** ratio. However, in the **Khawaja Nazir Ahmad (supra)**, the privy council itself accepted that if no cognizable offence is made out, then police have no jurisdiction to investigate the matter, and in that case the court may interfere. It was nowhere said by the privy council that court cannot interfere in exercise of power u/s 561-A of Old Cr.P.C. (corresponding 482 Cr.P.C., 1973) but it was erroneously presumed by the Full Bench in the case of **Ramlal Yadav (supra)** that the privy council in **Khawaja Nazir Ahmad (supra)** has observed that court cannot interfere during investigation in exercise of power u/s 482 Cr.P.C. (561-A of Old Cr.P.C.)

22. It is further submitted by Sri Raunak Chaturvedi, the Apex Court in the judgements of **Bhajan Lal (supra), T.T. Antony Vs. State of Kerala and Others** reported in **(2001) 6 SCC 181, Janata Dal Vs. H.S. Chowdhary and Others reported in (1992) 4 SCC 305**, **Neeharika Infrastructure Private Limited Vs. State of Maharashtra and Others reported in (2021) 19 SCC 401**, has observed that no cognizable offence is made out from the reading of FIR or institution of FIR itself comes within the categories laid down by the several judgements, the court can very well interfere in the exercise of power u/s 482 Cr.P.C. in the investigation or quashing the FIR.

23. Sri Raunak Chaturvedi, Amicus Curiae, also submits that the Apex Court, in the case of **Swapan Kumar Guha (supra)**, has considered the judgement of the privy council of **Khawaja Nazir Ahmad (supra)** and observed that courts have incorrectly overlooked the relevant observations of privy council, wherein privy council specifically mentioned that where no cognizable offence is made out, in that case the court can interfere in the investigation

as the police has no power to investigate the matter.

24. Sri Raunak Chaturvedi, on relying the judgement of Apex Court in the case of **Kedar Narayan Parida and Others Vs. State of Orissa And Another reported in (2009) 9 SCC 538** as well as the judgement of **T.T. Antony (supra)** submitted that the police has no unfettered power, which is tantamount to divine power to investigate, but if the police officer transgresses and circumscribed the limits laid down by the Apex Court in different judgements, then the court can interfere in the exercise of its inherent power under Section 528 of BNSS (corresponding Section 482 Cr.P.C.) to secure the ends of justice as well as to prevent the abuse of process of law.

25. It is submitted by learned amicus curiae that in view of the subsequent judgements of the Apex Court regarding inherent power of High Court u/s 528 of BNSS (corresponding Section 482 Cr.P.C.), judgement of Full Bench in the case of **Ramlal Yadav (supra)** has been impliedly overruled and in such cases, deviation from the principle of stare decisis is permissible so far as the ratio of Full Bench of **Ramlal Yadav (supra)** is concerned.

26. It is also submitted by Amicus Curiae that the Apex Court in the case of **State of Punjab Vs. Devans Modern Breweries Ltd.** reported in **(2004) 11 SCC 26** observed that in view of maxim "CESSANTE RATIONE CESSAT IPSA LEX" (when the reason for the law ceases, the law itself ceases), although the case has neither been reversed nor overruled, it may cease to law owing to changed condition and changed law.

27. Sri Raunak Chaturvedi, Amicus Curiae, also submits that the Full Bench judgement of **Ramlal Yadav (supra)** was considered in the case of Rama Shankar Pandey and Ors. Vs. U.P. Police Station Officer in Criminal Misc. Application No.2310 of 1994 wherein the Single Bench of this court has observed that in view of the subsequent judgements of the Apex Court, the decision in Ramlal Yadav (supra), is inconsistent to the decisions of the Supreme Court so far as the power of interference of court in the exercise of its inherent power is concerned. It was further observed by the learned Single Judge that the Full Bench judgement of **Ramlal Yadav (supra)** is no longer a good law in view of the subsequent judgement of the Apex Court. It is further submitted that the judgement of **Rama Shankar Pandey (supra)** referred to the Larger Bench in **Bhagvat Din Vs. State of U.P. and Others** in **Criminal Misc. Application No.193 of 1995.**

28. The Division Bench, on receiving the reference though, observed that the view taken in **Rama Shankar Pandey (supra)** is not correct, but the Division Bench, while deciding the reference in **Bhagvat Din (supra)** case failed to consider the judgement of Apex Court in **T.T. Antony (supra)** where the Apex Court after considering the judgement of privy council in the case of **Khawaja Nazir Ahmad (supra)** has observed that in exercise of inherent power u/s 482 Cr.P.C., court can interdict the investigation to prevent the abuse of process of court or to otherwise secure the ends of justice. It is further submitted by learned Amicus Curiae that Apex Court in the case of **Ramawatar Vs. State of Madhya Pradesh reported in (2022) 13 SCC 635** has observed that like inherent power vested in the Supreme Court under Article 142 of the Constitution of India, the High Court can also, in exercise of its power u/s 482 Cr.P.C. can

quash the proceeding to do complete justice. Therefore, power u/s 482 Cr.P.C. is akin to the inherent power vested in the Supreme Court under Article 142 of the Constitution of India.

Analysis

29. After hearing the submission of learned counsel for the parties, the sole question which arises for determination is whether the law laid down by the Full Bench of this court in **Ramlal Yadav (supra)** regarding non-maintainability of application u/s 528 of BNSS (corresponding Section 482 Cr.P.C.) for quashing the FIR as well as subsequent investigation is still good law despite observation of Apex Court in several judgements like **Bhajan Lal (supra), Gulam Mustafa (supra), Abhishek (supra), T.T. Antony (supra), Neeharika Infrastructure (supra), Imran Pratapgadhi (supra).**

30. Before proceeding further, it would be appropriate to refer to Section 528 of BNSS (corresponding Section 482 Cr.P.C.) and same is quoted as under:

"528. Saving of inherent powers of High Court.

Nothing in this Sanhita 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 Sanhita, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

31. From the perusal of Section 528 BNSS, it is clear that the High Court can use inherent power u/s 528 BNSS for the following three purposes :

(i) to give effect to any order under this code;

(ii) to prevent abuse of process of any court;

(iii) to secure the ends of justice.

32. The first information report regarding the commission of the cognizable offence is registered u/s 154 Cr.P.C. (corresponding to Section 173 BNSS). When it is found that FIR discloses the commission of cognizable offence then the police proceeds to investigate the case but it is the mandate of Section 155(2) Cr.P.C. that if the FIR does not disclose a cognizable offence, then the police will not investigate the case without the order of the Magistrate, and in case police proceed to investigate the non-cognizable offence, then his action would be illegal. Therefore, it is the order of the Cr.P.C. not to investigate the offences which are non-cognizable without the permission of the Magistrate but in case police still proceeds then court can exercise its power u/s 482 Cr.P.C. to give effect to this order/mandate of Cr.P.C. mentioned in Section 155(2) Cr.P.C. Similarly, power u/s 482 Cr.P.C. also gives wide power to High Court to secure the ends of justice, though the words "secure the ends of justice" has not been defined in Cr.P.C. but in number of judgements it has been observed that 'secure the ends of justice' means to prevent ends of justice on the part of the police authorities or court which is against the law.

33. The Full Bench judgement of **Ramlal Yadav (supra)** observed in paragraph no.22 that even if the investigation is conducted by the police officer with malafide then High Court cannot quash the investigation in exercise of its power u/s 582 BNSS (corresponding

Section 482 Cr.P.C.) but can do so in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. While deciding this case, the Full Bench of this court in **Ramlal Yadav (supra)** heavily relied upon the judgement of privy council in the case of **Khawaja Nazir Ahmad (supra)** and also observed that the Apex Court subsequently approved the above judgement of **Khawaja Nazir Ahmad (supra)** in the case of **State of West Bengal Vs. S.N. Basak** reported in **AIR 1963 SC 447, S.N. Sharma (supra**), **Hazari Lal Gupta Vs. Rameshwar Prasad** reported in **AIR 1972 SC 484, Jehan Singh Vs. Delhi Administration** reported in **1974 SC 1146, Kurukshetra University & Another Vs. State of Haryana & Another** reported in **AIR 1977 SC 2229, State of West Bengal And Others Vs. Sampat Lal And Others** reported in **(1985) 1 SCC 317, sSwapan Kumar Guha (supra) and R.P. Kapur. (supra). Paragraph nos.4, 14, 16, 17, 18, 19, 20, 22 and 26 of Ramlal Yadav's case (supra)** are being quoted as under :

"4. The power of the police to investigate a cognizable offence without any interference by this Court in the exercise of its inherent powers has been considered in a number of decisions of the Privy Council and the Supreme Court. In the case of Emperor v. Khwaja Nazir Ahmad AIR 1945 P.C. 18, it was held:

"just as it is essential that every one accused of a crime should have free access to a court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their providence and into which the law imposes upon them the duty of enquiry. In India as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an excercise of the inherent jurisdiction of the court. The functions of the judiciary and the police are complementary not overlaping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the court to intervene in an appropriate case when moved under section 491, Criminal P.C., to give directions in the nature of habeas corpus. In such a case as the present, however, the court's functions begin when a charge is preferred before it and not until then. It has sometimes been thought that section 561-A has given increased powers to the court which it did not possess before that section was enacted. But this is not so. The section gives no new powers, it only provides that those which the court already inherently possess shall be preserved and is inserted, as their Lordships think, lest it should be considered that the only powers possessed by the court are those expressly conferred by the Criminal Procedure Code, and that no inherent power has survived the passing of that Act. No doubt, if no cognizable offence is disclosed, and still more if no offence of any kind is disclosed, the police would have no authority to undertake an investigation.'

14. It is thus settled law that the power of the police to investigate into a report which discloses the commission of a cognizable offence is unfettered and cannot be interfered with by this Court in exercise

of its inherent powers under Section 482 Cr. P C.

16. It is noteworthy that in the case of Emperor v. Khwaja Nazir Ahmad (supra) although it was held:—

"No doubt if no cognizable offence is disclosed, and still more if no offence of any kind is disclosed the police would have.

"No doubt if no cognizable offence is disclosed, and still more if no offence of any kind is disclosed the police would have no authority to undertake an investigation."

17. It was not held therein that if no offence is disclosed the investigation can be quashed by the High Court in the exercise of its inherent powers under Section 561-A Cr. P.C. 1898 which corresponds to Section 482 Cr. P.C. 1973. On the other hand, it was held therein;

"The functions of the judiciary and the police are complementary not overlaping and the combination of law and order is only to be obtained by leaving each to exercise its own function, always of course subject to the right of the court to intervence in an appropriate case when moved under S. 491, Criminal P.C., to give directions in the nature of habeas corpus."

18. Which goes to show that if the police undertook an investigation when no offence of any kind was disclosed in the first information report the only remedy that was avilable was under Section 491-A Crl. P.C. 1898 in the nature of habeas corpus. It thus appears that the inherent powers of this Court to prevent the abuse of the process of court or otherwise to secure the ends of justice come into play only after charge-sheet against an accused is filed in court and not till then even in cases where the police wrongly investigate into a report which does not disclose the commission of any offence. It is significant to note that in the case of State West of Bengal v. Swapan Kumar Guha (AIR 1982 SC 949) the writ petition under Article 226 of the Constitution filed by the Firm and its partners for quashing an investigation commenced against the Firm was allowed by the Calcutta High Court and a writ of mandamus was issued directing the State Government and its concerned officers to forthwith withdraw and recall the first information report and all proceedings taken on the basis thereof and the appeal filed by the State of West Bengal against the aforesaid decision was dismissed by the Supreme Court and it was held:

19. The Privy Council qualified its statement by saying;

"No doubt, if no cognizable offence is disclosed, and still more if no offence of any kind is disclosed, the police would have no authority to undertake an investigation."

"If anything, therefore, the judgment shows that an investigation can be quashed if no cognizable offence is disclosed by the F.I.R. It shall also have been noticed, which is sometimes overlooked, that the Privy Council took care to qualify its statement of the law by saying that the judiciary should not interfere with the police in matters which are within their province. It is surely not within the province of the police to investigate into a report which does not disclose the commission of a cognizable offence and the Code does not impose upon them the duty of inquiry in such cases.

The position which emerges from these decisions and the other decisions, which are discussed by Brother A.N. Sen is that the condition precedent to the commencement of investigation under Section 157 of the Code is that the F.I.R. must disclose, prima facie, that a cognizable offence has been committed. It

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

20. Thus if the first information report does not disclose the commission of an offence the investigation on the basis of such a report is liable to be quashed under Article 226 of the Constitution and not in the exercise of the inherent powers of the High Court under Section 482 Cr.P.C. It may be mentioned that Section 491 Cr.P.C., 1898 has been repealed by the Code of Criminal Procedure, 1973.

22. It is thus clear that if the power of investigation is exercised by a police officer mala fide the High Court cannot quash the investigation in the exercise of its inherent powers under Section 482 Cr.P.C. but can do so under Article 226 of the Constitution.

26. We are, however, clearly of the opinion that the power of the High Court under Section 482 Cr.P.C. to quash a first information report or a complaint referred to above is with reference to proceeding in court after the filing of a charge-sheet or a complaint and not to investigation prior to the filing of the charge-sheet in court."

34. From a perusal of the Full Bench judgement of **Ramlal Yadav (supra)**, it is clear that it has mainly relied upon the observations of the judgement of the privy council in **Khawaja Nazir Ahmad (supra)**, wherein it is observed that police have statutory right to investigate and court cannot interfere therein, in exercise of its inherent power, even if no cognizable offence is made out from perusal of FIR because in that case High Court can interfere in the investigation in exercise of power u/s 491 of Cr.P.C., 1868 which gives power to High Court to issue direction in the nature of habeas corpus.

35. In the case of **Khawaja Nazir Ahmad (supra)**, there was an issue of whether the High Court could quash the proceeding consequential to FIR in the exercise of his power u/s 561-A of Cr.P.C. 1868 (corresponding Section 482 Cr.P.C., 1973). In this case though the privy council observed that judiciary should not interfere with the police in the matter of investigation as the law imposes a statutory duty on the police to investigate in the case of cognizable offence but privy council also observed that in certain circumstances, court can interfere even during investigation in exercise of its power u/s 491 Cr.P.C., 1868, where it is found that no cognizable offence is made out for which police has no right to investigate, issuing direction in the nature of habeas corpus. It was also observed that inherent power of the high court u/s 561-A of Cr.P.C., 1868, would come into play only after the charge has been preferred before the court. Relevant extract of the judgement of **Khawaja Nazir Ahmad (supra)** is being quoted as under:

"In India as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always of course subject to the right of the Court to intervene in an appropriate case when moved under section 491 of the Cr. P.C. to give directions in the nature of habeas corpus. In such a case as the present, however, the Court's functions begin when a charge is preferred before it and not until then. It has sometimes been thought that section 561A has given increased powers to the Court which it did not possess before that section was enacted. But this is not so. The section gives no new powers, it only provides that those which the Court already inherently possess shall be preserved and is inserted as their Lordships think, lest it should be considered that the only powers possessed by the Court are those expressly conferred by the Cr. P.C. and that no inherent power had survived the passing of that Act."

36. From the above extract of the judgement of **Khawaja Nazir Ahmad (supra)**, it is clear that the privy council observed that police have unfettered power to investigate into the cognizable offence but if no cognizable offence is made out, then police have no authority to investigate and even if the police continues to investigate then the court can interfere and issue appropriate direction u/s 491 Cr.P.C., 1898. It is relevant to quote Section 491 Cr.P.C, 1898, which is being quoted as under:

"491. Power to issue directions of the nature of a habeas corpus

(1) The High Court Division may, whenever it thinks fit, direct:-

(a) that a person within the limits of its appellate criminal jurisdiction be brought up before the Court to be dealt with according to law;

(b) that a person illegally or improperly detained in public or private custody with such limits be set at liberty;

(c) that a prisoner detained in any jail situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court;

(d) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners for trial or to be examined touching any matter pending before such Court-martial or Commissioners respectively;

(e) that a prisoner within such limits be removed from one custody to another for the purpose of trial; and

(2) The Supreme Court may, from time to time, frame rules to regulate the procedure in cases under this section.

(3) Nothing in this section applies to persons detained under any law for the time being in force providing for preventive detention."

37. From the perusal of the above quoted Section 491 of the Old Cr.P.C., it is clear that this power was of the High Court but in the Cr.P.C. of 1973, this power was deleted, and in the new Cr.P.C., the High Court has inherent power u/s 482 Cr.P.C.

Therefore, after the repeal of the Cr.P.C. of 1898, circumstances have changed and power u/s 491 of Old Cr.P.C. is no more available, therefore, when the FIR does not disclose any offence and police still continue investigation, in such case, only power available in Cr.P.C. to High Court is its inherent power u/s 482 Cr.P.C. or extraordinary power under Article 226 of the Constitution of India.

38. The Apex Court in the case of **R.P. Kapur. (supra)** considered the issue of inherent power of High Court u/s 561-A of Old Cr.P.C. (corresponding 482 Cr.P.C.) to quash the FIR as well as consequential proceedings. In this case the Apex Court observed that there is no doubt that the inherent power cannot be exercised with regard to the matters especially covered by the other provisions of the code but the High Court in exercise of its inherent jurisdiction can quash the proceeding to prevent the abuse of process of any court or otherwise to secure the ends of justice, specially in those cases where by mere looking at the FIR or complaint, no offence is disclosed and in such cases where institution or continuation of criminal proceeding may amount to abuse of process of court or where it appears to the High Court that there is a legal bar against the institution or continuation of the proceeding consequential to FIR, in that case High Court would be justified in quashing the proceeding but it was further observed by the Apex Court while exercising the inherent power, the High Court cannot appreciate the evidence which arises or would not embark upon the enquiry as to whether the evidence in question has been reliable or not. Paragraph no.6 of the **R.P. Kapur (supra)** is being quoted as under:

"6. Before dealing with the merits of the appeal it is necessary to consider the nature and scope of the inherent power of the High Court under Section 561-A of the Code. The said section saves the inherent power 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. There is no doubt that this inherent power cannot be exercised in regard to matters specifically covered by the other provisions of the Code. In the present case the Magistrate before whom the police report has been filed under Section 173 of the Code has yet not applied his mind to the merits of the said report and it may be assumed in favour of the appellant that his request for the quashing of the proceedings is not at the present stage covered by any specific provision of the Code. It is well-established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the Court or that the quashing of

the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise 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. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute offence alleged but there is either no legal evidence adduced in support of the case or 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. Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court under Section 561-A in the matter of quashing criminal proceedings, and that is the effect of the judicial decisions on the point ."

39. The three-Judge Bench of the Apex Court in the case of **S.N. Basak (supra)**, after relying upon the judgement of **Khawaja Nazir Ahmad (supra)** observed, where on the perusal of the FIR cognizance offence is made out then court should not interfere in the investigation in the exercise of its inherent power as conducting investigation of cognizable offence is the duty of the police. Paragraph no.3 of **S.N. Basak (supra)** is being quoted as under:

"3. At the time the respondent filed the petition in the High Court only a written report was made to the police by the Sub-Inspector of Police Enforcement Branch and on the basis of that report a first information report was recorded by the Officer-in-charge of the police station and investigation had started. There was no case pending at the time excepting that the respondent had appeared before the Court, had surrendered and had been admitted to bail. The powers of investigation into cognizable offences are contained in Chapter XIV of the Code of Criminal Procedure. Section 154 which is in that Chapter deals with information in cognizable offences and Section 156 with

investigation into such offences and under these sections the police has the statutory right to investigate into the circumstances of any alleged cognizable offence without authority from a Magistrate and this statutory power of the police to investigate cannot be interfered with by the exercise of power under Section 439 or under the inherent power of the court under Section 561-A of the Criminal Procedure Code. As to the powers of the judiciary in regard to statutory right of the police to investigate, the Privy Council in King Emperor v. Khwaja Nazir Ahmad [71 IA 203, 212] observed as follows:

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

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

40. The three-Judge Bench of Apex Court in **S.N. Sharma (supra)**, while considering the scope of Section 159 of Old Cr.P.C. to interfere in the investigation observed that the Magistrate, in the exercise of power u/s 159 of the Old Cr.P.C. had observed that once the cognizable offence is made out from the perusal of FIR then the Magistrate has no jurisdiction to interfere in the investigation conducted by the police. In this judgement, the Apex Court has also considered the judgement of **Khawaja Nazir Ahmad (supra)** and observed that though the issue involved in **Khawaja Nazir Ahmad (supra)** was regarding u/s 561-A of the Old Cr.P.C. and same is not the position in this case, even then the observations of privy council in Khawaja Nazir Ahmad (supra) that once the cognizable offence is made out from the perusal of the FIR then the judiciary cannot interfere in the police investigation, supports that in exercise of power u/s 159 of Old Cr.P.C., the Magistrate cannot stop the investigation. However in appropriate cases, judiciary can also interfere by invoking its power under Article 226 of the Constitution of India. In this case, the Apex Court did not observe that in case no cognizable offence is made out from the perusal of the FIR, then High Court cannot interfere the during investigation in the exercise of its inherent power u/s 561-A of Old Cr.P.C. (corresponding Section 482 Cr.P.C.). Paragraph nos.7, 9 and 10 of **S.N. Sharma (supra)** are being quoted as under:

"7. It may also be further noticed that, even in sub-section (3) of Section 156, the only power given to the Magistrate, who can take cognizance of an offence under Section 190, is to order an investigation; there is no mention of any power to stop an investigation by the police. The scheme of these sections, thus, clearly is that the power of the police to investigate any cognizable offence is uncontrolled by the Magistrate, and it is only in cases where the police decide not to investigate the case that the Magistrate can intervene and either direct an investigation, or, in the alternative, himself proceed or depute a Magistrate subordinate to him to proceed to enquire into the case. The power of the police to investigate has been made independent of any control by the Magistrate.

9. Both the Courts based their decisions primarily on the view expressed by the Privy Council in King-Emperor v. Khwaja Nazir Ahmad [71 IA 203] . That case, however, was not quite to the point that has come up for decision before us. The Privy Council was concerned with the question whether the High Court had power under Section 561-A of the Code of Criminal Procedure to quash proceedings being taken by the police in pursuance of first information reports made to the police. However, the Privy Council made some remarks which have been relied upon by the High Courts and are to the following effect:

"In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as Their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the court to intervene in an appropriate case when moved under Section 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus.

10. This interpretation, to some extent, supports the view that the scheme of the Criminal Procedure Code is that the power of the police to investigate a cognizable offence is not to be interfered with by the judiciary. Their Lordships of the Privy Council were, of course, concerned only with the powers of the High Court under Section 561-A CrPC, while we have to interpret Section 159 of the Code which defines the powers of a Magistrate which he can exercise on receiving a report from the police of the cognizable offence under Section 157 of the Code. In our opinion, Section 159 was really intended to give a limited power to the Magistrate to ensure that the police investigate all cognizable offences and do not refuse to do so by abusing the right granted for certain limited cases of not proceeding with the investigation of the offence."

41. The Apex Court in the case of **Jehan Singh (supra)** examined the inherent power of High Court u/s 561-A of Old Cr.P.C. (corresponding Section 482 Cr.P.C.) for quashing the proceeding in pursuance of the FIR. In this case, the Apex Court again relied upon the judgement of the privy council in **Khawaja Nazir Ahmad (supra)** and observed that where prima facie cognizable offence is made out from the allegation of FIR, in that case, the

High Court cannot interfere in the investigation in exercise of its inherent power as the High Court has no power to appraise the evidence or inquire as to the reliability of the evidence or allegation. In this case, the Apex Court refused to exercise its inherent power on the ground that the application was premature as the police had collected material on which the Magistrate had to apply its mind at the time of taking cognizance. Paragraph nos.16, 17 and 18 of **Jehan Singh (supra)** are being quoted as under:

"16. A plain reading of the first information report would show that the answer to this question must be in the negative. It is alleged therein that the bus (DLP-3867) belonged to Indraj and Sukh Lal of Chirag Delhi and was at the material time in their possession through their servants, Munshi Ram Driver, Mohinder Singh Conductor and Sher Singh helper, and that it was removed in the teeth of opposition from them without their consent from their custody or possession by four persons including Jehan Singh and R.K. Pathak, who all entered into the vehicle which was then driven by one of them who was of strong build, medium height, dark complexion, etc. to Scindia House. In substance the allegation was that the wrongful removal of the bus was the concerted action of the appellant Jehan Singh and R.K. Pathak and their un-named companions. Prima facie, the allegations in the first information report, if taken as correct, did disclose the commission of a cognizable offence by the appellant and his companions. May be that further evidence to be collected by the police in the course of investigation including the hire-purchase agreement, partnership deed and the receipt, etc. could confirm or falsify the allegations made in the first information report but the High Court at this stage as was pointed out by this Court in R.P. Kapur case could not, in the exercise of its inherent jurisdiction, appraise that evidence or enquire as to whether it was reliable or not.

17. Might be, after collecting all the evidence, the police would itself submit a cancellation report. If, however, a charge-sheet is laid before the Magistrate under Section 173 of the Criminal Procedure Code, then all these matters will have to be considered by the Magistrate after taking cognizance of the case. We cannot, at this stage, possibly indicate what should be done in purely hypothetical situations which may or may not arise in this case.

18. For the foregoing reasons, we would hold that the petitions under Section 561-A were liable to be dismissed as premature and incompetent. On this short ground, we would dismiss this appeal."

42. The three Judge Bench of Apex Court in the case of **Swapan Kumar Guha (supra)** considered the scope of interference by the High Court during the investigation, though, FIR was challenged under Article 226 of the Constitution of India. In this case, Apex Court considered and correctly interpreted the observations of the privy council in the case of **Khawaja Nazir Ahmad (supra)** and observed that the court sometimes overlooked the observations of the privy council, which itself permits the court to interfere during the investigation, where on perusal of FIR no cognizable offence is made out then the police have no duty under Cr.P.C. to conduct investigation. It is also observed in this case that police have no unfettered discretion to commence investigation u/s 157 Cr.P.C. because their right to conduct enquiry is subject to the existence of the reason to suspect the commission of

cognizable offence. Paragraphs nos.20 and 21 of Swapan Kumar Guha (supra) are being quoted as under:

"20. The only other decision to which I need refer is that of the Privy Council in King-Emperor v. Khwaja Nazir Ahmad [AIR 1945 PC 18 : (1944) 71 IA 203 : 217 IC 1] which constitutes, as it were, the charter of the prosecution all over, for saying that no investigation can ever be quashed. In a passage oft-quoted but much misunderstood. Lord Porter, delivering the opinion of the Judicial Committee, observed: (IA pp. 212-13)

"In Their Lordships' opinion, however, the more serious aspect of the case is to be found in the resultant interference by the court with the duties of the police. Just as it is essential that every one accused of a crime should have free access to a court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes on them the duty of inquiry. In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as Their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the court to intervene in an appropriate case when moved under Section 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the court's functions begin when a charge is preferred before it, and not until then."

I do not think that this decision supports the wide proposition canvassed before us by Shri Somnath Chatterjee. In the case before the Privy Council, similar charges which were levelled against the accused in an earlier prosecution were dismissed. The High Court quashed the investigation into fresh charges after examining the previous record, on the basis of which it came to the conclusion that the evidence against the accused was unacceptable. The question before the Privy Council was not whether the fresh FIR disclosed any offence at all. In fact, immediately after the passage which I have extracted above, the Privy Council qualified its statement by saying:

"No doubt, if no cognizable offence is disclosed, and still more, if no offence of any kind is disclosed, the police would have no authority to undertake an investigation."

If anything, therefore, the judgment shows that an investigation can be quashed if no cognizable offence is disclosed by the FIR. It shall also have been noticed, which is sometimes overlooked, that the Privy Council took care to qualify its statement of the law by saying that the judiciary should not interfere with the police in matters which are within their province. It is surely not within the province of the police to investigate into a report which does not disclose the commission of a cognizable offence and the Code does not impose upon them the duty of enquiry in such cases.

"21. The position which emerges from these decisions and the other decisions which are discussed by brother A.N. Sen is that the condition precedent to the commencement of investigation under Section 157 of the Code is that the FIR must disclose, prima facie, that a cognizable offence has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation under Section 157 of the Code. Their right of enquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the FIR, prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on and the rule in Khwaja Nazir Ahmad [AIR 1945 PC 18 : (1944) 71 IA 203 : 217 IC 1] will apply. The court has then no power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. On the other hand, if the FIR does not disclose the commission of a cognizable offence, the court would be justified in quashing the investigation on the basis of the information as laid or received."

43. The three-Judge Bench of Apex Court in the case of **Sampat Lal (supra)** considered the scope of interference pending police investigation. Though, the Apex Court was considering the interference in exercise of its power u/s 226 of the Constitution of India. In this case Apex Court observed that though in view of the law laid down by **Khawaja Nazir Ahmad (supra)** normally the court has no jurisdiction to interfere in the investigation, if prima facie cognizable offence is made out from perusal of the FIR still where no cognizable offence is made out from perusal of the FIR, in that case, the Magistrate can intervene during investigation and court has also observed that there is residuary jurisdiction left in the court to give direction to the investigating agency when it is satisfied that the requirement of law had not been complied with and investigation is not being conducted properly or with undue haste and promptitude. Paragraph no.26 of the **Sampat Lal (supra)** is being quoted as under:

"26. The investigation in the present case is still pending as we were told at the Bar. It is quite likely that some day, and we hope and trust that there would be no further delay, the court of competent jurisdiction would be in seisin of the matter and would be called upon to decide whether it was a case of murder or suicide. We have, therefore, thought it proper exercise of discretion not to enter into the facts and express any opinion one way or the other so as to prejudice the trial that might take place. It is sufficient to indicate that there is residuary jurisdiction left in the Court to give directions to the investigating agency when it is satisfied that the requirements of the law are not being complied with and investigation is not being conducted properly or with due haste and promptitude. The Court has to be alive to the fact that the scheme of the law is that the investigation has been entrusted to the police and it is ordinarily not subject to the normal supervisory power of the Court. We are inclined, on the facts of the case as placed before us, to take the view that the materials placed before the Court did not justify an exception to be made to the rule indicated by this Court and the appointment of a Special Officer was not called for at this stage."

44. The two Judge Bench of this Court in **Bhajan Lal (supra)**, has considered the scope of power u/s 482 Cr.P.C. for quashing the FIR. In this case, the Apex Court after considering the judgement of **Khawaja Nazir Ahmad (supra)** observed that privy council itself observed in its judgement of **Khawaja Nazir Ahmad (supra)** that an investigation can be quashed, if FIR discloses no cognizable offence. In this case, the Apex Court after considering the power of police to investigate the cognizable offence as per the provision of Cr.P.C. had laid down the detailed guidelines regarding scope of interference for quashing the FIR or complaint or consequential investigation or enquiry in exercise of its power u/s 482 Cr.P.C. or under Article 226 of the Constitution of India.

45. The Apex Court in the case of **Bhajan Lal (supra)** enlarged the scope of interference as mentioned in **Khawaja Nazir Ahmad (supra)**. In this case, the Apex Court observed that apart from the cases where no cognizable offence is made out from the perusal of the FIR as well as accompanying document or as the case where allegations of FIR or complaint were so absurd or inherently improbable that no reasonable person can reach a conclusion that there is sufficient ground or proceeding against the accused or there is legal bar in Cr.P.C. or in any other act to institute and continuation of the proceeding and also the case where proceeding has been manifestly attended by malafide and/or with an ulterior motive or wreaking vengeance on the accused, and with a view to spite him due to private and personal grudge, but the Apex Court has also made a note of caution in quashing the criminal proceeding and observed that it should be used sparingly in a rarest of rare cases without embarking upon the enquiry regarding reliability or genuineness of the allegation made in the FIR or complaint. Paragraph nos.102 and 103 of **Bhajan Lal (supra)** are being quoted as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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 concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(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.

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

46. The Apex Court in the case of **Pepsi Foods Limited & Anr Vs. Special Judicial Magistrate & Others** reported in **(1998) 5 SCC 749**, considered the scope of interference during the investigation by the High Court in exercise of its inherent power u/s 482 Cr.P.C. and observed that to prevent the abuse of process of court or to secure the ends of justice, interference is permissible by the High Court in exercise of its inherent power, if the allegations made in the first information report, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out case against the accused. Paragraph nos.22 and 26 of the **Pepsi Foods Limited (supra)** are being quoted as under:

"22. It is settled that the High Court can exercise its power of judicial review in criminal matters. In State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : JT (1990) 4 SC 650] this Court examined the extraordinary power under Article 226 of the Constitution and also the inherent powers under Section 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guidelines is 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. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure. The power conferred on the High Court under Articles 226 and 227 of the Constitution and under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised while invoking these powers. When the exercise of powers could be under Article 227 or Section 482 of the Code it may not always be necessary to invoke the provisions of Article 226. Some of the decisions of this Court laying down principles for the exercise of powers by the High Court under Articles 226 and 227 may be referred to.

26. Nomenclature under which petition is filed is not quite relevant and that does not debar the court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If in a case like the present one the court finds that the appellants could not invoke its jurisdiction under Article 226, the court can certainly treat the petition as one under Article 227 or Section 482 of the Code. It may not however, be lost sight of that provisions exist in the Code of revision and appeal but some time for immediate relief Section 482 of the Code or Article 227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate courts. The present petition though filed in the High Court as one under Articles 226 and 227 could well be treated under Article 227 of the Constitution."

47. In the case of **Inder Mohan Goswami & Others Vs. State of Uttaranchal & Another** reported in **(2007) 12 SCC 1**, the Apex Court, after considering the scope of inherent powers u/s 482 Cr.P.C., observed that inherent power u/s 482 Cr.P.C. is wide and can be invoked if any abuse of process leading to injustice is brought to the notice of the court and to prevent the injustice, invocation of inherent powers would be justified in absence of any other specific provision in the statute.

48. The main thrust of the Apex Court in this case was, if there was a statutory provision providing a remedy for injustice, then that power should not normally be exercised, but in the absence of such statutory remedy, it is always open for the High Court to exercise its power u/s 482 Cr.P.C. to prevent the injustice. Paragraph nos.23 and 24 Inder Mohan Goswami (supra) are being quoted as under:

"Scope and ambit of courts' powers under Section 482 Cr.P.C.

23. This Court in a number of cases has laid down the scope and ambit of courts' powers under Section 482 CrPC. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Section 482 CrPC can be exercised:

(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.

24. Inherent powers under Section 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute."

49. In the case of **Padal Venkata Rama Reddy alias Ramu Vs. Kovvuri Satyanarayana Reddy and Others** reported in **2011 (12) SCC 437**, the Apex Court observed that inherent power u/s 482 Cr.P.C. is very wide, but as a practice, it should be used only in exceptional cases, because the High Court is not only a court of law, but also court of justice and possesses inherent powers to remove injustice. The Apex Court also observed that the inherent powers u/s 482 Cr.P.C. can be exercised to quash an FIR, investigation or any other criminal proceeding to secure the ends of justice for giving effect to any order passed under Cr.P.C. Paragraph nos.11 and 12 of **Padal Venkata Rama Reddy alias Ramu (supra)** are being quoted as under:

"11. Though the High Court has inherent power and its scope is very wide, it is a rule of practice that it will only be exercised in exceptional cases. Section 482 is a sort of reminder to the High Courts that they are not merely courts of law, but also courts of justice and possess inherent powers to remove injustice. The inherent power of the High Court is an inalienable attribute of the position it holds with respect to the courts subordinate to it. These powers are partly administrative and partly judicial. They are necessarily judicial when they are exercisable with respect to a judicial order and for securing the ends of justice. The jurisdiction under Section 482 is discretionary, therefore the High Court may refuse to exercise the discretion if a party has not approached it with clean hands.

12. In a proceeding under Section 482, the High Court will not enter into any finding of facts, particularly, when the matter has been concluded by concurrent finding of facts of the two courts below. Inherent powers under Section 482 include powers to quash FIR, investigation or any criminal proceedings pending before the High Court or any court subordinate to it and are of wide magnitude and ramification. Such powers can be exercised to secure ends of justice, prevent abuse of the process of any court and to make such orders as may be necessary to give effect to any order under this Code, depending upon the facts of a given case. The Court can always take note of any miscarriage of justice and prevent the same by exercising its powers under Section 482 of the Code. These powers are neither limited nor curtailed by any other provisions of the Code. However, such inherent powers are to be exercised sparingly, carefully and with caution."

50. In the case of **Anand Kumar Mohatta & Another Vs. State (NCT of Delhi), Department of Home & Another** reported in **(2019) 11 SCC 706**, the Apex Court, while considering the inherent powers of High Court u/s 482 Cr.P.C. for quashing the FIR, observed that this power can be exercised to prevent the abuse of process of court or miscarriage of justice even at the stage of FIR. Paragraph no.16 of the **Anand Kumar Mohatta (supra)** is being quoted as under:

"16. There is nothing in the words of this section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High Court can exercise jurisdiction under Section 482 CrPC even when the discharge application is pending with the trial court [G. Sagar Suri v. State of U.P., (2000) 2 SCC 636, para 7 : 2000 SCC (Cri) 513. Umesh Kumar v. State of A.P., (2013) 10 SCC 591, para 20 : (2014) 1 SCC (Cri) 338 : (2014) 2 SCC (L&S) 237] . Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced and the allegations have materialised into a charge-sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge-sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court."

51. The Apex Court, in the case of **Neeharika Infrastructure *(supra)***, after considering the judgement of the privy council in **Khawaja Nazir Ahmad *(supra)***, observed that though observations of **Khawaja Nazir Ahmad *(supra)*** are correct so far as the statutory right and duty of the police to investigate cognizable offence is concerned still the privy council in the case of **Khawaja Nazir Ahmad *(supra)*** also permitted to interfere in the investigation where no cognizable offence is made out from the perusal of the FIR and also further relying upon the judgement of Apex Court in the case of Bhajan Lal (supra) laid down the guidelines, for the High Court to exercise its inherent power to quash the FIR and consequential investigation. Paragraph no.33 of **Neeharika Infrastructure *(supra)*** is being quoted as under:

"Conclusions

33.In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482CrPC and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/charge-sheet is filed under Section 173CrPC, while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482CrPC and/or under Article 226 of the Constitution of India, our final conclusions are as under:

33.1. Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence.

33.2. Courts would not thwart any investigation into the cognizable offences.

33.3. It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on.

33.4. The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the "rarest of rare cases" (not to be confused with the formation in the context of death penalty).

33.5. While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.

33.6. Criminal proceedings ought not to be scuttled at the initial stage.

33.7. Quashing of a complaint/FIR should be an exception rather than an ordinary rule.

33.8. Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere.

33.9. The functions of the judiciary and the police are complementary, not overlapping.

33.10. Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences.

33.11. Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.

33.12. The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure.

33.13. The power under Section 482CrPC is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court.

33.14. However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in R.P. Kapur [R.P. Kapur v. State of Punjab, 1960 SCC OnLine SC 21 : AIR 1960 SC 866] and Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , has the jurisdiction to quash the FIR/complaint.

33.15. When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482CrPC, only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR.

33.16. The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482CrPC and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally,

when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438CrPC before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/charge-sheet is filed under Section 173CrPC, while dismissing/disposing of the quashing petition under Section 482CrPC and/or under Article 226 of the Constitution of India.

33.17. Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482CrPC and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

33.18. Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."

52. Apex Court in the case of **Mahmood Ali & Others Vs. State of Uttar Pradesh and Others** reported in **(2023) 15 SCC 488**, observed that when an accused comes before the court invoking inherent power u/s 482 Cr.P.C. or extraordinary power u/a 226 of the Constitution of India for quashing the FIR or criminal proceeding on the ground that same is manifestly frivolous vexatious or instituted with ulterior motive, then the High Court owes a duty to look into the FIR with care and little more closely, and further observed that for exercising inherent power or extraordinary power, such a case is not relevant. It can be exercised at the stage of initiation or registration of a case or even after the collection of material in the course of the investigation. Paragraph nos.11 and 13 of **Mahmood Ali *(supra)*** are being quoted as under:

"11. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the court owes a duty to look into the FIR with care and a little more closely.

13. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to

read in between the lines. The Court while exercising its jurisdiction under Section 482CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged."

53. In the case of **Abhishek *(supra)*** wherein the applicants were seeking the quashing of the FIR, and during the pendency of the case, the police completed the investigation and filed chargesheet. In this case, the Apex Court observed that if the application u/s 482 Cr.P.C. has been filed to quash the FIR, then even during the pendency of the application above, if police had filed chargesheet, even then the High Court, in exercise of its inherent powers, can quash the FIR, if same is manifestly frivolous or vexatious or instituted with ulterior motive of wreaking vengeance. Paragraph no.14 of **Abhishek *(supra)*** is being quoted as under:

"14. This being the factual backdrop, we may note at the very outset that the contention that the appellants' quash petition against the FIR was liable to be dismissed, in any event, as the charge-sheet in relation thereto was submitted before the Court and taken on file, needs mention only to be rejected. It is well settled that the High Court would continue to have the power to entertain and act upon a petition filed under Section 482CrPC to quash the FIR even when a charge-sheet is filed by the police during the pendency of such petition [See Joseph Salvaraj A. v. State of Gujarat [Joseph Salvaraj A. v. State of Gujarat, (2011) 7 SCC 59 : (2011) 3 SCC (Cri) 23]]. This principle was reiterated in Anand Kumar Mohatta v. State (NCT of Delhi) [Anand Kumar Mohatta v. State (NCT of Delhi), (2019) 11 SCC 706 : (2019) 4 SCC (Cri) 288 (2)] . This issue, therefore, needs no further elucidation on our part."

54. The Apex Court, in the case of **Gulam Mustafa (supra)**, has again considered the scope of inherent power in quashing the FIR and observed that, no doubt, police should ordinarily be allowed to investigate, but in appropriate cases, court can quash the FIR in exercise of its inherent power u/s 482 Cr.P.C. Paragraph no.35 of **Gulam Mustafa (supra)** is being quoted as under:

"35. We have bestowed anxious consideration to the precedents cited by the learned counsel for the respondents and are of the view that the same are inapposite to the factual scenario herein. Suffice it would be to state that while the propositions laid down therein are not disputed, they do not prejudice the version of the present appellant. Tapan Kumar Singh [CBI v. Tapan Kumar Singh, (2003) 6 SCC 175 : 2003 SCC (Cri) 1305] and Naresh [State of U.P. v. Naresh, (2011) 4 SCC 324 : (2011) 2 SCC (Cri) 216] indicate that the FIR need not be a detailed one, as it is only to initiate the investigative process and the police should ordinarily be allowed to investigate. This is the general rule, but not a fetter on this Court or the High Court in an appropriate case."

55. In the latest judgement in **Imran Pratapgadhi *(supra)***, the Apex Court was considering the issue of quashing the FIR

in petition filed u/s 528 of BNSS read with Article 226 of the Constitution of India and observed that there is no rule that inherent power u/s 528 BNSS equivalent to 482 Cr.P.C. cannot be exercised at the initial stage to quash the FIR and further observed that where no case has been made out on the face of the FIR, then to prevent abuse of process of law, it can always interfere, though the investigation is at initial stage. Paragraph no.42 (vii) of **Imran Pratapgadhi *(supra)*** is being quoted as under:

"42 (vii). There is no absolute rule that when the investigation is at a nascent stage, the High Court cannot exercise its jurisdiction to quash an offence by exercising its jurisdiction under Article 226 of the Constitution of India or under Section 482 of the CrPC equivalent to Section 528 of the BNSS. When the High Court, in the given case, finds that no offence was made out on the face of it, to prevent abuse of the process of law, it can always interfere even though the investigation is at the nascent stage. It all depends on the facts and circumstances of each case as well as the nature of the offence. There is no such blanket rule putting an embargo on the powers of the High Court to quash FIR only on the ground that the investigation was at a nascent stage."

56. The Apex Court, again in the case of **Kim Wansoo *(supra),*** observed that normally, quashing the FIR can be done in the exercise of the inherent power of the High Court, u/s 482 Cr.P.C. being statutory power, but that normal practice does not mean that quashing of FIR cannot be sought in the exercise of extraordinary power u/a 226 of the Constitution of India and further observed that prayer for seeking to quash the FIR can be sought either in the inherent power of High Court u/s 482 Cr.P.C. or in exercise of extraordinary power under Article 226 of the Constitution of India, either to prevent abuse of process of court or otherwise to secure the ends of justice. A relevant extract of paragraph no.6 of **Kim Wansoo *(supra)*** is being quoted as under:

"6. It is worthwhile to refer to some of the decisions of this Court in regard to the power of the High Court to quash criminal proceedings before considering the rival contentions with reference to the allegations made in the subject FIR, as extracted above. It is true that normally, quashing of criminal proceedings would be sought and would be done in exercise of the inherent power of the High Court under Section 482, Cr.P.C. But certainly, that does not mean that it could not be done only in invocation of the extraordinary power under Article 226 of the Constitution of India. This position was made clear by this Court in State of Haryana and Ors. v. Bhajan Lal and Ors. ……."

57. In the case of **Ramawatar Vs. State of M.P.** reported in **2022 (13) SCC 635**, the Apex Court observed that the touchstone for exercising the extraordinary power under Article 142 or inherent power u/s 482 Cr.P.C. would be to do complete justice. Therefore, the same can be exercised at any stage. Paragraph no.10 of the said judgement is being quoted as under:

"10. So far as the first question is concerned, it would be ad rem to outrightly refer to the recent decision of this Court in Ramgopal v. State of M.P. [Ramgopal v. State of M.P., (2022) 14

SCC 531 : 2021 SCC OnLine SC 834] , wherein, a two-Judge Bench of this Court consisting of two of us (N.V. Ramana, CJI & Surya Kant, J.) was confronted with an identical question. Answering in the affirmative, it has been clarified that the jurisdiction of a court under Section 320CrPC cannot be construed as a proscription against the invocation of inherent powers vested in this Court under Article 142 of the Constitution nor on the powers of the High Courts under Section 482CrPC. It was further held that the touchstone for exercising the extraordinary powers under Article 142 or Section 482CrPC, would be to do complete justice. Therefore, this Court or the High Court, as the case may be, after having given due regard to the nature of the offence and the fact that the victim/complainant has willingly entered into a settlement/compromise, can quash proceedings in exercise of their respective constitutional/inherent powers."

58. The three-Judge Bench of Apex Court in the case of **Kulandaisamy Vs. State Represented By Its Inspector of Police in Criminal Appeal No.1224 of 2025** observed that power u/s 482 Cr.P.C. for quashing the FIR can be exercised even at the preliminary stage of investigation, and there is no absolute rule that even if the investigation is at the preliminary stage, the court, exercising jurisdiction u/s 482 Cr.P.C. cannot interfere.

59. From the legal position discussed above, it is clear that privy council in the case of **Khawaja Nazir Ahmad *(supra)***, though observed that the police has statutory power to investigate cognizable offence, but it also observed that investigation can be interfered with by the court when no cognizable offence is made out from the allegation of FIR. But it is also to be noted that at the time of delivering the judgement in **Khawaja Nazir Ahmad *(supra)***, there was a provision in the old Code of Criminal Procedure, 1898, in the form of Section 491, which provides remedy against the illegal detention, therefore, the privy council observed that in case of non-cognizable offence being made out, then the statutory remedy provided u/s 491 Cr.P.C. can be invoked by the court instead of inherent power u/s 561-A of Old Cr.P.C. but after repealing the old Cr.P.C., no such provision was made in new Cr.P.C. (corresponding to Section 491 of Old Cr.P.C.). Therefore, in the absence of any other provision, the only provision that was available in the Cr.P.C. was the inherent power u/s 482 Cr.P.C. which can be exercised when no cognizable offence is made out, because police cannot investigate the non-cognizable case without the permission of the Magistrate u/s 155 (2) Cr.P.C., but these facts were overlooked by the Full Bench judgement in the case of **Ramlal Yadav *(supra)***. Even otherwise, the scope of interference during the investigation has been enlarged by the subsequent judgements of Apex Court in the case of Bhajan Lal (supra). In the judgement of Bhajan Lal (supra) wherein the judgement of the privy council in **Khawaja Nazir Ahmad *(supra)*** was also considered, the Apex Court permitted the High Court to exercise its inherent power u/s 482 Cr.P.C. (corresponding Section 528 BNSS) or under Article 226 of the Constitution of India to quash the FIR or consequential investigation to prevent the miscarriage of justice on following grounds :

"(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 facic 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 concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide 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."

60. In the judgement of **Bhajan Lal *(supra)***, the Apex Court considered almost all the judgements considered by the Full Bench in the case of **Ramlal Yadav *(supra)*** and expanded the scope of interference by the High Court during the investigation.

61. In the judgement of **Neeharika Infrastructure *(supra)***, the Apex Court, after considering the judgement of the privy council in **Khawaja Nazir Ahmad *(supra)***, again reiterated the judgement of **Bhajan Lal *(supra)***, as well as subsequent judgements regarding the scope of inherent power u/s 482 Cr.P.C. observed that though the principle laid down in **Khawaja Nazir Ahmad *(supra)*** that police has statutory right and duty to investigate the cognizable offence, but in appropriate cases, including the cases where no cognizable offence is made out from perusal of FIR, court cannot permit the investigation to move on and can interfere in the investigation, including passing of an order not to arrest the accused or not to take coercive steps adopted during investigation.

62. Therefore, it is clear from the above judgements of Apex Court that the High Court, in the exercise of its power u/s 482 Cr.P.C., can interfere with the investigation, in the case seeking quashing of FIR, where not only case where FIR does not disclose cognizable offence but also on fulfilment of other conditions as mentioned in **Bhajan Lal *(supra)*** and **Neeharika Infrastructure *(supra)***.

63. This court is also of the view that it is the mandate of Section-155 (2) Cr.P.C. (corresponding Section 174(2) of BNSS) that police cannot investigate a non-

cognizable offence. Therefore, if the police continues to investigate an FIR, which does not disclose cognizable offence that it would be against the mandate of Cr.P.C./BNSS and in such case, court can interfere or stop the investigation in exercise of its power u/s 528 BNSS (corresponding Section 482 Cr.P.C.).

64. In view of the above discussion, this court respectfully disagrees with the Full Bench judgement of this court in Ramlal Yadav (supra) wherein it is observed that FIR or consequential investigation cannot be quashed in exercise of inherent power u/s 482 Cr.P.C. (corresponding Section 528 BNSS). Subsequent judgements of the Apex Court clearly indicate that FIR can be quashed in exercise of its inherent power u/s 482 Cr.P.C. (corresponding Section 528 BNSS), if the conditions set forth in paragraph no.102 of Bhajan Lal (supra) as well as in paragraph no.33 of Neeharika Infrastructure (supra) are satisfied.

65. This court is of the view that though the decision of the Full Bench of **Ramlal Yadav** ***(supra)*** is not explicitly reversed or overruled, the evolution of circumstances and legal principle as articulated in the Apex Court's judgement render the law established by **Ramlal Yadav** ***(supra)*** obsolete. As per the principle of "CESSANTE RATIONE CESSAT IPSA LEX" which was also considered by the Apex Court in the case of **Devans Modern Breweries** ***(supra)***, the principle of stare decisis can be departed in such cases.

66. **Justice Louis Brandeis** in his dissenting judgement in **State of Washington Vs. W.C. Dawson & Co. Industrial Accident Commission of the State of California** reported in **(264 US 219 : 68 L.Ed. 646)** has observed "stare decisis is ordinarily a wise rule of action. But it is not a universal, inexorable command." If the rule of stare decisis were followed blindly and mechanically, it would dwarf and stultify the growth of the law and affect its capacity to adjust itself to the changing needs of society.

67. This court respectfully acknowledges that the legal principles established in the Full Bench decision of Ramlal Yadav (supra) may no longer be applicable due to recent developments in the law as interpreted by the Apex Court. Nevertheless, in the spirit of judicial discipline and to uphold the doctrine of stare decisis as emphasized in the cases of Shanker Raju (supra) and Mishri Lal (supra) the court is inclined to refer this matter to a Larger Bench comprising nine judges. This referral is necessary as the judgement in Ramlal Yadav (supra) was rendered by a bench of seven judges. We look forward to the insights and guidance that the Larger Bench will provide on the following questions-:

(i) In light of the law set forth by the Apex Court in the case of Bhajan Lal (supra), Neeharika Infrastructure (supra), and other subsequent judgments from the Hon'ble Apex Court, is the law laid down by the Full Bench in Ramlal Yadav (supra) that an FIR and the ensuing investigation cannot be quashed by the High Court using its inherent powers under Section 482 of the Cr.P.C. (corresponding to Section 528 of BNSS) - still valid?

(ii) Can an FIR and its consequential investigation be quashed

under the inherent powers under Section 528 of BNSS (equivalent to Section 482 of the Cr.P.C.) if the conditions outlined in paragraph 102 of Bhajan Lal (supra) and paragraph 33 of Necharika Infrastructure (supra) are fulfilled?

68. The Registrar General is instructed to present the case record to the Hon'ble Chief Justice within three days for the formation of a Larger Bench consisting of nine judges to address the referenced issues.

69. The interim order granted earlier will remain in effect until the investigation concludes in case crime no.114 of 2025, under Sections- 498A, 323, 504, 506, and 342 of the IPC, along with Sections 3 and 4 of the D.P. Act, at Police Station-Karvi, District-Chitrakoot.

(2025) 5 ILRA 1309
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 07.05.2025

BEFORE

THE HON'BLE VINOD DIWAKAR, J.

Application U/S 482 No. 16456 of 2024
Alongwith other connected cases

Niraj @ Banti Shahi & Ors. ...Applicants
Versus
State of U.P. & Anr. ...Respondents

Counsel for the Applicants:
D.M. Tripathi, Nagendra Pratap Singh, Vimlendu Tripathi

Counsel for the Respondents:
G.A.

Criminal Law – Criminal Procedure Code, 1973 - Sections 173, 190, 190(1)(1), 190(1)(b), 190(1)(b), 191(1)(c), 200, 203, 204, 207, 209, 260 & 482 - Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 528 - Constitution of India,1950 – Article 226 - Indian Penal Code,1860 - Section 120-B, 147, 323, 420, 465, 467, 468, 471, 477-A, 447, 504 & 506 - Prevention of Damage to Public Property Act, 1984- Sections 3 & 4- Applications u/s 482 Cr.P.C. – challenge to impugned summoning orders – Court while adjudicating the batch of petitions, expressed grave concern over the – (i) the mechanical issuance of summoning orders by trial courts, often using printed proforma formats without applying judicial mind or assigning reasons - such practice not only undermines judicial discipline but also burdens the system with avoidable litigation and depriving accused persons of clarity regarding allegations prior to the procedural stage under Section 207 Cr.P.C. – (ii) furthermore, although the statutory remedy of discharge under the Cr.P.C. remains available before the trial court, litigants increasingly bypass this route, approaching the High Court under Section 482 Cr.P.C. for quashing of cognizance orders and seeking "no coercive action" – such approach, held to be legally untenable and procedurally premature – Court reiterates that "taking cognizance" does not necessitate a formal or reasoned order, but requires the Magistrate to apply judicial mind to the alleged commission of offence with intent to proceed under law – (iii) court also finds that, systemic lapses attributed to insufficient judicial training, legacy practices, excessive dependence on clerical staff, and a backlog-centric culture that compromises judicial scrutiny - Held that, issuance of summoning orders through pre-typed formats and rubber-stamped templates is impermissible and must be discontinued forthwith – directions issued for institutional reforms including sustained judicial training, enhanced supervisory oversight, and legal sensitization of court staff – Judicial Training and Research Institute and relevant authorities directed to circulate the judgment for compliance and future reference – finding no material irregularity in the impugned summoning orders, all applications dismissed – however, liberty granted to the applicants to reapply post compliance with Section 207 Cr.P.C. (Para – 33, 34, 35, 37, 38, 40, 41)