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IN THE HIGH COURT OF DELHI AT NEW DELHI**Reserved On: 24th November, 2023****Pronounced On: 22nd January, 2024**

+ CRL.M.C. 4385/2023 & CRL.M.C. 16758/2023 (Stay), 24680/2023
(Impleadment of Delhi Vidhan Sabha)

A.V. PREM NATH

..... Petitioner

Through: Ms. Vibha Dutta Makhija, Senior
Advocate with Mr. Sumit Kumar,
Advocate.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Aman Usman, APP for the State,
Mr. Yoginder Handoo, Special
Counsel.
ACP Sushil Kumar, AEKC-Crime
Branch, Insp. Daleep Kumar, AEKC-
Crime Branch and Insp. Ganesh Kumar,
PS IP Estate.

CORAM:**HON'BLE MR. JUSTICE AMIT SHARMA****JUDGMENT****AMIT SHARMA, J.**

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') seeks quashing of FIR No. 171/2023 under Sections 417/419/468/471/120B of the Indian Penal Code, 1860 ('IPC') registered at PS IP Estate and all other consequential proceedings emanating therefrom.



Background

2. The case of the prosecution is that the present FIR was registered at the instance of one Nakul Kashyap ('the complainant'), stating that his father, late Sh. Ramesh Babu was an employee at LNJP Hospital, Delhi and he passed away in the year 2016, while he was on duty. Thereafter, the complainant applied to the Delhi Secretariat for employment on compassionate grounds, however, no action was taken in that regard. The complainant further stated that about a year and half ago, one of his relatives introduced him to an officer in the Delhi Secretariat, Shri AV Premnath, i.e., the petitioner. The petitioner assured that he is acquainted with Mr. Saurabh Bhardwaj, a minister in the ruling Government of the Aam Aadmi Party and that he will help the complainant in securing the appointment on compassionate grounds.

3. The complainant further alleged that after a few months, the petitioner called him from the mobile number 8384001874 and asked him to meet near Patiala House Courts. There, the petitioner showed him some documents and told him that he has had a conversation with Mr. Saurabh Bharwdaj and once a complaint is submitted against Sh. YVVJ Rajshekhar, Special Secretary, Services, Government of National Capital Territory of Delhi ('GNCTD'), they will get him employed. The petitioner obtained the complainant's signatures on several documents.

4. The complainant alleged that the petitioner called him after a few days and told him that his meeting has been fixed with Mr. Saurabh Bhardwaj. Thereafter, the complainant met Mr. Saurabh Bhardwaj who told him to stand by his complaint against Sh. YVVJ Rajshekhar and ensured him about his employment.



5. It was further alleged that during the enquiries conducted into the complaint submitted against Sh. YVVJ Rajshekhar, it came to the complainant's knowledge that in the said complaint, it has been stated that Sh. YVVJ Rakshekhar made caste based remarks against the complainant, which is false. The complainant never even met Sh. YVVJ Rajshekhar. It further came to the complainant's knowledge that a fake email-ID has been created in his name, using which complaints against Sh. YVVJ Rakshekhar have been sent to various persons.

Submissions on behalf of the Petitioner/AV Premnath

6. At the outset, learned Senior Counsel for the petitioner drew the attention of this Court to the sequence of events that culminated into the registration of the present FIR:

- i. On 27.05.2023, a complaint was received at PS IP Estate addressed by the complainant, against Sh. YVVJ Rajshekhar, seeking registration of an FIR against the latter under the relevant provisions of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 ('SC/ST Act') for making caste based remarks. The said complaint was stated to have been accompanied with another complaint dated 19.05.2023 against Sh. YVVJ Rajshekhar, which was addressed to Mr. Saurabh Bhardwaj, Minister of Serviced and Vigilance, GNCTD making allegations in relation to a 'Cash for Compassionate Jobs Scam'.
- ii. On 01.06.2023, the petitioner addressed a complaint to the Hon'ble Speaker of the Delhi Legislative Assembly seeking *'immediate necessary action for CBI enquiry into fake and fraudulent OBC*



credentials of YVVJ Rajasekhar, Spl Secretary (Services) holding Additional Charge of Spl Secretary (Vigilance), GNCT of Delhi.’.

- iii. On 07.06.2023, the complainant sent an email to various authorities, including the Commissioner of Police, Delhi Police making allegations of threats extended by Sh. YVVJ Rajshekhar and requesting for protection from his alleged abuse of authority.
- iv. On 09.06.2023, the All India Congress Committee wrote a letter to the Hon'ble Speaker of the Delhi Legislative Assembly seeking action against Sh. YVVJ Rajshekhar on the complaint dated 27.05.2023.
- v. On 12.06.2023, Sh. YVVJ Rajshekhar sent an email to the SHO, PS IP Estate regarding fake complaints against him dispatched to the Chief Secretary, GNCTD and Secretary (Vigilance) using the email-ID nakulkashyap1717@gmail.com and the mobile number 9999332761.
- vi. On 13.06.2023, the complainant Nakul Kashyap appeared before the Delhi Legislative Assembly and gave a statement on similar lines, as his earlier complaints.
- vii. On 15.06.2023, a notice was sent to the petitioner from the Legislative Assembly Secretariat, asking him to appear before the Sub-Committee on Welfare of OBCs (in relation to his complaint dated 01.06.2023).
- viii. On 15.06.2023, the Bhim Army organised a protest against Sh. YVVJ Rajshekhar which was also attended by the complainant Nakul Kashyap. The said fact has been recorded in the letter sent by the Bhim Army to the Hon'ble Lieutenant Governor. The said letter also stated that Nakul Kashyap was arrested from his residence at about 10:30 PM



on 15.06.2023 and remained in the custody of police as on 16.06.2023, i.e., the date of registration of the FIR.

ix. The present FIR was registered on 16.06.2023.

7. Learned Senior Counsel for the petitioner submitted that the FIR is liable to be quashed. It was submitted that a perusal of the FIR reflects that the ingredients of the offences for which it has been registered are not made out. It is further submitted that the complainant has an ulterior motive for registration of the FIR and that it has been registered only on account of vendetta and bias.

8. Learned Senior Counsel submitted that in the FIR, the allegation against the petitioner is that he created a fake email-ID in the name of the complainant and using the said email-ID, he has impersonated the complainant and sent the representations against Sh. YVVJ Rajshekhar. It is submitted that the said allegation is not sufficient to constitute the offences under which the FIR has been registered. Learned Senior Counsel further submitted that the FIR is a result of vendetta against the petitioner, perpetrated by Sh. YVVJ Rakshekhar, who is a senior IAS officer.

9. It was submitted that after the petitioner sent a complaint to the Hon'ble Speaker of the Delhi Legislative Assembly on 01.06.2023, he was threatened by Sh. YVVJ Rajshekhar to withdraw the same. Learned Senior Counsel further submitted that the FIR states that the petitioner had allegedly called the complainant from the mobile number 8384001874 about a month prior to the registration of the FIR and that the complainant had met Mr. Saurabh Bhardwaj 15 days prior to registration of the FIR. It was submitted that the



timeline of events, as stated above, reflects that by that time, a complaint had already been made by the petitioner against Sh. YVVJ Rajshekhar.

10. Learned Senior Counsel placed reliance on the following judgments:

- i. **State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp (1) SCC 335:** Attention of this Court was drawn to Para 102 of the said judgment, wherein the Hon'ble Supreme Court has laid down a non-exhaustive list of cases which may be considered appropriate for quashing. It was submitted that the present case falls within the following categories enumerated by the Hon'ble Supreme Court:

"102...(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(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.

(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."

- ii. **Aman Kumar Bhardwaj v. State of Himachal Pradesh through Director General of Police and Others, 2022 SCC OnLine HP 3794 (Para 18 to 21) and Hemendra Nath Chakraborty v. State of West Bengal and Others, 1989 SCC OnLine Cal 105 (Para 16 and 22):** Reliance was placed on the said judgments to submit that ingredients of the offences alleged in the present FIR are not made out.



- iii. **Mahmood Ali and Others v. State of Uttar Pradesh and Others, 2023 SCC OnLine SC 950:** Reliance was placed on Para 13 of the said judgment to submit that in exercise of jurisdiction under Section 482 of the CrPC, irrespective of the stage of the case, the Court can look into the overall facts and circumstances.

Submissions on behalf of the State

11. Learned APP for the State and learned Special Counsel for the Delhi Police opposed the present petition and submitted that allegations against the present petitioner are serious and the investigation conducted so far has sufficiently revealed his involvement in the offences.

12. It was submitted that the complainant was forced by the petitioner to make a complaint against Sh. YVVJ Rajshekhar on 27.05.2023. It was submitted that the email-ID nakulkashyap1717@gmail.com was used to send a complaint against Sh. YVVJ Rajshekhar to the Chief Secretary, GNCTD on 10.06.2023. It was submitted that after a letter was written by Sh. YVVJ Rajshekhar to the SHO, PS IP Estate regarding the same, an enquiry was initiated and verification of the said email-ID was conducted. It was revealed that the said email-ID was created on 10.06.2023 using an IP address of a computer system belonging to the petitioner's wife. During further enquiry, the statement of complainant Nakul Kashyap was recorded, who stated that Sh. YVVJ Rajshekhar never made any caste based remarks against him. The complainant denied ever having met Sh. YVVJ Rajshekhar and also confirmed that the email-ID nakulkashyap1717@gmail.com does not belong to him.



13. Learned APP for the State as well as learned Special Counsel for the Delhi Police submitted that the statement of the complainant was recorded under Section 164 of the CrPC. The complainant stated that on 19.05.2023, the petitioner called him to Patiala House Courts Complex and made him sign some documents, contents of which were unknown to the complainant. It was submitted that investigation revealed that the location of the mobile phone of the petitioner on the said date and at the relevant time was at Patiala House Courts.

14. In response to learned Senior Counsel's argument that the requisite ingredients of the alleged offences are not made out, it was submitted that at this stage where the investigation is still ongoing, the allegations in the FIR have to be taken at their face value and a detailed appreciation of facts or evidence cannot be done. Section 468 of the IPC provides for the offence of forgery for the purpose of cheating. In the present case, the petitioner is alleged to have created false document in the name of the complainant to cause harm to Sh. YVVJ Rajshekhar which constitutes the offence under Section 468 of the IPC. It was submitted that Section 415 of the IPC provides for the offence of cheating to '*cause damage or harm to that person in body, mind, reputation or property*'. In the present case, the allegation is that the petitioner induced the complainant to file a false complaint in return for a job and in order to cause harm to the reputation of Sh. YVVJ Rajshekhar. The said allegation is therefore, squarely covered under the offence of cheating.

15. On behalf of the State, reliance was placed on the following judgments:

- i. **R.P. Kapur v. State of Punjab, 1960 SCC OnLine SC 21:** Reliance was placed on Paras 10 to 12 of the said judgment to submit that in the



present proceedings, this Court cannot conduct a detailed enquiry into the case of the accused petitioner which is in the jurisdiction of the learned Trial Court.

- ii. **GV Rao v. LHV Prasad and Others, (2000) 3 SCC 693:** Reliance was placed on the said judgment to demonstrate that in the facts and circumstances of the case, the offence of cheating is made out.
- iii. **Veena Mittal v. State of Uttar Pradesh, Order dated 24.01.2022 passed by the Hon'ble Supreme Court in Crminal Appeal No. 122 of 2022:** Reliance was placed on Para 6 of the said order, wherein it has been observed and held that *"It is well-settled that at the stage when the High Court considers a petition for quashing criminal proceedings under Section 482 of the CrPC, the allegations in the FIR must be read as they stand and it is only if on the face of the allegations that no offence, as alleged, has been made out, that the Court may be justified in exercising its jurisdiction to quash. The parameters of the jurisdiction under Section 482 have been reiterated in a consistent line of authorities and, at this stage, it may be material to refer to the recent decision of this Court in Neeharika Infrastructure v. State of Maharashtra."*
- iv. **Ramveer Upadhyay and Anr. v. State of U.P. & Anr., 2022 INSC 455:** Reliance was placed on paragraph 39 of the said judgment to submit that even if a proceeding is politically motivated, it would not justify interference by the High Court in exercise of inherent powers under Section 482 of the CrPC. The veracity of the allegations would have to be decided at trial.



v. **Mahendra K.C. v. State of Karnataka and Anr., (2022) 2 SCC 129:**

Reliance was placed on paragraphs 19 and 20 of the said judgment to submit that jurisdiction under Section 482 of the CrPC should be exercised sparingly and carefully.

16. It was submitted that during the course of investigation, the mobile phone of the complainant was seized and whatsapp chat with the petitioner having mobile number 8384001874 were found. Investigation further confirmed that the mobile phone with the aforesaid SIM number was purchased by the petitioner. The petitioner's associate Deepak also confirmed that he had gone alongwith the petitioner to purchase the said phone. During further course of investigation Advocate Manish Kumar Angirash was interrogated and he stated that he was called by one Anil Gaur to assist the complainant in filing his complainant at PS IP Estate and the DCP Office. One Mr. Rohan Kaushik joined the investigation and submit that on 03.06.2023, at about 4:45 P.M. three persons visited him at Patiala House Courts and asked him to modify the documents sent to him by the aforesaid Advocate Manish Kumar Angirash. It was submitted that one Advocate Orangazeb Khan also joined investigation and supported the complainant's version. He stated that he was hired by the petitioner and was instructed to accompany the complainant to the Delhi Legislative Assembly on the day when he was called to make a statement.

17. It was further submitted on 01.07.2023, the petitioner joined investigation, however, did not cooperate with the same. Despite notice under Section 91 of the CrPC, he did not produce the mobile with SIM number 8384001874. It was further submitted that there are several other complaints



pending against the petitioner and he is also named in the Doubtful Integrity List of 2021.

18. Learned APP for the State as well as learned Special Counsel for the Delhi Police submitted that CDR analysis of mobile numbers of the complainant, Anil Gaur, Advocate Orangazeb, petitioner, Advocate Manish Kumar Angirash and Deepak corroborate the allegations detailed hereinabove. It was further revealed that the complainant did not visit the residence of the petitioner on 10.06.2023 when the email-ID nakulkashyap1717@gmail.com was created in his name and without his knowledge.

Rejoinder on behalf of the Petitioner/AV Premnath

19. By way of rejoinder, learned Senior Counsel for the petitioner submitted that the ingredient of impersonation is not made out as the petitioner never claimed to be the complainant Nakul Kashyap. It was further submitted that Section 120B of IPC has been added in the present FIR, however, there is no material to suggest that multiple persons were involved in the conspiracy. As far as the documents relied upon by the prosecution incriminating the present petitioner are concerned, it was submitted that the searches leading to the recovery of the said documents were conducted prior to registration of the FIR.

Analysis and Findings

20. The moot issue before this Court is that whether the facts and circumstances of the present case warrant exercise of jurisdiction under Section 482 of the CrPC for quashing of the impugned FIR. The proposition of law in the judicial precedents cited by the parties are well settled. The



jurisdiction to exercise inherent powers under Section 482 of the CrPC for quashing an FIR has been the subject matter of various judicial precedents. It is well settled that a Court, while exercising powers under Section 482 of the CrPC, cannot examine disputed questions of fact. However, at the same time, if the facts and circumstances of the case *prima facie* make out a case for exercise of inherent powers to prevent the abuse of process of law or in the interest of justice, then the exercise of such jurisdiction is justified. Such circumstances have been broadly indicated in various judicial precedents, including **Bhajan Lal** (*supra*).

21. In the present case, the thrust of the argument of learned Senior Counsel for the petitioner, is that the complainant, prior to registration of the FIR, had been making complaints against Sh. YVVJ Rajshekhar. The same has been sought to be demonstrated by placing on record, complaints and various other communications to show that the complainant was consistent in filing complaints against the said officer, however, on account of some extraneous reasons, filed a complaint against the petitioner blaming the latter for inducing him to file the previous complaints. From the documents on record, it has been sought to be established that the complaints were voluntary in nature.

22. *Per contra*, learned APP and Special Counsel for the State opposed the present petition on the following grounds, stated in the status report dated 19.08.2023 authored by SHO, PS IP Estate:

“1. That during investigation. it revealed that the present Applicant/accused due to personal grudge with Sh. YVVJ Raj Sekhar. Spl Secretary (Services and Vigilance) made conspiracy to implicate him in false case and consequently he duped the complainant Sh. Nakul



Knshyap by alluring to provide him a job on compassionate ground and lodged false and fabricated complaint against Sh. YVVJ Raj Sekhar on behalf of the complainant.

2. That the petitioner created fake email-id nakulkashyap 1717@gmail.com from the internet of his residence without the knowledge, permission and presence of complainant Sh. Nakul Kashyap and he mailed several complainants to different agencies against Sh. YVVJ Raj Sekhar only to implicate him in a false criminal case.

3. That the petitioner purchased a second hand mobile VivoY21 from Gaffar Market, Karol Bagh and also a SIM having mobile number 88400 1874 in the name of his assistant Deepak to lodge false and fabricated complaint against Sh. YVVJ Raj Sekhar. The petitioner came in contact with Mr Anil Gaur. PA of Sh. Saurabh Bhardwaj by this mobile number.

4. That as per the whatsapp chat between complainant and present petitioner with Mob n0. 884001874, it's found that it is the petitioner, who shared the details of Sh. YVVJ Raj Sekhar to the complainant.

5. That the IP addresses of alleged email-id nakulkashyup717@gmail.com obtained and during investigation it is found that mac-id registered in the name of Asha PremNath w/o the present applicant.

6 . That during spot inspection at the residence of the present petitioner and on the instruction of FSL. Rohini, Expert team one desktop HP-22. Jio internet router containing mac-id A8DAOCAD72DC and three visiting card of Guru Kripa Electronics having details of mobile model No, and IMEI number were recovered in the case.

7. That during investigation, it was found that petitioner was using a Desktop HP-22 at his residence to commit instant crime by preparing the contents of complaints against Sh. YVVJ Raj Sekhar, The seized desktop contains several crucial evidence and several e-mail contents in relations to Sh. Nakul Kashyap complaint and against the Sh, YVVJ Rajsekhar and same were sent to different mail account from the system having mail id- lastsamurai689@gmail.com.

8. That during visit of FSL cyber team and Police at the residence of petitioner, despites several calls, he was not joining enquiry with Police team and after information ion about Police Team, present petitioner was attempting to hamper email contents by opening the above email-id in another system having mobile number 7302 120584 and with the help of e-mail recovery mobile number 9999 193164, which is possessed with petitioner.

9. Thai after lodging false complaint against Sh. YVVJ Raj Sekhar on the instruction of present petitioner in the office of Sh. Saurabh Bhardwaj,



on 21.05.23 Mr. Anil Gaur visited at the residence of complainant and asked him to meet Sh. Saurabh Bhardwaj on 22.05.23. 10.

10. That on 22.05.2023, complainant visited at the residence of the petitioner, as per his instruction before going to meet with Sh. Saurabh Dhardwnj in respect of false complaint lodged against Sh. YVVJ Raj Sckhar. 11. That on the instruction of present petitioner. Mr. Anil Gaur arranged the meeting of complainant with Sh. Saruabh Bhnrdwaj with regards to his complaint lodged against Sh. YVVJ Raj Sekhar.

12. That it was present petitioner, who hired on advocate Orangazeb only to represent the complainant before the Vidhan Sabha and at the office of LG House.

13. That on 13.06.2023, present petitioner, had also visited at Vidhan Sabha alongwith the complainant and arranged advocate to represent him.

14. That on 15.06.2023, petitioner had also taken out a rally/protest against Sh. YVVJ Rajsekhar at the LG House. where Advocate Oragazeb also represented the complainant.

15. That email id lastsamurai689@gmail.com was created on 12/07/2022 in the desktop HP-22 of present petitioner and account recovery mobile number is 9999 193 164 and users' phone numbers arc 9999193164, 8384001874, 99 10816120, 6398460822 and 7302 120584. The mobile number 838400 1874 is that alleged mobile number by which complainant Sh. Nakul Kashyap was in regular touch with present petitioner and he was being guided and by which the information about Sh. YVVJ Rajsekhar was sent to the complainant through whatsapp.

16. That during investigation shopkeeper Sh. Charandeep Singh, the owner of Guru Kripa Elcctronics, Gaffar Market, Korol Bagh identified the petitioner. who purchased the alleged mobile Vivo- Y-21 in which mobile number 838400 1874 was being used during the commission of crime.

17. That CDR location, CCTV footage and identification of the complainant corroborate the versions of complainant that Mr. Anil Gaur visited at the residence of complainant in the series of allurement to get job on compassionate ground.

18. That statement of Mr Rohan Kaushik recorded U/S 161 CrPC support the version of complainant that Advocate Manish prepared a complaint to file complaint at Vidhan Sabha.

19. That as per CDR analyses of different mobile numbers possess by the petitioner. Mr. Anil Gaur, Adv Orangazeb. Adv Manish, Mr Deepak and



complainant. the versions of complainant found correct and corroborating the allegations against the present petitioner.

20. That during investigation, the CCTV footages from the colony of petitioner Sh. AV Prem Nath, received for the dated 10-12/06/2023 and analyzed. On analyses, it's found that the complainant has not visited at the residents of petitioner on 10.06.2023, where on that day alleged/fake E-mail id was created by the petitioner at his residence and first time complaint was mailed in the name of complainant without his knowledge and presence.

21. That 04 criminal cases found registered against present petitioner and it has also been found that present petitioner was also involved in similar type of criminal activity previously.

22. That the email-id created in the name of the complainant created by the present petitioner was identified as one nakulkashyap1717@gmail.com and it is the same email through which complainants were made to the office of CP of Delhi Police and various other authorities to pressurize authorities to take action on the physical complaint which was allegedly made by the complaint against Sh.YVVJ Rajshekhar before Delhi Police through SHO IP Estate under the influence of the petitioner.

23. That the present petitioner is DANICS officer during suspension, he committed instant crime. It is matter of investigation that if the petitioner is not involved in the instant crime, then how he received documents filed in the present petition.”

23. The aforesaid facts demonstrate that the complainant in the present FIR, had filed complaints against Sh. YVVJ Rajshekhar, however, the contention is that the same were filed at the instance of the petitioner, on the basis of a dishonest inducement to get him a job on compassionate grounds after the demise of his father. It is not the case of the petitioner that he did not assist the former in making the said complaints. On a pointed query from this Court, during the course of arguments, with regard to the email-ID nakulkashyap1717@gmail.com, learned Senior Counsel contended that the case of the petitioner is that the said email-ID was created with the



complainant's consent. It is the stand of the petitioner that he had used the said email-ID to forward complaints against the aforesaid officer filed at the instance of the complainant. It is a matter of record that the statement of the complainant has been recorded under Section 164 of the CrPC wherein he has corroborated the allegations in the FIR. In view of the above, the present case involves two versions – one of the petitioner and one of the complainant, which requires due investigation.

24. So far as the contention of learned Senior Counsel for the petitioner with regard to ingredients of the offence for which the present FIR has been registered, it is pertinent to note that it has come on record that the petitioner had created an email-ID, i.e., nakulkashyap1717@gmail.com, in the name of the complainant from his residence. It has also come on record that the petitioner was aware of an earlier email-ID being used by the complainant, i.e., lastsamurai689@gmail.com. The issue whether the said second email-ID was created by the petitioner with the consent of the complainant cannot be decided by this Court in exercise of jurisdiction under Section 482 of the CrPC. Section 464 of the IPC provides as under:

"464. Making a false document.— A person is said to make a false document or false electronic record—

First.—Who dishonestly or fraudulently—

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any electronic signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature,

with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made,



signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly.—Who without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly.—Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration."

In view of the above, it is *prima facie* clear that the aforesaid email-ID created by the petitioner falls with the definition of '*creating a false document*'. Thus, the case of the petitioner will not be covered under the categories enumerated in **Bhajan Lal (supra)**. Similarly, in **Mohammad Ali (supra)**, the Hon'ble Supreme Court, in Para 10 of the said judgment, took the view that none of the ingredients constituting the offence alleged in the FIR were disclosed.

25. Be that as it may, the matter is still under investigation. The exercise of collecting evidence in support of the offences alleged in the present FIR is still underway. The present case is not one where it can be safely concluded at this stage that no offence is made out. The Hon'ble Supreme Court, in **Mahendra K.C. v. State of Karnataka and Another, (2022) 2 SCC 129** held as under:



“19. The High Court has the power under Section 482 to issue such orders as are necessary to prevent the abuse of legal process or otherwise, to secure the ends of justice. The law on the exercise of power under Section 482 to quash an FIR is well-settled. In *State of Orissa v. Saroj Kumar Sahoo* [*State of Orissa v. Saroj Kumar Sahoo*, (2005) 13 SCC 540 : (2006) 2 SCC (Cri) 272] , a two-Judge Bench of this Court, observed that : (SCC pp. 547-48, para 8)

“8. ... While exercising the powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto.”

20. These principles emanate from the decisions of this Court in *State of Haryana v. Bhajan Lal* [*State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] and *State of M.P. v. Surendra Kori* [*State of M.P. v. Surendra Kori*, (2012) 10 SCC 155 : (2012) 4 SCC (Civ) 921 : (2013) 1 SCC (Cri) 247 : (2012) 2 SCC (L&S) 940] . In *Surendra Kori* [*State of M.P. v. Surendra Kori*, (2012) 10 SCC 155 : (2012) 4 SCC (Civ) 921 : (2013) 1 SCC (Cri) 247 : (2012) 2 SCC (L&S) 940] , this Court observed : (*Surendra Kori case* [*State of M.P. v. Surendra Kori*, (2012) 10 SCC 155 : (2012) 4 SCC (Civ) 921 : (2013) 1 SCC (Cri) 247 : (2012) 2 SCC (L&S) 940] , SCC p. 163, para 14)

“14. The High Court in exercise of its powers under Section 482 CrPC does not function as a court of appeal or revision. This Court



has, in several judgments, held that the inherent jurisdiction under Section 482 CrPC, though wide, has to be used sparingly, carefully and with caution. The High Court, under Section 482 CrPC, should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of wide magnitude and cannot be seen in their true perspective without sufficient material.”

Further, in **Ramveer Upadhyay and Another v. State of U.P. and Another, 2022 SCC OnLine SC 484**, the Hon’ble Supreme Court held as under:

“**39.** In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under Section 482 of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference under Section 482 of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal case cannot be ruled out. The allegations in the complaint constitute offence under the Atrocities Act. Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence. The Complaint Case No. 19/2018 is not such a case which should be quashed at the inception itself without further Trial. The High Court rightly dismissed the application under Section 482 of the Cr.P.C.”

26. Learned Senior Counsel for the petitioner had contended that the material collected by the investigating agency was prior to registration of FIR, and therefore, could not be looked into. The said contention is not sustainable in view of the judgment of the Hon’ble Supreme Court in **Pooran Mal v. The**



Director of Inspection (Investigation), New Delhi and Other, (1974) 1 SCC 345, wherein it has been held as under:

"24. So far as India is concerned its law of evidence is modelled on the rules of evidence which prevailed in English Law, and Courts in India and in England have consistently refused to exclude relevant evidence merely on the ground that it is obtained by illegal search or seizure.

In *Kuruma case*, Kuruma was searched by two police officers who were not authorised under the law to carry out a search and, in the search, some ammunition was found in the unlawful possession of Kuruma. The question was whether the evidence with regard to the finding of the ammunition on the person of Kuruma could be shut out on the ground that the evidence had been obtained by an unlawful search. It was held it could not be so shut out because the finding of ammunition was a relevant piece of evidence on a charge for unlawful possession. In a later case before the Privy Council in *Herman King v. Queen* [(1969) 1 AC 304] which came on appeal from a Court of Appeal of Jamaica, the law as laid down in *Kuruma case* was applied although the Jamaican Constitution guaranteed the constitutional right against search and seizure in the following provision of the Jamaica (Constitution) Order in Council 1962, Sch. 2, Section 19:

“(1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises. (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Section to the extent that the law in question makes provision which is reasonably required for the purpose of preventing or detecting crime....”

In other words search and seizure for the purposes of preventing or detecting crime reasonably enforced was not inconsistent with the constitutional guarantee against search and seizure. It was held in that case that the search of the appellant by a Police Officer was not justified by the warrant nor was it open to the Officer to search the person of the appellant without taking him before a Justice of the Peace. Nevertheless it was held that the Court had a discretion to admit the evidence obtained as a result of the illegal search and the constitutional protection against search of person or property without consent did not take away the discretion of the Court. Following *Kuruma v. Queen* the Court held



that it was open to the Court not to admit the evidence against the accused if the Court was of the view that the evidence had been obtained by conduct of which the prosecution ought not to take advantage. But that was not a rule of evidence but a rule of prudence and fair play. It would thus be seen that in India, as in England, where the test of admissibility of evidence lies in relevancy, unless there is an express or necessarily implied prohibition in the Constitution or other law evidence obtained as a result of illegal search or seizure is not liable to be shut out."

27. In view of the above discussion and in the facts and circumstances of the case, this Court is of the considered opinion that no case for exercise of jurisdiction under Section 482 of the CrPC for quashing of the impugned FIR is made out. The present petition is dismissed and disposed of accordingly.

28. Pending applications, if any, also stand disposed of.

29. Needless to state, nothing stated hereinabove is an opinion on the merits of the case.

30. Judgment be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA
JUDGE

JANUARY 22,2024/sn