(6) In any eventuality having recourse to proceedings under Section 482 of the Code of Criminal Procedure for launching prosecution against officials involved in lodging the FIR resulting in an unsuccessful prosecution is not the remedy.

(7) The other prayer for issuance of directions to the other functionaries of State to grant sanction for prosecuting the officers named in the representation to them, cannot be granted as *prima facie* this court is of the opinion that no such case for their prosecution has been made out for the reasons aforesaid.

(8) The present proceedings are clearly an abuse of the process of law and a result of frivolous and vexatious litigation. The petition is accordingly dismissed with costs of Rs. 50,000.

(9) At this stage learned counsel for the petitioner prayed earnestly for a lenient view. In view of this, the petition is dismissed with a costs of Rs. 20,000.

R.N.R.

Before Vijender Jain, C.J., P. Sathasivam, Rajive Bhalla, Surya Kant & Mahesh Grover, JJ.

KULWINDER SINGH AND OTHERS,—*Petitioners*

versus

STATE OF PUNJAB AND ANOTHER,—*Respondents*

Criminal Misc. No. 33016/M of 2007

8th August, 2007

Code of Criminal Procedure, 1973—Ss. 320 and 482—Constitution of India, 1950—Arts. 226 and 227—Parties after arriving at a compromise and settling all their disputes seeking quashing of FIR—Non-compoundable offence—S.320 provides a table of offences punishable which may be compounded and no offence shall be compounded except as provided by this section—Whether High Court has power under section 482 to quash criminal proceedings or allow compounding of offences notwithstanding the bar under Section 320—Held, yes —Power of High Court under Section 482—Exercise of—To prevent abuse of process of any Court or to secure the ends of justice—No hard and fast category to prescribe—No embargo can whittle down power of High Court under Section 482 Cr.P.C. and such power could not be restricted to matrimonial cases only.

[Dharambir versus State of Haryana, 2005(3) R.C.R. (Crl.) 426 (F.B.) majority view over-ruled]

Held, that the power under Section 482 of the Cr.P.C. cannot be a hostage to one class or category of cases. That would be a complete misconstruction of the intent of the Legislature, who placed its utmost faith in the inherent power of the High Court to break free the shackle of other provisions of the Code, to give effect to any order under it or to prevent the abuse of the process of any Court or otherwise to secure the endes of justice. Hence, there can never be any hard and fast category which can be prescribed to enable the Court to exercise its power under Section 482 of the Cr.P.C. The only principle that can be laid down is the one which has been incorporated in the Section itself i.e. "to prevent abuse of the process of any Court" or 'to secure the ends of justice".

(Paras 25 and 28)

Further held, that the power to do complete justice is the very essence of every judicial justice dispensation system. It cannot be diluted by distorted perceptions and is not a slave to anything, except to the caution and circumspection, the standards of which the Court sets berfore it, in exercise of such plenary and unfettered power inherently vested in it while donning the cloak of compassion to achieve the ends of justice. No embargo, be in the shape of Section 320(9) of the Cr.P.C. or any other such curtailment, can whittle down the power under Section 482 of the Cr.P.C.

(Para 30)

Further held, that there is no statutory bar under the Cr.P.C. which can affect the inherent power of this Court under Section 482. Further, the same cannot be limited to matrimonial cases alone and the Court has the wide power to quash the proceedings even in non—compoundable offences notwithstanding the bar under Section 320 of the Cr.P.C. in order to prevent the abuse of law and to secure the ends of justice.

(Para 33)

Further held, that the power under Section 482 of the Cr.P.C. is to be exercised Ex—Debitia Justitia to prevent an abuse of process of Court. There can neither be an exhaustive list nor the defined

para—meters to enable a High Court to invoke or exercise its inherent powers. It will always depend upon the facts and circumstances of each case. The power under Section 482 of the Cr.P.C. has no limits. However, the High Court will exercise it sparingly and with utmost care and caution. The exercise of power has to be with circumspection and restraint. The Court is a vital and an extra-ordinary effective instrument to maintain and control social order. The Courts play role of paramount importance in achieving peace, harmony and everlasting congeniality in society. Resolution of a dispute by way of a compromise between two warring groups, therefore, should attract the immediate and prompt attention of a Court which should endeavour to give full effect to the same unless such compromise is abhorrent to lawful composition of the society or would promote savagery.

(Para 34)

R.S. Cheema, Senior Advocate as Amicus Curiae assisted by Ms. Tanu Bedi, Advocate.

G.S. Kaura, Advocate, *for the petitioner.*

H.S. Mattewal, Advocate General, Punjab for the State.

H.S. Hooda, Advocate General, Haryana.

R.S. Rai, (Senior Advocate) Standing Counsel for Union Territory, Chandigarh.

JUDGEMENT

VIJENDER JAIN, CHIEF JUSTICE

(1) In **Dharambir** *Versus* **State of Haryana (1),** the majority view propounded the proposition that there is neither any provision of law nor does the Constitution of India confer any power upon the High Court to either quash the prosecution or allow the compounding of the offences which are not declared compoundable by the Legislature and that the only exception which can be carved out pertains to the offences arising out of marital disputes.

(2) Pitted against the aforesaid view was the minority view expressed by V.K. Bali, J., who professed that while exercising its

(1) 2005 (3) R.C.R. (Crl.) 426

power under Section 482 of the Cr.P.C., as also under Articles 226 and 227 of the Constitution of India, the High Court has the power to quash the proceedings in order to secure the ends of justice in all such eventualities in which it may be desirable to do so and not necessarily confined to matrimonial disputes alone.

(3) From the turbulence of thoughts and conflict of opinion expressed in the aforesaid case, has emerged the following reference by Surya Kant, J., which is as follows :—

> "The prayer in this petition is for quashing of FIR No. 92, dated 28th June, 2005, under sections 452, 427, 148. 149, registered at Police Station, Ghuman, District Gurdaspur.
>
> The aforesaid relief has been sought primarily on the plea that both the parties have resolved their dispute and in terms thereof a compromise deed dated 29th November, 2006, Annexure P-2, has been executed. Acting upon the said compromise, the complainant is stated to have sworn an affidavit, Annexure P-3, in support of the prayer made in this petition.
>
> The minute reading of the FIR reveals that the lis has originated out of a property dispute.
>
> Whether the inherent powers under section 482 Cr.P.C. are wide enough and can be invoked to strike down the criminal proceedings arising out of a civil dispute which has been amicably resolved by the parties, and/or exercise of such power is confined *qua* matrimonial disputes only, more so when there appears to be no reasonable classification between two sets of case, is a question of paramount public importance and requires consideration by a larger Bench.
>
> In general parlance, "compounding" is known as "compromise". The expression is used to condone any felony in exchange for reparation received by the victim-complainant from the felon.
>
> "Compounding" of an offence in terms of its power under Section 320(6) Cr.P.C. by the High Court as an Appellate or Revisional Court has thus, no similarity or relevance with

its inherent and plenary jurisdiction under Section 482 Cr.P.C. which cannot be limited or affected by any other provision contained in the Code. Suffice to say that the inherent jurisdiction includes the High Court's power to whittle down and also quash on going criminal prosecution provided that a case "to prevent abuse of the process of law" or "to advance the ends of justice" etc. is made out in unequivocal terms.

The scope of these two sets of powers enjoyed upon by the High Court may shrink or expand depending upon pre/post conviction eventualities, especially if in pre-conviction case(s), the High Court, as a matter of fact, is satisfied that continuation of criminal proceedings would be an exercise in futility; their fate-accompli is known; and further pendency thereof would be an undesirable burden on the trial Courts, who are already struggling hard to manage their unmanageable dockets.

In addition, the question as to whether Section 320 (9) Cr.P.C. which prohibits "compounding" of the offences not falling within the ambit of sub-section (1) and (2) of section 320 of the Code, can barge into the constitutional powers conferred upon a High Court under Articles 226 and 227 of the Constitution, also deserves to be dealt with elaborately.

In this regard, the conclusions drawn in paras 12 and 14 of the judgment rendered by the Full Bench of this Court (majority view) in the case of **Dharambir *versus* State of Haryana,** 2005(3) RCR (Crl.) 426, also needs to be reconciled. From para 12 of the report in **Dharambir's** case (supra), the majority view to the effect that "for preventing the abuse of process of law and advancing the ends of justice" and/or "in the interest of justice", the High Court in exercise of its powers under Section 482 of the Code or under Article 226 of the Constitution can quash the criminal proceedings, is quite discernible. However, the aforesaid conclusion is apparently in conflict with the majority's later conclusion drawn in para 14 of the report where it has been held that there is neither any provision

of law nor does the Constituion of India confer any power in the High Court to either quash the prosecution or allow the compounding of the offences, which are not declared compoundable by the Legislature or that the only exception which can be carved out, pertains to offences arising out of marital disputes.

Let notice of motion be issued to the Advocates General of the States of Punjab and Haryana for 26th July, 2007.

Let the paper book of this case be placed before Hon'ble the Chief Justice for passing appropriate orders.

Meanwhile, the proceedings before the learned trial court, in the case in hand, shall remained stayed."

(4) In essence, what we have been called upon to determine, can be briefly encapsulated as under :—

(1) Whether the High Court has the power under Section 482 of the Cr.P.C. to quash the criminal proceedings or allow the compounding of the offences in the event of the parties entering into a compromise in the cases which have been specified as non-compoundable offences and in particular, in view of the provisions of Section 320 of the Cr.P.C.?

(2) Whether the aforesaid power could be restricted to matrimonial cases only ?

(5) In order to reflect upon the controversy, we appropriately sought the assistance of Shri R.S. Cheema, Senior Advocate as Amicus Curiae; Shri H.S. Mattewal, Advocate General, Punjab; Shri H.S. Hooda, Advocate General, Haryana and Shri R.S. Rai, (Senior Advocate), Standing Counsel for Union Territory, Chandigarh.

(6) The stream of thoughts and the contentions made by Shri R.S.Cheema, Senior Advocate; Shri H.S. Mattewal, Advocate General, Punjab and Shri R.S. Rai (Senior Advocate), Standing Counsel for Union Territory, Chandigarh particularly converged to focus on the proposition that the High Court under Section 482 of the Cr.P.C. had undiminished power to quash the proceedings in the event of the parties setting their disputes in all such matters in which the Court

was of the opinion that it was necessary to do so to secure the ends of justice and to prevent the abuse of the process of law.

(7) A slightly discordant note was sounded by Shir H.S. Hooda, Advocate General, Haryana, who contended that in view of the bar contained in Section 320 of the Cr.P.C., the High Court could not brandish its inherent powers to quash the proceedings. To drive home his submissions, he relied on **State of Haryana and others *versus* Bhajan Lal and others (2); Arun Shankar Shukla *versus* State of U.P. and others, (3)** and **Bankat *versus* State of Maharashtra, (4).**

(8) We now proceed to disseminate the case law in search for an answer to the aforementioned questions.

(9) In **Dharambir's case** *(supra),* Amar Dutt, J. (the author of the majority view and B.K. Roy, C.J. concurring with it) proceeded on a premise that the Apex Court had, in relation to this aspect of the matter, time and again, held that in cases involving non-compounding offences, the High Court would not use inherent powers under Section 482 of the Cr.P.C. or exercise its extra-ordinary jurisdiction under Articles 226 and 227 of the Constitution of India to circumvent the power. While elaborating this point, the view expressed by the Supreme Court in various judgments was extensively referred to. The relevant paragraphs of the majority judgment are reproduced below :—

> "6.1 The earliest observations in this regard came up before a three Judge Bench of the Apex Court in **Sankatha Singh and others** *versus* **State of Uttar Pradesh,** AIR 1962 S.C. 1208, wherein it was observed as under :—
>
> > "It has been urged for the appellants that Sri Tej Pal Singh could order the re-hearing of the appeal in the exercise of the inherent powers which every Court possesses in order to further the ends of justice and that Sri Tripathi was not justified in any case to sit in judgment over the order of Sri Tej Pal Singh, an order

(2) 1992 Supp. (1) S.C.C. 335
(3) (1999) 6 S.C.C. 146
(4) 2005 (1) R.C.R. (Criminal) 306

passed within jurisdiction, even though it be erroneous. Assuming that Sri Tej Pal Singh, as Sessions Judge, could exercise inherent powers, we are of opinion that he could not pass the order of the re-hearing of the appeal in the exercise of such powers when Section 369, read with Section 424 of the Code, specifically prohibits the altering or reviewing of its order by a Court. Inherent powers cannot be exercised to do what the Code specifically prohibits the Court from doing. Sri Tripathi was competent to consider when the other party raised the objection whether the appeal was validly up for re-hearing before him. He considered the question and decided it rightly."

6.2 In **Amar Nath and others** *versus* **State of Haryana and others,** AIR 1977 S.C. 2185, their Lordships were considering the bar under Section 397(2) of the Code. They observed that it would not be possible for the Court to use Section 482 of the Code to circumvent the bar.

6.3 In **State of Orissa** *versus* **Ram Chander Agarwala etc.,** AIR 1979 S.C. 87, their Lordships observed as under :—

"Once a judgment has been pronounced by a High Court either in exercise of its appellate or its revisional jurisdiction, no review or revision can be entertained against that judgment as there is no provision in the Code which would enable the High Court to review the same or to exercise revisional jurisdiction.

xxx xxx xxx xxx xxx xxx

The provisions of Section 561-A cannot be invoked for exercise of a power which is specifically prohibited by the Code."

In **Smt. Sooraj Devi** *versus* **Pyare Lal and another,** AIR 1981 S.C. 736, it was observed as under :—

"A clerical or arithmetical error is an error occasioned by an accidental slip or omission of the Court. It represents that which the Court never intended to say. It is an error

apparent on the face of the record does not depend for its discovery on argument or disputation. An arithmetical error is a mistake of calculation, and a clerical error is a mistake in writing or typing.

Further, the inherent power of the Court also cannot be invoked. The inherent power of the court cannot be exercised for doing that which is specifically prohibited by the Code. 'It is true that the prohibition in Section 362 against the Court altering or reviewing its judgment is subject to what is "otherwise provided by this Code or by any other law for the time being in force." Those words, however, refer to those provisions only where the Court has been expressly authorised by the Code or other law to alter or review its judgment. The inherent power of the Court is not contemplated by the saving provision contained in Section 362."

6.5 **In Mosst. Simrikhia** *versus* **Smt. Dolley Mukerjee** *alias* **Smt. Chabbi Mukerjee and another,** 1990(2) R.C.R. (Crl.) 337 (S.C.): AIR 1990 S.C. 1605, it was observed as follows :—

"The court is not empowered to review its own decision under the purported exercise of inherent power. The inherent power under Section 482 is intended to prevent the abuse of the process of the Court and to secure ends of justice. Such power cannot be exercised to do something which is expressly barred under the Code. Section 362 of the Code expressly provides that no court when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error save as otherwise provided by the Code. If any consideration the facts by way of review is not permissible under the Code and is expressly barred, it is not for the Court to exercise its inherent power to reconsider the matter and record a conflicting decision. If there had been change in the circumstances of the case, it would be in order for the High Court to exercise

its inherent power was in the prevailing circumstances and pass appropriate orders to secure the ends of justice or to prevent the abuse of the process of the Court. Where there are no such changed circumstances and the decision has to be arrived at on the facts that existed as on the date of the earlier order, the exercise of the power to reconsider the same materials to arrive at different conclusion is in effect a review, which is expressly barred under Section 362."

6.6 In **Deepti** *alias* **Arati Rai** *versus* **Akhil Rai and others,** 1995 (3) R.C.R. (Crl.) 638 (SC) : (1995) 5 S.C.C. 751, it was observed as under :—

"Second revision after dismissal of the first one by the Sessions Court not maintainable—Inherent power cannot be utilised for exercising powers expressly barred by the Code."

6.7 In **Hari Singh Mann** *versus* **Harbhajan Singh Bajwa and others,** 2000 (4) R.C.R. (Crl.) 650 (SC) : AIR 2001 S.C. 43, it was observed as under :—

"We have noted with disgust that the impugned orders were passed completely ignoring the basic principles of criminal law. No review of an order is contemplated under the Code of Criminal Procedure. After the disposal of the main petition on 7th January, 1999, there was no list pending in the High Court wherein the respondent could have filed any miscellaneous petition. The filing of a miscellaneous petition not referable to any provision of Code of Criminal Procedure or the rules of the Court, cannot be resorted to as a substitute of fresh litigation. The record of the proceedings produced before us shows that directions in the case filed by the respondents were issued apparently without notice to any of the respondents in the petition. Merely because the respondent No. 1 was an Advocate, did not justify the issuance of directions at his request without notice of the other side. The impugned orders dated 30th April, 1999 and

21st July, 1999 could not have been passed by the High Court under its inherent power under Section 482 of the Code of Criminal Procedure. The practice of filing miscellaneous petitions after the disposal of the main case and issuance of fresh directions in such miscellaneous not referable to any statutory provisions and in substance the abuse of the process of the Court."

6.8 The latest view taken by the Apex Court in **State of Punjab** *versus* **Phulan Rani and another,** JT 2004(6) S.C. 214, where their Lordships were specifically dealing with the provisions of 1987 Act too does not improve the matters. In the judgment their Lordships after dealing with the provisions of section 20 of the 1987 Act have specifically held that cognizance can only be taken of those cases which fall within the purview of sub-section (1) of Section 20 of the 1987 Act. However, Section 199 (5) of the 1987 Act, which reads as under :—

"19. Organisation of Lok Adalats :

(1) to (4) xxxx xxxx xxx

(5) A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of :—

(i) any case pending before ; of

(ii) any matter which is falling within the jurisdiction of and is not brought before, and Court for which the Lok Adalat is organised :

Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law."

specifically debars the Lok Adalat from taking congnizance of any case or matter relating to an offence not compoundable under any law. The ratio of the judgment in Phulan Rani's case (supra) would take out of the jurisdiction of the Lok Adalat the cases where the offence related to matters which are not compoundable.

7. The concept of judicial precedent as emerges from the judgments referred to herein before is that the High Court has to be reluctant to invoke its inherent jurisdiction under Section 482 of the Code for granting in favour of the parties where there exists a statutory bar either in the Code or any other law, which would disentitle the parties to the relief sought for by them.

8. After having examined the scope of interference by the High Court to allow compounding of non-compoundable offences while exercising its powers under Section 482 of Cr. P.C., we may proceed to examine the question as to whether the position would be any different where the petitioner approaches the High Court for the grant of similar relief while invoking its extra ordinary jurisdiction under Articles 226/227 of the Constitution of India. The Supreme Court, after taking into consideration the judgments in the cases reported as **Madhu Limaye** *versus* **State of Mahrashtra, AIR 1978 Supreme Court 47, Bhajan Lal** *versus* **State of Haryana and others, AIR 1992 S.C. 604 and State of Karnataka** *versus* **L. Muniswamy and others, AIR 1977 Supreme Court 1489,** has summed up in the case reported as **State through Special Cell, New Delhi** *versus* **Navjot Sandhu** *alias* **Afshan Guru and others, 2003(2) R.C.R. (Crl.) 860(SC) : (2003) 6 S.C.C. 64** has summed up the legal position in para Nos. 28 and 29 as follows :—

"Thus, the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order. However,

the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate courts and tribunals within the bound of their authority and not to correct mere errors. Further, where the statute banned the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised "as the cloak of an appeal in disguise."

Section 482 of the Criminal Procedure Code starts with the words "Nothing in this Code". Thus the inherent jurisdiction of the High Court under Section 482 of the Criminal Procedure Code can be exercised even when there is a bar under Section 397 or some other provisions of the Criminal Procedure Code. However, as is set out in Satya Narayan Sharma case this power cannot be exercised if there is a statutory bar in some other enactment. If the order assailed is purely of an interlocutory character, which could be corrected in exercise of revisional powers or appellate powers the High Court must refuse to exercise its inherent power. The inherent power is to be used only in cases where there is an abuse of the process of the Court or where interference is absolutely necessary for securing the ends of justice. The inherent power must be exercised very sparingly as cases which require interference would be few and far between. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed because they are initiated illegally, vexatiously or without jurisdiction. Most of the cases set out hereinabove fall in this category. It must be remembered that the inherent

power is not to be resorted to if there is a specific provision in the Code or any other enactment for redress of the grievance of the aggrieved party. This power should not be exercised against an express bar of law engrafted in any other provision of the Criminal Procedure Code. This power cannot be exercised as against an express bar in some other enactment."

(10) The majority view also proceeded on the premise that the Supreme Court, while exercising its constitutional power under Article 142 of the Constitution of India, could lay down such a law which would be binding on the High Courts under Article 141 and exercising this power, it has, in **B.S. Joshi and others** *versus* **State of Haryana and another (5)** carved out an exception for the purpose of securing the ends of justice in the facts and circumstances of a criminal case having its origin in a matrimonial dispute which has been compromised and none other. It was observed as under in paragraph 12 of the majority judgment :—

"It is in these circumstances that while exercising its powers under Section 482 of the Code, the Court has in given cases quashed the criminal proceedings where it felt that the same was required to prevent the abuse of the process of any Court or to otherwise secure the ends of justice. These decisions would necessarily involve an appraisal of the facts and circumstances of each case and this Court cannot while interpreting the statutory provisions take upon itself the onerous responsibility of extending the powers of compounding of offences to cases other than those listed in Section 320(1) and (2) of the Code. While it is true that it should be the endeavour of every one to bring into operation the conciliation process with a view to pursue consensual justice, yet for achieving this object the scope of Section 320 of the Code will have to be enlarged. Such an enlargement though desirable being in the domain of legislative enactment would fall out of the purview of statutory interpretation at the level of the High Court. This Court in this case does not have any material available before it to assess the utility of widening the scope of compromise in the criminal justice system as the possibility of the same

(5) 2003 (2) R.C.R. (Crl.) 888 (S.C.)

being misused by the persons having at their command greater money and muscle power cannot be ruled out. It is because of this that we feel obliged not to extend in general terms the ambit of interest of justice as indiscriminate and uncontrolled reliance thereon may end in the abuse of the process of law which is one of the goals, which the enactor of section 482 of the Code, seek to achieve. The balance in each case will have to be struck to ensure that complete justice is done between the parties and for achieving this, each individual case will have to be scrutinized to find out whether it attracts any of the provisions incorporated in Section 482 of the Code to impel the Court to grant relief to a party either in the exercise of the aforesaid power or under Article 226 of the Constitution. Therefore, we would not like to launch an exercise for determining the scope of judicial intervention as provided under Section 482 of the Code in view of the terms "abuse of the process of law" and "in the interest of justice", as it would not be proper for us to provide a straightjacket formula for channelizing judicial responses to the facts and the circumstances of a given case. It would be more appropriate that the interpretation of these terms is left open to the response of an Hon'ble Judge to the facts and circumstances of a given case, as and when this Court is called upon to intervene in any matter for preventing the abuse of the process of law and advancing the ends of justice."

(11) In **B.S. Joshi's case (supra),** the Apex Court clearly enunciated the principle that an F.I.R. can be quashed even where the offence was non-compoundable in cases where the parties have arrived at a compromise and settled all their disputes notwithstanding the bar under Section 320 of the Cr. P.C.

(12) Section 320 of the Cr. P.C. provides a table of offences punishable under the Indian Penal Code which may be compounded. It also details the table of the offences under the Indian Penal Code which can be compounded with the permission of the Court. Sub-Section (9) of Section 320, which is relevant, is reproduced below :—

"320. Compounding of offences.—(1) to (8) xxx xxx xxx

(9) No offence shall be compounded except as provided by this section."

(13) In **Bhajan Lal's case (supra),** the Supreme Court, while explaining the powers of the High Court under section 482 of the Cr.P.C., laid down certain parameters, principles and guidelines, which are as follows :—

"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 the 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 give 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 formula and 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 previsions 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 prevision 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.

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."

(14) In **Madhu Limaye versus State of Maharashtra (6)** their Lordships considered the question as to whether the High Court can exercise its inherent power under Section 482 of the Cr. P.C. to quash an interlocutory order. The provisions of Section 397(2) of the Cr. P.C. which barred a revision against an interlocutory order, were also considered. It was held that the purpose of putting a bar on the power of revision in relation to any interlocutory order passed in an appeal, inquiry, trial or other proceeding is to bring about expeditions disposal of cases finally. In the circumstances of the case before them,

(6) AIR 1978 S.C. 47

the following principles were laid down by their Lordships for exercise of the inherent power of the High Court :—

1. That the power is not to be resorted to if there is a specific provisions in the Code for the redress of the grievance of the aggrieved party ;

2. That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice ;

3. That it should not be exercised as against the express bar of law engrafted in any other provision of the Code."

(15) In **State through Special Cell, New Delhi** *versus* **Navjot Sandhu alias Afshan Guru and others, (7)** while affirming the view expressed in **State of Karnataka** *versus* **L. Muniswamy and others (8)** ; Madhu Limaye's case *(supra)* and Bhajan Lal's case *(supra)*, their Lordships of the Supreme Court observed as under :—

> "It is settled that the High Court can exercise its powers of judicial review in criminal matters. In State of Haryana versus Bhajan Lal 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

(7) 2003 (2) R.C.R. (Crl.) 860 (S.C.)
(8) AIR 1977 S.C. 1489

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 administrative 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 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 provisons 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."

(16) The judgments relied upon by Amar Dutt, J. while answering the reference in **Dharmbir's case** *(supra)* regarding the bar created by Section 397 of the Cr. P.C. stood reconciled by the reasoning of V.K. Bali, J. while recording his dissent.

(17) In **Ram Lal and another** *versus* **State of Jammu and Kashmir (9),** their Lordships of the Supreme Court held that the offence which was not compoundable under Section 320 of the Cr. P.C. cannot be made compoundable with the permission of the Court. It was a case where the said Ram Lal was convicted for an offence under Section 326 of the I.P.C. and was sentenced to undergo rigorous imprisonment for a period of three years. The parties thereafter effected a compromise when the matter was pending before the Supreme Court. Their Lordships, in the given set of the circumstances, held that the compounding of the offence pertaining to Section 326 of the I.P.C. could not be acceded to as the offence was non-compoundable and the sentence was reduced to that of already undergone.

(18) In **Dharambir's case** *(supra)*, Bali, J. has rightly commented upon the aforementioned judgment by observing as follows:—

"The judgment, in my view, is not at all on the proposition as to whether the High Court, in exercise of the powers vested

(9) AIR 1999 S.C. 895

in it under section 482 Cr. P.C. can over-come the hurdle created by Section 320(9) Cr. P.C. as the point was neither debated nor adjudicated upon. Further, the compromise was arrived after conviction. Hon'ble Supreme Court, however, reduced the sentence to the one already undergone which resulted in achieving the same object as, by no means, the convicts could be restored to their earlier position at the time when they were undergoing trial as by the time compromise was arrived at, a part of sentence imposed upon them had already been undergone by them. Net result in any case was recognition of a settlement between the parties and which was taken to its logical ends as well."

(19) It is not proposed to make any comparative analysis of the powers of the Apex Court in exercise of its powers under Article 142 of the Constitution of India and the powers of the High Court under Section 482 of the Cr. P.C. as there can be no such interpretations of such powers which flow from different sources. It is only proposed to venture out to examine the powers of the High Court to exercise its jurisdiction under Section 482 of the Cr. P.C. within the parameters of the reference delineating the controversy which has been narrowly encompassed but is much larger in perception and application.

(20) Section 482 of the Cr. P.C., which is under consideration, is reproduced below :—

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

(21) The words with which the aforesaid Section begins, i.e., "Nothing in this Code" only emmphasizes the magnitude of inherent jurisdiction of the High Court under it, and once it is recognized that the High Court has the power under this Section to quash an F.I.R. in the facts and circumstances of a given case, even when the offence

is non-compoundable, with the only driving force being the object of securing ends of justice, then the same power cannot have any fetter and it cannot be eclipsed by any contingencies and the same cannot be made diminutive in sense and substance as was sought to be interpreted by the majority in **Dharmbir's case** *(supra).*

(22) If **Madhu Limaye's case** *(supra)* opened the chink in the door slightly, then **Bhajan Lal's case** *(supra)* half opened it and **B.S. Joshi's case** *(supra)* threw it ajar. The power which always existed on the statute book, but had been covered under dust, was neatly dusted to glow and stand out in no uncertain terms in **B.S. Joshi's case** *(supra).*

(23) The only judgment which needs to be dissected here is **B.S. Joshi's case** *(supra)* as this is the judgment which completed the process of unchaining of the fetters, i.e., a process which began with **Madhu Limaye's case** *(supra)* and **Bhajan Lal's case** *(supra)* The fetters created by some judicial perceptions viewing the power of the High Court under Section 482 of the Cr. P.C. as being captive to the bar created by some sections of the Code.

(24) In **Dharambir versus State of Haryana** *(supra)* V.K. Bali, J. (minority view), while dealing with the judgment in B.S. Joshi's case *(supra)* observed as under :—

> "The question framed and answered by the Hon'ble Supreme Court in B.S. Joshi's case *(supra)* pertinently relates to powers of the High Court under Section 482 Cr. P.C. and Article 226 of the Constitution of India in view of the bar created by Section 320(9) Cr. P.C., even though, as stated earlier, the matter pertained to matrimonial disputes. In my considered view, judgment in B.S. Joshi's case *(supra),* cannot be treated to be the only exception vesting the power with the High Court under section 482 or Article 226 of the Constitution of India where FIR can be quashed relating to non-compoundable offence. In other words, it is not an exception to the power of the High Court under Section 482 of Code of Criminal Procedure relating to matrimonial disputes. To illustrate, if it was a case under Section 304-B IPC where wife had died due to torture

meted to her on account of demand of dowry, could it be said to be a dispute relating to matrimonial dispute where a compromise should be permitted and FIR quashed ? If it was a case of cold blooded murder of wife by the husband for non-fulfillment of his demands relating to dowry, could on compromise the High Court quash the FIR? In both the events, as mentioned above, answer to the question, to this Court, appears to be in the negative. To further illustrate by examples of disputes other than relating to marriage, like civil disputes between two brothers which had criminal overtones as well, would the decision in B.S. Joshi's case *(supra)* not apply ? Where the property in dispute between close relatives, which is primarily of civil nature and has also genuine or belaboured dimension of criminal liability, could the decision be otherwise ? If the dispute may pertain to old parents or business concerns with dealings over a long period which were predominantly civil and were given or acquired a criminal dimension but the parties were essentially seeking a redressal of their financial or commercial claims, could, the decision be otherwise. I have no doubt in my mind that in the matters related to the kind of categories mentioned above, the decision would have been the same. If that be so, B.S. Joshi's case *(supra)* cannot be treated an exception for permitting the parties to command non-compoundable offence by permitting the High Court to quash FIR under Section 482 Cr.P.C."

(25) The power under Section 482 of the Cr.P.C. cannot be a hostage to one class or category of cases. That would be a complete misconstruction of the intent of the Legislature, who placed its utmost faith in the inherent power of the High Court to break free the shackle of other provisons of the Code, to give effect to any order under it or to prevent the abuse of the process of any Court or otherwise to secure the ends of justice.

(26) The wide amplitude of this provision of law cannot be diminished by any myopic interpretation and any straightjacket prescription.

(27) Shri R.S. Cheema, learned Senior Advocate, who assisted the Bench as Amicus Curiae, highlighted the inadequacies of the criminal justice system in order to propound and promote the principle that under Section 482 of the Cr.P.C., the High Court can effectively exercise its power in an appropriate case and intervene to quash an F.I.R. even when the case discloses a non-compoundable offence and where the parties have voluntarily entered into a compromise. To illustrate, he submitted that the Legislature, in its wisdom, is seeking to introduce a pre-bargaining in the country and in this scenario, to curtail the power under Section 482 by reading into the provisons of law the non-existing lines would, indeed, be a travesty of justice, especially in view of the fact that there is a wide spread tendency in the society now to use the arm of criminal law to settle civil disputes and he reiterated certain contingencies which were also placed before the Bench during the course of hearing in **Dharambir's case** *(supra)*. Some of the guidelines were as follows :—

"a. Cases arising from matrimonial discord, even if other offences are introduced for aggravation of the case.

b. Cases pertaining to property disputes between close relations, which are predominantly civil in nature and they have a genuine or belaboured dimension of criminal liability. Notwithstanding a touch of criminal liability, the settlement would bring lasting peace and harmony to larger number of people.

c. Cases of dispute between old partners or business concerns with dealings over a long period which are predominantly civil and are given or acquire a criminal dimension but the parties are essentially seeking a redressal of their financial or commercial claim.

d. Minor offences as under Section 279 IPC may be permitted to be compounded on the basis of legitimate settlement between the parties. Yet another offence which remains non-compoundable is Section 506(II) IPC, which is punishable with 7 years imprisonment. It is the judicial

experience that an offence under Section 506 IPC in most cases is based on the oral declaration with different shades of intention. Another set of offences, which ought to be liberally compounded, are Sections 147 and 148 IPC, more particularly where other offences are compoundable. It may be added here that the State of Madhya Pradesh,—*vide* M.P. Act No. 17 of 1999 (Section 3) has made Sections 506(II) IPC, 147 IPC and 148 IPC compoundable offences by amending the schedule under Section 320 Cr. P.C.

e. The offences against human body other than murder and culpable homicide where the victim dies in the course of transaction would fall in the category where compounding may not be permitted. Heinous offences like highway robbery, dacoity or a case involving clear-cut allegations of rape should also fall in the prohibited category. Offences committed by public Servants purporting to act in that capacity as also offences against public servant while the victims are acting in the discharge of their duty must remain non-compoundable. Offences against he State enshrined in Chapter-VII (relating to army, navy and air force) must remain non-compoundable.

f. That as a broad guideline the offences against human body other than murder and culpable homicide may be permitted to be compounded when the court is in the position to record a finding that the settlement between the parties is voluntary and fair.

While parting with this part. it appears necessary to add that the settlement or compromise must satisfy the conscience of the court. The settlement must be just and fair besides being free from the undue pressure, the court must examine the cases of weaker and vulnerable victims with necessary caution."

(28) To conclude, it can safely be said that there can never be any hard and fast category which can be prescribed to enable the

Court to exercise its power under section 482 of the Cr. P.C. The only principle that can be laid down is the one which has been incorporated in the Section itself, i.e., "to prevent abuse of the process of any Court" or "to secure the ends of justice".

(29) In **Mrs. Shakuntala Sawhney** *versus* **Mrs. Kaushalya Sawhney and others (10),** Hon'ble Krishna Iyer, J. aptly summoned up the essence of compromise in the following words :—

> "The finest hour of justice arrives propitiously when parties, despite falling apart, bury the hatchet and weave a sense of fellowship of reunion."

(30) The power to do complete justice is the very essence of every judicial justice dispensation system. It cannot be diluted by distorted perceptions and is not a slave to anything, except to the caution and circumspection, the standards of which the Court sets before it, in exercise of such plenary and unfettered power inherently vested in it while donning the cloak of compassion to achieve the ends of justice.

(31) No embargo, be in the shape of Section 320(9) of the Cr. P.C., or any other such curtailment, can whittle down the power under Section 482 of the Cr. P.C.

(32) The compromise, in a modern society, is the *sine qua* non of harmony and orderly behaviour. It is the soul of justice and if the power under Section 482 of the Cr. P.C. is used to enhance such a compromise which, in turn, enhances the social amity and reduces friction, then it truly is "finest hour of justice". Disputes which have their genesis in a matrimonial discord, landlord-tenant matters, commercial transactions and other such matters can safely be dealt with by the Court by exercising its powers under Section 482 of the Cr. P.C. in the event of a compromise, but this is not to say that the power is limited to such cases. There can never be any such rigid rule to prescribe the exercise of such poer, especially in the absence of any premonitions to forecast and predict eventualities which the cause of justice may throw up during the course of a litigation.

(10) (1980) 1 S.C.C. 63

(33) The only inevitable conclusion from the above discussion is that there is no statutory bar under the Cr. P.C. which can affect the inherent power of this Court under Section 482. Further, the same cannot be limited to matrimonial cases alone and the Court has the wide power to quash the proceedings even in non-compoundable offences notwithstanding the bar under Section 320 of the Cr. P.C., in order to prevent the abuse of law and to secure the ends of justice.

(34) The power under Section 482 of the Cr. P.C. is to be exercised Ex-Debitia Justitia to prevent an abuse of process of Court. There can neither be an exhaustive list nor the defined para-meters to enable a High Court to invoke or exercise its inherent powers. It will always depend upon the facts and circumstances of each case. The power under Section 482 of the Cr. P.C. has no limits. However, the High Court will exercise it sparingly and with utmost care and caution. The exercise of power has to be with circumspection and restraint. The Court is a vital and an extra-ordinary effective instrument to maintain and control social order. The Courts play role of paramount importance in achieving peace, harmony and ever-lasting congeniality in society. Resolution of a dispute by way of a compromise between two warring groups, therefore, should attract the immediate and prompt attention of a Court which should endeavour to give full effect to the same unless such compromise is abhorrent to lawful composition of the society or would promote savagery.

(35) In the result, the minority view expressed by V.K. Bali, J. in **Dharambir's case** *(supra)* is approved as it has brought out the essence of **B.S. Joshi's case** *(supra)* correctly and the majority view is over-ruled and the reference is answered accordingly.

(36) The instant Criminal Miscellaneous petition is accordingly returned back to the learned Single Judge for decision on merits in view of the answer to the reference made above.

R.N.R.