Andhra High Court
Gudavalli Murali Krishna And Ors. vs Gudavalli Madhavi And Anr. on 30 January, 2001
Equivalent citations: 2001 (1) ALD Cri 689, 2001 (1) ALT Cri 433, 2001 (2) LS 39
Author: T C Rao
Bench: T C Rao
ORDER T. Ch. Surya Rao, J.

1. At the threshold in all these petitions the question germane for consideration, upon which the very maintainability of these petitions hinges, is as to whether the High Court in exercise of its inherent jurisdiction can quash a First Information Report pending investigation.

2. The objection at the initial stage about the maintainability of these petitions filed under section 482 of the Criminal Procedure Code ('the Cr.P.C.' for brevity) invoking inherent jurisdiction of this court to quash the relevant First Information Reports issued against the petitioners while registering the cases against them, has arisen in view of three Judgments of this court. The earliest on the point is in HASAN ALI KHAN v. STATE OF A.P.1 rendered by a learned single Judge. The second one is in S.SARAT BABU CHOWDARY v. INSPECTOR OF POLICE2 rendered by a Bench and the last one is the latest Judgment of this court in PEARL BEVERAGES LIMITED, NEW DELHI V. STATE OF A.P.3 rendered by a learned single Judge.

3. In Hasan Ali Khan's case a learned single Judge of this court held that the criminal proceedings can be quashed by the High Court under its inherent power under Section 482 Cr.P.C. which can be invoked only after initiation of criminal proceedings by filing a Charge Sheet but not at the investigation stage and where the investigation is taken-up by the police on the basis of the F.I.R. and other material which do not disclose any cognizable offence, or mala fide or colourable exercise of power any person aggrieved can invoke the jurisdiction of the High Court under Article 226 of the Constitution to quash the F.I.R. and the investigation.

4. In Sarat Babu Chowdari's case, a Bench of this court held that the High Court cannot quash F.I.R. under section 482 Cr.P.C. and in exercise of jurisdiction under Article 226 of the Constitution of India High Court cannot do what is not expected to do under Section 482 Cr.P.C.

5. In Pearl Beverages' case a learned single Judge of this court has taken the view that neither the First Information Report nor the Complaint before it is taken cognizance by the Magistrate nor the Charge Sheet can be quashed by the High Court in exercise of its jurisdiction under section 482 Cr.P.C. The court can quash the proceedings only when the case is taken cognizance by the Magistrate at any stage thereafter.

6. Needless to mention the factual matrix inasmuch as the question that falls for determination herein is a pure question of law that can be decided without reference to the facts of the case.

7. The section germane for consideration in the context is Section 482 Cr.P.C. which saves the inherent jurisdiction of the High Court, and the section reads thus:

"Section 482. Saving of inherent jurisdiction 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."

8. The situations in which, the High Court can pass necessary orders are (1) to give effect to any order under the Code; (2) to prevent abuse of the process of any Court; and (3) otherwise to secure the ends of justice. To prevent the abuse any process of the Court there must be a proceeding pending before the Court pursuant to which, process has been issued by the Court, is one view. Inasmuch as it is the prerogative of the police to conduct investigation into a crime upon registration of the case and the Court cannot and shall not interfere with such right except under the extraordinary jurisdiction of the Court under Article 226 of the Constitution and therefore the High Court can do so only when it issued the process pursuant to a proceeding instituted before it is the other view. It is therefore expedient to look at the law enunciated by the Courts on the point.

9. The earliest case on the point has been rendered by the Privy Council in EMPEROR v. KHWAJA NAZIR AHMED4. This Judgment has been the basis for the subsequent development of law on the point. At page 22 in para 2 the Privy Council observed as mentioned hereunder:

"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 S.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 S.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 Criminal Procedure Code, and that no inherent power had 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 and for this reason Newsam J. may well have decided rightly in A.I.R. 1938 Mad. 129. But that is not this case.

[Emphasis is mine]

10. As the Privy Council was of the view that the police have statutory right to investigate into an offence and as the court's functions begin when a charge is preferred before it and not until then the High Court can interfere under its inherent powers only when a Charge has been preferred and not before. The decision cannot be taken to mean that High Court by exercising its inherent powers cannot quash the First Information Report and interfere with the investigation to be made by the police in a cognizable case as an absolute proposition of law. The said view is conditioned by adding a rider at the end that if no cognizable offence is disclosed and no offence of any kind is disclosed from the First Information Report, then the Police would have no authority to undertake an

investigation and if they do so, the High Court may interfere under Section 561-A Cr.P.C. (482 under the new Code).

11. The Apex Court in R.P.KAPOOR v. STATE OF PUNJAB5 held as hereunder:

"Cases may also arise where the allegations in the F.I.R. 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 this case it would be legitimate to 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."

12. In STATE OF HARYANA v. BHAJANLAL6 the Apex Court after having surveyed the entire case law on the point has laid down certain indicia with reference to which, a High Court may in exercise of powers under Article 226 of the Constitution of India or under Section 482 Cr.P.C may interfere in proceedings relating to cognizable offences to prevent abuse of the process of any court or otherwise to secure the ends of justice. In paras 86 to 90, the Apex Court has sought to explain the Judgment of the Privy Council in Khwaja Nazir Ahmad's case (referred to supra) and it may profitably be extracted hereunder thus:

'The Judicial Committee in its oft-quoted decision, namely, King Emperor v. Khwaja Nazir Ahmad (A.I.R.1945 P.C. 18) though strongly observed that the judiciary should not interfere with the police in matters which are within their province has qualified the above statement of law by saying, "No doubt if no cognizable offence is disclosed, and still more, if no offence of kind is disclosed, the police would have no authority to undertake an investigation". The above observation shows that an investigation can be quashed if no cognizable offence is disclosed by the F.I.R.' [Emphasis is mine]

13. Thus it is manifest that a First Information Report can be quashed during the pendency of the investigation even. The Apex Court in the said Judgment has not categorised by holding that the F.I.R. can be quashed either by exercising the powers under Article 226 of the Constitution of India or invoking the inherent powers of the High Court under Section 482 Cr.P.C. The Apex Court in Bhajanlal's case referred several of its Judgments in this regard. In para 101 it has been held as follows:

"The classic exposition of the law is found in State of West Bengal v. Swapan Kumar Guha . In this case, Chandrachud, CJ in his concurring separate Judgment has stated that "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".

14. Although the F.I.R. was sought to be quashed by invoking the extraordinary jurisdiction under Article 226 of the Constitution, a two Judge Bench of the Apex Court laid down certain broad tests which are equally applicable either to exercise the inherent power under Section 482 Cr.P.C. or the extraordinary power of the High Court under Article 226 of the Constitution. In that case the Apex Court held that the F.I.R should not be quashed since it disclosed prima facie cognizable offences to

proceed further in the investigation. The Judgment of the Apex Court in Bhajanlal's case was not in vogue when the earlier two Judgments of this court came to be rendered.

15. In STATE OF TAMILNADU v. THIRUKKURAL PERUMAL7, the Apex Court held that the power of quashing a First Information Report and criminal proceedings should be exercised sparingly by the courts. Indeed the High Court has the extraordinary or inherent power to reach out injustice and quash the First Information Report and criminal proceedings keeping in view the guidelines laid down by this court in various Judgments (reference in this connection may be made with advantage to State of Haryana v. Bhajanlal) but the same has to be done with circumspection. That was a case where the crime was registered against the respondent and when the investigation was in progress he filed a petition under Section 482 Cr.P.C. in the High Court and a learned single Judge of the High Court quashed the proceedings. While doing so, the learned Judge placed reliance upon some evidence collected by the investigating agency during the investigation. Under such circumstances the Apex Court held that the approach of the learned Single Judge in relying-upon such evidence, which is yet to be produced before the trial court to quash the criminal proceedings in Crime Case No.246/1992 was not proper. The above Judgment clearly shows that First Information Report and the investigation can be quashed by invoking the inherent powers of the High Court under Section 482 Cr.P.C.

16. In STATE OF H.P. v. PIRTHI CHAND8 the Apex Court held in para 12 of its Judgement thus:

"It is thus settled law that the exercise of inherent power of the High Court is an exceptional one. Great care should be taken by the High Court before embarking to scrutinise the FIR/charge-sheet/complaint. In deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter whether the allegations constituting the offence. It must be remembered that FIR is only an initiation to move the machinery and to investigate into cognizable offence. After the investigation is conducted (sic concluded) and the charge-sheet is laid, the prosecution produces the statements of the witnesses recorded under Section 161 of the Code in support of the charge-sheet. At that stage, it is not the function of the court to weigh the pros and cons of the prosecution case or to consider necessity of strict compliance of the provisions which are considered mandatory and its effect of non-compliance, it would be done after the trial is concluded. The court has to prima facie consider from the averments in the charge-sheet and the statements of witnesses on the record in support thereof whether court could take cognizance of the offence on that evidence and proceed further with the trial. If it reaches a conclusion that no cognizable offence is made out, no further act could be done except to quash the charge-sheet. But only in exceptional cases, i.e, in rarest of rare cases of mala fide initiation of the proceedings to wreak private vengeance process of criminal is availed of in laying a complaint or FIR itself does not disclose at all any cognizable offence - the court may embark upon the consideration thereof and exercise the power".

17. That was a case where on a secret information received that Charas contraband was being dealt, the Head Constable Rattan Singh along with other Police officials went to the Bus Stand, secured the presence of panchas, and conducted search of the house of the respondent-Pirthi chand and having found 1 Kilo 15 Grams of Charas in the house, he took samples and sent them for analysis and when

the result of the analysis was found to be positive, eventually he filed the charge sheet before the Court to prosecute the respondent. After considering the charge sheet, the learned Sessions Judge by his Order dated 06.07.1987 discharged the respondent from the offence. The question that arose before the Supreme Court for determination was as to whether the learned Sessions Judge was justified in discharging the accused even before the trial was conducted on merits, on the ground that provisions of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985. It is obvious, therefore, that the process of the Court was not issued to the accused. At para 10 of its Judgement, the Supreme Court posed another question for determination as follows:

"The question then is whether the High Court would be justified in exercising its inherent power under Section 482 of the Code or under Article 226 of the Constitution to quash the FIR/charge-sheet/complaint."

18. The Supreme Court then proceeded to consider its earlier Judgement in STATE OF HARYANA v. BHAJAN LAL and another Judgement in RUPAN DEOL BAJAJ v. KANWAR PAL SINGH GILL9. Ultimately, the Apex Court held that the learned Sessions Judge was not justified in discharging the accused after filing of the charge sheet. The observations made by the Apex Court in para 13 of its Judgement may profitably be extracted hereunder thus:

"When the remedy under Section 482 is available, the High Court would be loath and circumspect to exercise its extraordinary power under Article 226 since efficacious remedy under Section 482 of the Code is available. When the court exercises its inherent power under Section 482, the prime consideration should only be whether the exercise of the power would advance the cause of justice or it would be abuse of the process of the Court. When investigating officer spends considerable time to collect the evidence and places the charge-sheet before the court, further action should not be short-circuited by resorting to exercise inherent power to quash the charge-sheet".

19. The Judgement of the Apex Court, therefore, sounds that the inherent power of the High Court under Section 482 of the Cr.P.C. is an efficacious remedy and, therefore, the extraordinary power under Article 226 of the Constitution when the efficacious alternative remedy is available, need not be clutched at.

20. In STATE OF U.P. v. O.P.SHARMA10 a three Judge Bench of the Apex Court held that the High Court should be loath to interfere at the threshold to thwart the prosecution exercising its inherent power under Section 482 of the Cr.P.C or under Article 226 of the Constitution, as the case may be, and allow the law to take its own course. The three Judge Bench of the Apex Court placed reliance upon its earlier Judgement in STATE OF H.P. v. PRITHI CHAND and extracted paras 12 and 13 verbatim of the Judgement in para 11 of its Judgement. That was a case where the State of U.P. filed a F.I.R. alleging, inter alia, that Modi Paints and Varnish Works - a Modi Industrial Unit, its Clerk and Factory Manager have violated clause 4 of the U.P. Oilseeds and Oilseeds Products Control Order, 1966 and clauses 2, 3 and 6 of Pulses Edible Oilseed and Edible Oil (Storage Control) Order, 1977 and requested to register a case against the said persons. Thereupon, the respondent-O.P.Sharma, the Factory Manager filed the Criminal Miscellaneous Petition No.15985 of 1985 in the High Court of Allahabad. A learned single Judge of the Allahabad High Court by his

Order dated 07.01.1986 quashed the F.I.R. The Apex Court while allowing the appeal preferred by the State of U.P. set aside the Order of the High Court and directed the Investigating Officer to complete the investigation within four weeks from the date of receipt of the Order. Therefore, it is a typical case whether the First Information Report was quashed at the threshold. Of course, on facts peculiar to that case, the Apex Court set aside that Order on the premise that that was not a case to thwart the prosecution at the threshold.

21. In RASHMI KUMAR v. MAHESH KUMAR BHADA11 a three Judge Bench of the Apex Court again reiterated its earlier view enunciated in O.P.Sharma's case. While reiterating the said view, the Apex Court sounded a word of caution and stated that such power should be sparingly and cautiously exercised only when the Court is of the opinion that otherwise there will be gross miscarriage of justice. The Apex Court further observed that social stability and order is required to be regulated by proceeding against the offender as it is an offence against society as a whole.

22. The Apex Court in RAJESH BAJAJ v. STATE NCT OF DELHI 12 held that for quashing a First Information Report (a step which is permitted only in extremely rare cases) the information in the complaint must be so bereft of even the basic facts, which are absolutely necessary for making-out the offence. That was a case where on the strength of a complaint filed by the appellant, the First Information Report was prepared by registering the crime under section 420 of the I.P.C. On being moved, a Division Bench of Delhi High Court quashed that F.I.R. on the premise that the complaint did not disclose the offence. Since the facts did not pass the test laid down by the Apex Court in Bhajanlal's case, the Apex Court in appeal reversed the same.

23. In SATVINDER KAUR v. STATE (GOVT. OF NCT OF DELHI)13 the Apex Court held in para 14 as hereunder:

"Further, the legal position is well settled that if an offence is disclosed the court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed. If the FIR, prima facie, discloses the commission of an offence, the court does not normally stop the investigation, for, to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. It is also well settled by a long course of decisions of this Court that for the purpose of exercising its power under Section 482 CrPC to quash an FIR or a complaint, the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se; it has no jurisdiction to examine the correctness or otherwise of the allegations.

[Emphasis is mine]

24. In para 16 of its Judgement, the Apex Court observed as follows:

"Lastly, it is required to be reiterated that while exercising the jurisdiction under Section 482 of the Criminal Procedure Code of quashing an investigation, the Court should bear in mind what has been observed in the State of Kerala v. O.C.Kuttan to the following effect:

'Having said so, the Court gave a note of caution to the effect that the power of quashing the criminal proceedings should be exercised very sparingly 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 of 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. It is too well settled that the first information report is only an initiation to move the machinery and to investigate into a cognizable offence and, therefore, while exercising the power and deciding whether the investigation itself should be quashed, utmost care should be taken by the court and at that stage it is not possible for the court to sift the materials or to weigh the materials and then come to the conclusion one way or the other.'"

[Emphasis is mine]

25. That was again a case where the question arose for determination was as to whether the High Court was justified in quashing the FIR on the ground that Delhi Police Station did not have territorial jurisdiction to investigate the offence. According to the facts in that case, the appellant-Satvinder Kaur was married to one Rajender Singh-the second respondent therein. A daughter was born to them. It was alleged that on 19.01.1992 she was thrown out from the matrimonial home in Patiala. On the same day, she lodged a complaint at PS Kotwali Patiala making various allegations of torture and dowry demand against her husband. Thereafter, she came down to Delhi to visit her parents. As the threats by her husband continued, she lodged another complaint against her husband in Women's Cell, Delhi. Subsequently, on 23.01.1993 the impugned FIR No.34 of 1993 under Sections 406 and 498-A of the Indian Penal Code for the alleged occurrence dated 19.01.1992 at Patiala was lodged at Police Station Paschim Vihar, New Delhi. The second respondent-her husband filed a petition in Delhi High Court under Section 482 of the Cr.P.C. for quashing the FIR No.34 of 1993 on the ground that the allegations made in the complaint were false and mala fide and no part of the cause of action for investigation or trial of an offence arose within Delhi. When the FIR was quashed by the Delhi High Court on the premise that the investigating Officer has no territorial jurisdiction, the Apex Court ultimately allowed the appeal and directed the investigating Officer to complete the investigation as early as possible. The Supreme Court, as aforediscussed, relied upon its earlier Judgements in STATE OF KERALA v. O.C.KUTTAN, STATE OF U.P. v. O.PSHARMA, and RASHMI KUMAR v. MAHESH KUMAR BHADA, which are a three Judge Bench Judgements. It is thus obvious that it is settled legal position that the High Court can exercise its power under Section 482 of the Cr.P.C. to quash an FIR or a complaint but to do so it should proceed entirely on the basis of the allegations made in the FIR or the complaint, as the case may be. The Court should take utmost care to quash the investigation itself. In the same Judgement, the Apex Court has also referred the Judgement of the Privy Council in KING EMPEROR v. KHWAJA NAZIR AHMED.

26. In MAHAVIR PRASHAD GUPTA V. STATE OF NATIONAL CAPITAL TERRITORY OF DELHI14 at para 4, the Apex Court held as follows:

"On 16.12.1997 the petitioners filed this Criminal Writ Petition No.905 of 1997 in the High Court of Delhi. In this petition it was prayed that the FIR registered by the police be quashed. It was claimed that the 2nd respondent and the police are acting in abuse and excess of authority conferred by law and are subjecting the petitioners to harassment of criminal proceedings without there being any sufficient ground for taking action against the petitioners. To be remembered that in the Criminal Procedure Code there are sufficient provisions, which enable a party to move the High Court if there is abuse of the process of law. The petitioners could have utilised those provisions. Also anticipatory bail had been refused to the petitioners. The order refusing grant of anticipatory bail was accepted by the petitioners, as they filed no appeal or revision. There was thus no justification for invoking Article 226 of the Constitution of India. The petition was ultimately dismissed by the High Court of Delhi. However, by this method the petitioners have managed to stall a proper inquiry for the last over 2 1/2 years."

[Emphasis is mine]

27. It is true that investigation of an offence is the field exclusively reserved for the executive through the Police Department the superintendence over which vests in the State Government. The executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is its bounden duty to investigate into the offence and bring the offender to book vide STATE OF BIHAR v. J.A.C. SALDANHA15 and STATE OF HARYANA v. BHAJAN LAL.

28. Obviously the functions of the Court are adjudicatory. At the stage of investigation there is no adjudication process involved. Thus, the power of Police to investigate and the power of Court to adjudicate are complementary and each is expected to act in its own field. The Court cannot, therefore, trench upon the power of the Police to investigate. However it is wrong to suppose that the Police have unfettered discretion to commence investigation under Section 157 of the Cr.P.C. 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, vide STATE OF WEST BENGAL v. SWAPAN KUMAR GUHA16. The commencement of investigation by a Police Officer is subject to two conditions, firstly, the Police Officer should have reason to suspect the commission of a cognizable offence as required by Section 157(1) of the Cr.P.C. and secondly, the Police Officer should subjectively satisfy himself as to whether there is sufficient ground for entering on an investigation even before he starts an investigation into the facts and circumstances of the case as contemplated under clause (b) of the proviso to Section 157(1) of the Cr.P.C., vide STATE OF HARYANA v. BHAJAN LAL. Not only that, clause (b) of the proviso under Section157 mandates that the police officer shall not investigate he case if it appears that there is no sufficient ground for entering on an investigation. If a Police Officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of the statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the Court approached by the person

aggrieved for the redress of any grievance has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of Police echelons since human dignity is a dear value of our Constitution. It needs no emphasis that no one can demand absolute immunity even if he is wrong and claim unquestionable right and unlimited powers exercisable up to unfathomable cosmos. Any recognition of such power will be tantamount to recognition of 'Divine Power', which no authority on earth can enjoy, vide, STATE OF HARYANA v. BHAJAN LAL para62 at page 620.

29. The Privy Council in KHWAJA NAZIR AHMAD's case (referred to supra) though has ruled that it is of the utmost importance that the judiciary should not interfere with the Police in matters which are within their province has provided an exception to that above observation to the effect that if no cognizable offence or no case of any kind is disclosed, the Police would have no authority to undertake the investigation.

30. Whether the First Information Report discloses a cognizable offence and still more whether the necessary ingredients that constitute the offence are discernible from the First Information Report or not is an essential function of the Court for it comes within the adjudicatory process. Instances are not lacking where to wreak private vengeance, process of Criminal Court is abused in laying the complaint before the Court or lodging a report before the Police. Perhaps, such cases may be rare. It may be contended that what if even investigating agency is allowed to proceed with the investigation and perhaps the Police may after such investigation come to a conclusion that no case is made out and may prefer to file final report. But when the Police have no power to investigate as the FIR is bereft of any cognizable case, prima faice, on the premises that no harm would be caused even if the Police are allowed to proceed with investigation, is far from reason and it would tantamount to not only interfering with the liberty of an individual but also infringes his dignity which is his human right. If Courts have to remain as mute spectators, drawing the lakshamana reka for itself, on the mere ground that it shall not trench upon the arena of investigating agency, the liberty of an individual, and his human rights would be in serious peril and jeopardy. Although, Chapter XII does not contain any provision enabling the Court to step in appropriate cases, the same cannot affect or circumscribe the inherent powers of the Court to prevent the abuse of the process or to otherwise secure the ends of justice. Inherent Powers are not conferred on the High Court by the Crl.P.C, but inheres in it by virtue of its constitution. Sec.482 only saves such powers so as to give effect to its orders, or to prevent the abuse of its process, or otherwise to secure the ends of justice. If the Court is supposed to wait till its process is initiated, the possible damage would result and it cannot be retrieved in which case the inherent powers of the Court saved under Sec 482 of Crl.P.C would become otiose or would be rendered nugatory. Therefore, the Courts in exercise of its inherent powers is expected to step in, nay its duty to do so to secure the ends of justice.

31. From the conspectus of the above Judgements, it is manifest that the inherent powers of the High Court under Section 482 of the Cr.P.C. can be invoked to quash the proceedings even at the threshold - be it a FIR or a complaint or a charge sheet.

32. The inherent powers to be exercised by the High Court under Section 482 of the Cr.P.C. is efficacious remedy. When such an efficacious alternative remedy is available, the High Court should

be loath and circumspect to exercise its extraordinary jurisdiction under Article 226 of the Constitution.

33. When that be the clear position of law, in my considered view, it is difficult to discern the subtle distinction which is now sought to be drawn that the inherent powers of the High Court under Section 482 of the Cr.P.C. can be invoked in the event of a process of the Court has been issued either taking the complaint on file or taking cognizance upon a Police report and the investigation on the F.I.R. after its registration cannot be quashed except by invoking the extraordinary power of the High Court under Article 226 of the Constitution. On the other hand, the position manifestly seems to be otherwise. The first two Judgements of this Court obviously have been rendered prior to the Bhajanlal's case. The latest Judgement of this Court, of course, has surveyed the entire case law on the point but has not referred the decisions of the Apex Court in (1) Thirukkural Perumal's case; (2) O.P.Sharma's case; and (3) Satvinder Kaur's case; and (4) Mahavir Prasad Gupta's case, out of which O.P.Sharma's case is a three Judge Bench case. When the law is thus clear, any Judgements rendered against these principles enunciated by the Apex Court become per incuriam.

34. In ordinary course, I would have referred the matter to a larger Bench for consideration in view of a Division Bench Judgement and two Judgements of the learned single Judges of this Court, but however since the law propounded in those judgements is directly opposite to the law enunciated by the Apex Court as discussed supra without referring to the three judge bench judgement, in my considered view, there is no need to refer the matter to a larger Bench and the preliminary objection can be answered relying upon the Judgements of the Apex Court.

35. For the foregoing reasons, the preliminary objection is answered that the High Court, by exercising its inherent powers can quash the F.I.R. or Investigation in appropriate cases following the tests laid down in Bhajanlal's case by exercising its inherent jurisdiction under Section 482 of the Cr.P.C.