



GRAVITAS LEGAL

Supreme Court Enunciates the Guidelines for Ordering ‘Stay On Arrest’ and/or ‘No Coercive Steps’ in Quashing Petitions U/s 482 Cr.P.C.

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Introduction

The scope and ambit of the powers of the High Courts under Section 482 Cr.P.C. has been a subject matter of interpretation in a catena of judgments of the Supreme Court. The power granted under the said provision casts a onerous duty upon the High Courts to simultaneously perform a twofold function, that is, to protect the rights of victims and at the same time mitigate the risk of wrongful persecutions in case of frivolous complaints. The Apex Court has time and again cautioned the High Courts that the power of quashing an FIR conferred by virtue of Section 482 Cr.P.C. must be exercised sparingly and with circumspection. Proceeding on the same lines recently, a three-Judge bench of the Supreme Court, in *M/s. Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Ors.*ⁱ, analyzed and interpreted the power of the High Courts to pass interim orders while considering a petition under Section 482 Cr.P.C. praying for stay of arrest or for no coercive steps against an alleged accused.

Facts:

The opportunity was presented before the Apex Court when the Appellant lodged an FIR disclosing allegations of forgery and fabrication against the Respondents-accused. In an application filed before the Trial Court seeking anticipatory bail, the Respondents-accused were granted interim protection from arrest. Meanwhile, during the pendency of the said application, the Respondents-accused preferred a petition before the High Court under Section 482 CrPC read with Article 226 of the Constitution for quashing of the FIR. In the said petition, an interim order came to be passed directing that “no coercive measures” shall be adopted against the accused persons in respect of the FIR and the same, thus, came to be challenged before the Supreme Court in *M/s Neeharika* (supra).

Arguments on behalf of Appellant:

The Appellant averred that such a blanket direction is unwarranted in view of the serious charges made out against the Respondents-accused. Further, it was also been argued that the direction passed by the High Court to the effect that “no coercive measures shall be adopted” hampers the valuable right of the investigating officer to investigate offence in question. It was also underscored that despite the High Court being empowered to pass such interim orders, orders of the said nature cannot be passed mechanically and without assigning any reasons.

Arguments on behalf of the Respondents-Accused

The Respondents-accused asserted that where the Court is of the view that further investigation or proceedings pursuant to a FIR is likely to cause unwarranted and unjustified harassment to the accused, the court may pass an order of “no coercive measures” in favour of the accused. Further, it was also argued by the Respondent-Accused that the powers under Section 482 CrPC are akin to the powers of a civil court under Order XXXIX Rule 1 CPC and, therefore, interim order restricting investigation has to be tested touchstone of balance of convenience, irreparable loss and a *prima facie* case.

Issue before the Court

The Supreme Court in *M/s. Neeharika* (supra) narrowed down the primary issue; as to whether the High Court would be justified in passing an interim order staying the further investigation in the FIR/complaint or interim order in the nature of “no coercive steps” and/or not to arrest the accused either pending investigation by the police/investigating agency or during the pendency of the quashing petition.

The said issue, as per the Supreme Court needs to be adjudicated, while bearing firmly in mind the well-concretized parameters regarding quashing the FIR. It has also been pointed out by the Court that in adjudicating upon the said issue, the Court ought to consider the rights and duties of the police to investigate into cognizable offences.

Analysis and observations of the Supreme Court

In its analysis and interpretation, the Court has placed reliance on several landmark Supreme Court precedents with respect to the jurisdiction and power of High Courts while adjudicating on a petition for quashing under Section 482 CrPC. Notable among them were the decisions in *R.P. Kapur v. State of Punjab*ⁱⁱ and the famous case of *State of Haryana v. Bhajan Lal*ⁱⁱⁱ.

The Supreme Court also referred to the age old case of *King- Emperor v. Khwaja Nazir Ahmad*^{iv}, wherein it has been held that there exists a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities.

That apart, the Court also took into consideration the recent judgments in *P. Chidambaram v. Directorate of Enforcement*^v and *Skoda Auto Volkswagen India Private Limited v. State of Uttar Pradesh*^{vi}, to determine the circumstances, when it would be justified for the High Courts to interfere in the investigation of the police while exercising the inherent powers under Section 482 CrPC.

After a complete and thorough analysis of all precedents holding the field, the Apex Court has enunciated a compendium of principles that the High Courts need to adhere to, while considering and disposing off petitions for quashing under Section 482 CrPC and/or 226 of the Constitution. The said principles laid down by the Supreme Court in *M/s. Neeharika* (supra) are reproduced below:

- i. *Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;*
- ii. *Courts would not thwart any investigation into the cognizable offences;*
- iii. *However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;*
- iv. *The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);*
- v. *While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;*
- vi. *Criminal proceedings ought not to be scuttled at the initial stage;*
- vii. *Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;*

- viii. *Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the above of the process by Section 482 Cr.P.C.*
- ix. *The functions of the judiciary and the police are complementary, not overlapping;*
- x. *Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;*
- xi. *Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;*
- xii. *The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;*
- xiii. *The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;*
- xiv. *However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and*
- xv. *When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.”*

To sum up the aforesaid principles, it can be said that the Supreme Court has directed the High Courts to exercise the power of quashing in a careful and scrupulous manner without interfering with the statutory investigating rights of the Police/investigating agencies. As already stated above, the Court has observed that the parameters that govern a petition for quashing shall also apply, *in toto*, for determining whether in particular set of facts and circumstances an interim order for stay of arrest would be justified. The most significant role of the High Courts, as has been underscored by the court, is to strive to create a balance, on the one hand between the rights of the genuine complainants, FIRs disclosing commission of a cognizable offence and the statutory obligation of the investigating agency to investigate such cognizable offences and on the other hand rights of those innocent persons against whom the criminal proceedings are initiated which tantamount to abuse of the process of law and the courts.

For the avowed purpose the Supreme Court in *M/s. Neeharika* (supra) ruled thus:

“There is no denial of the fact that power under Section 482 Cr.P.C. is very wide, but as observed by this Court in catena of decisions, referred to hereinabove, conferment of wide power requires the court to be more cautious and it casts an onerous and more diligent duty on the court. Therefore, in exceptional cases, when the High Court deems it fit, regard being had to the parameters of quashing and the self-restraint imposed by law, may pass appropriate interim orders, as thought apposite in law, however, the High Court has to give brief reasons which will reflect the application of mind by the court to the relevant facts.”

Thus, the Court has held that it is not only incumbent upon the High Courts to proceed in a cautious manner while granting interim orders for stay of investigation, but any such order must also be accompanied by justifiable reasoning which discloses that the High Court has applied its mind in passing such an order.

Another important observation made by the Court is that directions, such as, 'stay of arrest' and/or 'no coercive steps' till the final report/charge sheet is filed and/or during the course of investigation or 'no to arrest' till the investigation is completed, ought not be passed by the High Courts while disposing off quashing petitions under Section 482 CrPC and/or under Article 226 of the constitution.

While ruling so the Supreme Court, heavily relied upon its earlier decision in the case of *State of Telangana v. Habib Abdullah Jeelani*^{vi}, wherein the Supreme Court staunchly criticized and deprecated the practice of the High Courts directing police not to arrest, while dismissing the petitions for quashing under Section 482 CrPC. In the said case of *Habib Abdullah Jeelani* (supra) the court had also, in a steadfast manner, disapproved order passed by the High Courts to the effect that if the petitioner-accused surrenders before the trial Magistrate, he/she shall be admitted to bail on such terms and conditions as the Magistrate concerned, deems fit. The Supreme Court opined that such orders are *de hors* to the powers conferred under section 438 CrPC, which deals with directions for grant of bail to person apprehending arrest.

Finally, the Supreme Court in *M/s. Neeharika* (supra) allowed the criminal appeal in question, by stating that the High Court committed a grave error of law and also of facts, in passing an interim order to the effect that "no coercive steps to be adopted". Accordingly, the Supreme Court overturned the impugned order passed by the High Court.

The Supreme Court, in its ultimate three conclusions has also noted that as a norm the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. And, even in exceptional cases where the High Court is *prima facie* of the view that case is made out for grant of interim stay of further investigation, the High Court has to accord brief reasons why such an interim order is warranted. Thus, there has to application of judicial mind and such order cannot be passed mechanically.

Most importantly, the Supreme Court also directed the High Courts that as and when interim order of "no coercive steps to be adopted" is passed by the High Courts, they must in the same order itself clarify what does it mean by "no coercive steps to be adopted".

For a ready reference, the aforesaid three conclusions penned by the Supreme Court in *M/s. Neeharika* (supra) are reproduced below:

xvi) ...However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically.

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

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

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

The judgment has reiterated and reinforced several important principles of criminal jurisprudence, which are at the core of criminal adjudication system of our country and also govern the adjudication of all criminal petitions/applications including a petition under Section 482 CrPC. Further, the said judgment has extended a note of caution to the High Courts to act within the permissible statutory limits as well as within the parameters of well-established judicial principles of law. After exhaustively examining the existing precedential law on the issue, the Court laid down a slew of principles, which shall serve as a handbook for the High Courts for ruling on prayers in quashing petitions under section 482 CrPC and/or Article 226 of the Constitution.

Therefore, the Court, keeping in view its obligation to maintain a balance between two competing interests, has not imposed a complete ban on passing of interim orders in the nature of 'stay on arrest' and/or 'no coercive steps' in quashing petitions. Be that as it may, the principles laid down by the Court would undoubtedly, go a long way in deterring the High Courts from passing such orders in a mechanical manner and thereby encourage the High Courts to pronounce reasoned orders, as when order(s) of 'stay on arrest' and/or 'no coercive steps' are granted in quashing petitions.

ⁱ AIR 1945 PC 18

ⁱⁱ AIR 1960 SC 866

ⁱⁱⁱ 1992 Supp (1) SCC 33

^{iv} AIR 1945 PC 18

^v (2019) 9 SCC 24

^{vi} 2020 SCC OnLine SC 95

^{vii} (2017) 2 SCC 779



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