IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MMO No. 242 of 2023
Reserved on: 02.06.2025
Date of Decision: 26th June, 2025.

Dr. Ena Sharma ...Petitioner

Versus

State of Himachal Pradesh & others ...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting? Yes

For the Petitioner	:	M/s Ashok Sharma, Pawan Gautam and Gauri Sharma, Advocates.
For Respondent No.1	:	Mr. Lokender Kutlehria, Additional Advocate General.
For Respondent No.2	:	Mr. Ajay Kochhar, Sr. Advocate with Mr. Shivank Singh Panta and Mr. Varun Chauhan, Advocates.
For Respondent No.3	:	Mr. Bhim Raj Sharma, Advocate.

Rakesh Kainthla, Judge

The petitioner has filed the present petition for quashing of FIR No. 131 of 2022, dated 19.12.2022, registered at Police Station Nahan, District Sirmaur for the commission of an

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offence punishable under Section 63 of Copy Copyright Act, 1957.

2. Briefly stated, the facts giving rise to the present petition are that the informant made a complaint to the police, asserting that she is a Senior Resident in Dr. Yashwant Singh Parmar Medical College, Nahan. She published her research article as the second author in the International Journal of Advanced Research (IJAR). She found that X-ray image, surgery image, Intraoperative image and research material were misused by the petitioner Ena Sharma, without her permission and knowledge, in the Journal of Pharmaceutical Research International (JPRI) in February 2021; hence, a prayer was made to take action in the matter.

3. The police registered the FIR and commenced the investigation.

4. Being aggrieved by the registration of the FIR, the petitioner has filed the present petition, asserting that the informant was working as an Assistant Professor in the Department of Periodontics in Maharishi Markandeshwar Medical College and Hospital (MMMCH) at Solan. Dr. Amit

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Lakhani, the informant's husband, was also working in the same hospital. The informant and her husband, Dr. Amit Lakhani, Dr. Uday and Dr. S.M. Bhatnagar submitted their article on 13.01.2017 for publication in the IJAR titled Wrist Arthrodesis in Rheumatoid Arthritis using reconstruction plate. Dr. Amit Lakhani was the first author. The names of the informant and other members were also mentioned. This article was accepted by the Journal on 08.02.2017 and was published in March 2017. All the authors transferred their copyrights in favour of the Journal. The article contained images of the research conducted by Dr. Amit Lakhani on 05 patients (four females and one male) aged between 28 to 44 years. The petitioner, Dr. Amit Lakhani and Harsh Mandher submitted a research paper for publication based on the retrospective review of 15 patients of Rheumatoid Arthritis. This study was designed by Dr. Amit Lakhani, who also wrote the protocol and the first draft of the manuscript. The images in the research paper were submitted by Dr. Amit Lakhani based on a study conducted in the Department of Orthopaedics between 2013 to 2016 and surgeries performed upon 15 patients (11 females and 4 males). The petitioner performed a statistical analysis. This research paper was

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submitted on 02.11.2020, accepted on 08.01.2021, and was published on 13.02.2021. Both articles are different from each other. Both articles were based on the case study exclusively conducted by Dr. Amit Lakhani. The material and methodology of the second article are different from the first. The results obtained in both studies are different. There is no infringement of the copyright. The petitioner noticed that the abstract of the first article pertained to some other study and did not relate to the Orthopaedic study. The petitioner clarified her stand in reply to the notice issued to her. The petitioner brought to the notice of IJAR that the abstract was wrongly mentioned in the first article, and the article was removed. No case for the violation of infringement of copyright is made out. The complaint is false. There is no similarity between the two articles except some images, which are the exclusive research of Dr. Amit Lakhani. The petitioner is a general physician and not an orthopaedic surgeon. The article has been removed, and there can be no violation of the copyright. The continuation of the proceedings amounts to abuse of the process of the Court; therefore, it was prayed that the present petition be allowed and the FIR be quashed.

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5. The petition is opposed by respondent No.1 by filing reply taking a preliminary objection regarding lack of maintainability. The contents of the petition were denied on merits. It was asserted that the investigation is at the initial stage, and necessary correspondence for supplying information has been made to IJAR. The petitioner cannot escape from the liability to infringe the copyright; hence, it was prayed that the present petition be dismissed.

6. A separate reply was filed by respondent No.2, making preliminary submissions outlining her contribution and her status and preliminary objections regarding lack of maintainability, and the petitioner being guilty of suppressing the material fact. It was asserted that the informant obtained her MBBS degree from Dr. Rajendra Prasad Government Medical College, Tanda, in the year 2008 and Doctor of Medicine from Indira Gandhi Medical College and Hospital, Shimla, in the year 2013. She served in various hospitals. She, Dr. Amit Lakhani, Dr. Uday and Dr. S.M. Bhatnagar published an article in IJAR in March 2017 based on an extensive study conducted by the authors on five patients. The abstract was wrongly published. The research paper was protected by copyright law. The

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photographs/samples /observations/results were published, and they formed an essential part of the research paper. The photographs and the research material were copied in the second article published by the petitioner along with other authors. The consent of the informant was not obtained, and in this manner, her copyright in the first article was infringed. The police are investigating the matter; therefore, it was prayed that the present petition be dismissed.

7. Dr. Amit Lakhani, respondent No.3, also filed a reply asserting that he, the informant and other doctors published an article in IJAR in March 2017 and thereafter second article in February 2021. These articles were based upon the exclusive study conducted by respondent No.3. The informant never conducted any study on any patient suffering from Wrist Rheumatoid and had not referred any patient to the Government or a private institute. Respondent No.3 had included the name of the informant to improve her professional profile. The informant was not a copyright holder of the first article, and she had no right to file the complaint. The respondent No.3 is the principal author, and the informant cannot claim any copyright in the study. The Indian Council of

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Medical Research (ICMR) is the statutory authority to look into all complaints regarding copyright disputes, and the FIR should not have been lodged in the present matter. There is a dispute between respondent No.3 and the informant. The dispute was settled between the parties before the District Legal Services Authority (DLSA), and it was agreed that the informant would not file any complaint against her husband; however, she continued to file complaints. Respondent No.3-Dr. Amit Lakhani, being the principal author, had the right to subsequently publish his work in another Journal; therefore, it was prayed that the present petition be dismissed.

8. A separate rejoinder denying the contents of the reply and affirming those of the petition was filed.

9. I have heard M/s Ashok Sharma, Pawan Gautam and Gauri Sharma, learned counsel for the petitioner, Mr. Lokender Kutlehria, learned Additional Advocate General for respondent No.1/State, Mr. Ajay Kochhar, learned Senior Counsel assisted by M/s Shivank Singh Panta and Varun Chauhan, learned counsel for respondent No.2 and Mr. Bhim Raj Sharma, learned counsel for respondent No.3.

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10. Mr. Ashok Sharma, learned counsel for the petitioner, submitted that the petitioner is innocent and she was falsely implicated. The first article was published by Dr. Amit Lakhani based on an exclusive study conducted by him. The name of the informant was mentioned because she happened to be the wife of Dr. Amit Lakhani. The copyright was assigned to IJAR as per the conditions of the publication. The informant had no subsisting copyright. The first article was removed after it was found that the abstract did not match the contents of the main article. The petitioner had only assisted statistically in the publication of the article. The informant had a remedy for approaching the ICMR or the Registrar of Copyright for the redressal of her grievances. There is a matrimonial dispute between Dr. Amit Lakhani and the informant, and a false case was made against the petitioner to drag her into the litigation; hence, he prayed that the present petition be allowed and the FIR be ordered to be quashed. He relied upon the judgments of Hon'ble Supreme Court and this Court in ***Madhavrao Jiwaji Rao Scindia & Anr. Etc vs Sambhajirao, AIR 1988 Supreme 709, Suresh Chand versus State of H.P, 2024:HHC:15268, B.N. John vs. State of UP and ors. AIR 2025 SC 759***

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and ***Ajay Malik vs. State of Uttrakhand and ors, 2025 INSC 118*** in support of his submission.

11. Mr. Lokender Kutlehria, learned Additional Advocate General, for respondent No.1/State, submitted that the police have registered the FIR. The investigation is continuing, and it is premature to quash the FIR. The police will file a cancellation report if no case is made out, and the Court should not scuttle the proceedings at the initial stage; therefore, he prayed that the present petition be dismissed and the police be permitted to carry out the investigation.

12. Mr. Ajay Kochhar, learned Senior Counsel for the informant, submitted that the informant was the joint author of the study in the first article, as is apparent from the article itself. The concept of *locus standi* is alien to criminal law. The copyright subsisted with IJAR, and the petitioner could not have published the images in the second article without the permission of IJAR. The claim made by Dr. Amit Lakhani that he had the right to use the images is not correct because he has no right after the assignment of copyright to IJAR. The substantial similarity is to be seen while determining the infringement of

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the copyright, and an exact copy is not required to be proved. The documents filed by the petitioner, along with the petition, cannot be looked into at this stage because their authenticity has not been established. He relied upon the judgments in ***R.G. Anand versus Delux Films, AIR 1978 SC 1613, Fateh Mehta versus OP Singhal, AIR 1990 RJ 8, M/s Knit Pro International Versus State of NCT of Delhi, 2022 LIVE Law (SC) 505, AR Antulay V. Ram Dass, 1984 AIR SC 718, Vishwa Mitra versus OP Poddar, 1984 AIR SC 5, Manohar Lal versus Vinesh Anand and ors. 2001 (5) SCC 407, Ratan Lal vs. Prahlad Jat and ors., 2017 (9) SCC 340, State vs. Nagoti Menkataramanna, 1996 8 JT 282, Superintendent CBI vs. Tapan, 2003 (6) SCC 175, Neeharika Infra vs. State of Maharashtra, 2021 (5) Scale 610, Supriya Jain vs. State of Haryana, 2023 (7) SCC 711, CBI Vs. Aryan Singh, 2023 SCC Online 379, Mahesh Chaudhary vs. State of Rajasthan, 2009 (4) SCC 439, Priti Safar vs. State of NCT of Delhi, 2021 (16) SCC 142, Fr. KO Tomas Vs. State of Kerala in Criminal M.C. No. 4827 of 2013 decided on 23.01.2017, Vinay Kumar vs. State of H.P. in Cr.MMO No. 97 of 2022 decided on 16.09.2024, Ganga Bal vs. Shriram, 1990 SCC Online MP 213, Bharat Metal Box Company Limited vs. G.K. Strips Pvt. Ltd and anr., 2004 STPL 43 AP, Mehender K.C. State of Karnataka and anr., 2022***

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(2) SCC 129, Supriya Jain vs. State of Haryana and anr., 2023 (7) SCC 711, Priyanka Jaiswal vs. State of Jharkhand and ors., 2024 SCC Online SC 685, Central Bureau of Investigation vs. Aryan Singh and ors., 2023 (18) SCC 399, Central Bureau of Investigation versus Arvind Khanna, 2019 (10) SCC 686, Tilly Gifford vs. Michael Floyd Eshwar and anr., 2017 (0) Supreme (SC) 902 and *Sourabh Bhardwaj and anr., vs. State of H.P and ors., 2023:HHC:13695* in support of his submission.

13. Mr. Bhim Raj Sharma, learned counsel for respondent No.3-Dr. Amit Lakhani submitted that respondent No.3 was a leading author of the study. He had named the informant because she is his wife to improve her career prospects. She had no copyright in the first article, and there can be no violation of the use of the study conducted by an author in the subsequent article. Therefore, he prayed that the present petition be dismissed.

14. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

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15. The law relating to quashing of FIR was explained by the Hon'ble Supreme Court in ***B.N. John v. State of U.P., 2025 SCC OnLine SC 7*** as under: -

> "**7.** As far as the quashing of criminal cases is concerned, it is now more or less well settled as regards the principles to be applied by the court. In this regard, one may refer to the decision of this Court in ***State of Haryana v. Ch. Bhajan Lal, 1992 Supp (1) SCC 335,*** wherein this Court has summarized some of the principles under which FIR/complaints/criminal cases could be quashed in the following words:
>
> > "**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we 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 formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
> >
> > > (1) *Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused.*
> > >
> > > (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a

cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) *Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to a private and personal grudge." *(emphasis added)*

8. Of the aforesaid criteria, clause no. (1), (4) and (6) would be of relevance to us in this case.

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In clause (1) it has been mentioned that 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, then the FIR or the complaint can be quashed.

As per clause (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 dated by the Magistrate as contemplated under Section 155 (2) of the CrPC, and in such a situation, the FIR can be quashed.

Similarly, as provided under clause (6), if there is an express legal bar engrafted in any of the provisions of the CrPC or the concerned Act under which the criminal proceedings are instituted, such proceedings can be quashed."

16. This position was reiterated in ***Ajay Malik v. State of Uttarakhand, 2025 SCC OnLine SC 185,*** wherein it was observed:

"**8.** It is well established that a High Court, in exercising its extraordinary powers under Section 482 of the CrPC, may issue orders to prevent the abuse of court processes or to secure the ends of justice. These inherent powers are neither controlled nor limited by any other statutory provision. However, given the broad and profound nature of this authority, the High Court must exercise it sparingly. The conditions for invoking such powers are embedded within Section 482 of the CrPC itself, allowing the High Court to act only in cases of clear abuse of process or where intervention is essential to uphold the ends of justice.

9. It is in this backdrop that this Court, over the course of several decades, has laid down the principles and guidelines that High Courts must follow before

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> quashing criminal proceedings at the threshold, thereby pre-empting the Prosecution from building its case before the Trial Court. The grounds for quashing, *inter alia*, contemplate the following situations : (***i***) the criminal complaint has been filed with *mala fides*; (***ii***) the FIR represents an abuse of the legal process; (***iii***) no *prima facie* offence is made out; (***iv***) the dispute is civil in nature; (***v.***) the complaint contains vague and omnibus allegations; and (***vi***) the parties are willing to settle and compound the dispute amicably (***State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335***).

17. It was held in ***Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234: 1988 SCC OnLine SC 80*** that the Court has to determine whether the uncontroverted allegations in the complaint constitute a cognizable offence when the prosecution is at the initial stage. It was observed at page 695

> **7.** The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

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18. The parameters for exercising jurisdiction to interfere with the investigations being carried out by the police were considered by the Hon'ble Supreme Court in ***Neeharika Infrastructure (P) Ltd. v. State of Maharashtra*, *(2021) 19 SCC 401: 2021 SCC OnLine SC 315*,** and it was observed at page 444:

> **13.** From the aforesaid decisions of this Court, right from the decision of the Privy Council in ***Khwaja Nazir Ahmad [King Emperor v. Khwaja Nazir Ahmad, 1944 SCC OnLine PC 29: (1943-44) 71 IA 203: AIR 1945 PC 18]***, the following principles of law emerge:
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> **13.1.** The 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.
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> **13.2.** Courts would not thwart any investigation into the cognizable offences.
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> **13.3.** 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.
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> **13.4.** 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 482CrPC 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.)
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> **13.5.** While examining an FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.

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

13.7. Quashing of a complaint/FIR should be an exception and a rarity rather than an ordinary rule.

13.8. Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the above of the process by Section 482CrPC.

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

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

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

13.12. The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to an abuse of the process of law. During or after the 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.

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

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

13.15. When a prayer for quashing the FIR is made by the alleged accused, the Court when it exercises the power under Section 482CrPC, 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.

19. It was held in ***State of Karnataka v. L. Muniswamy (1977) 2 SCC 699: 1977 SCC (Cri) 404*** that the High Court can quash the criminal proceedings if they amount to an abuse of the process of the Court. It was observed at page 703:

> "7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose, which is that a court proceeding ought not to be permitted to degenerate into a

> weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests, and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law, though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

20. The term abuse of the process was explained in ***Chandran Ratnaswami v. K.C. Palanisamy, (2013) 6 SCC 740: (2014) 1 SCC (Cri) 447: 2013 SCC OnLine SC 450*** at page 761:

> **33.** The doctrine of abuse of process of court and the remedy of refusal to allow the trial to proceed is a well-established and recognised doctrine both by the English courts and courts in India. There are some established principles of law which bar the trial when there appears to be an abuse of the process of the court.
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> **34.** Lord Morris in ***Connelly v. Director of Public Prosecutions [1964 AC 1254 : (1964) 2 WLR 1145 : (1964) 2 All ER 401 (HL)]***, observed: (AC pp. 1301-02)
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> > "There can be no doubt that a court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction. ... A court must enjoy such powers in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of its process.
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> The power (which is inherent in a court's jurisdiction) to prevent abuses of its process and to control its own procedure must in a criminal court include a power to safeguard an accused person from oppression or prejudice."

In his separate pronouncement, Lord Delvin in the same case observed that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial.

35. In ***Hui Chi-ming v. R. [(1992) 1 AC 34 : (1991) 3 WLR 495 : (1991) 3 All ER 897 (PC)]***, the Privy Council defined the word "abuse of process" as something so unfair and wrong with the prosecution that the court should not allow a prosecutor to proceed with what is, in all other respects, a perfectly supportable case.

36. In the leading case of ***R. v. Horseferry Road Magistrates' Court, ex p Bennett [(1994) 1 AC 42 : (1993) 3 WLR 90 : (1993) 3 All ER 138 (HL)]***, on the application of the abuse of process, the court confirms that an abuse of process justifying the stay of prosecution could arise in the following circumstances:

> (*i*) where it would be impossible to give the accused a fair trial; or
>
> (*ii*) where it would amount to misuse/manipulation of the process because it offends the court's sense of justice and propriety to be asked to try the accused in the circumstances of the particular case.

37. In ***R. v. Derby Crown Court, ex p Brooks [(1984) 80 Cr App R 164 (DC)]***, Lord Chief Justice Ormrod stated:

> "It may be an abuse of process if either (*a*) the prosecution has manipulated or misused the process of the court so as to deprive the defendant of a protection provided by law or to take unfair advantage of a technicality, or (*b*) on the balance of probability the defendant has been, or will be, prejudiced in the

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> preparation of conduct of his defence by delay on the part of the prosecution which is unjustifiable."

38. Neill, L.J. in ***R. v. Beckford (Anthony) [(1996) 1 Cr App R 94: 1995 RTR 251 (CA)]***, observed that:

> "The jurisdiction to stay can be exercised in many different circumstances. Nevertheless, two main strands can be detected in the authorities: (*a*) cases where the court concludes that the defendant cannot receive a fair trial; (*b*) cases where the court concludes that it would be unfair for the defendant to be tried."

What is unfair and wrong will be for the court to determine on the individual facts of each case.

21. It was held in ***Mahmood Ali v. State of U.P., (2023) 15 SCC 488: 2023 SCC OnLine SC 950*** that where the proceedings are frivolous or vexatious, the Court owes a duty to quash them. However, the Court cannot appreciate the material while exercising jurisdiction under Section 482 of the CrPC. It was observed at page 498:

> **13.** In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection, try to read in between the lines. The Court, while exercising its jurisdiction under Section 482CrPC or Article 226 of the Constitution, need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take, for instance, the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs

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assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.

14. ***State of A.P. v. Golconda Linga Swamy [State of A.P. v. Golconda Linga Swamy, (2004) 6 SCC 522: 2004 SCC (Cri) 1805]***, a two-judge Bench of this Court elaborated on the types of materials the High Court can assess to quash an FIR. The Court drew a fine distinction between consideration of materials that were tendered as evidence and appreciation of such evidence. Only such material that manifestly fails to prove the accusation in the FIR can be considered for quashing an FIR. The Court held : (***Golconda Linga Swamy case [State of A.P. v. Golconda Linga Swamy, (2004) 6 SCC 522: 2004 SCC (Cri) 1805]***, SCC p. 527, paras 5-7)

> "5. ... Authority of the court exists for the advancement of justice, and if any attempt is made to abuse that authority so as to produce injustice, the court has the power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent the promotion of justice. In the exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of the court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. *When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out, even if the allegations are accepted in toto*.
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> 6. In ***R.P. Kapur v. State of Punjab [R.P. Kapur v. State of Punjab, 1960 SCC OnLine SC 21: AIR 1960 SC 866]***, this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings : (SCC OnLine SC para 6)

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> (*i*) where it manifestly appears that there is a legal bar against the institution or continuance, e.g. want of sanction;
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> (*ii*) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;
>
> (*iii*) *where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge*.
>
> 7. *In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether, on a reasonable appreciation of it, the accusation would not be sustained. That is the function of the trial Judge*. The judicial process, no doubt, should not be an instrument of oppression or needless harassment. The court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing the process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time, the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death." (emphasis supplied)

22. The present petition is to be decided as per the parameters laid down by the Hon'ble Supreme Court.

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23. It was asserted in the petition that the copyright was assigned to IJAR as per the terms and conditions of the Journal. Reliance was placed upon the letter written by corresponding author (Annexure P/13) annexed to the additional rejoinder to the reply filed by respondent No.2/complainant, therefore, it is apparent that Dr. Amit Lakhani had no copyright after its assignment in favour of the Journal and his claim that he had a subsisting copyright in the first article and he could have used the images and the research material mentioned in the first article cannot be accepted. A perusal of the two articles clearly shows that some images published in the first article have been reproduced in the second article; therefore, *prima facie,* the use of the images from the first article in the second article shows the infringement of the copyright.

24. It was submitted that the informant has no locus standi to file the complaint. This submission is not acceptable. It was laid down by the Hon'ble Supreme Court in ***A.R. Antulay v. Ramdas Sriniwas Nayak, (1984) 2 SCC 500: 1984 SCC (Cri) 277: 1984 SCC OnLine SC 44,*** that anyone can set or put the criminal law into motion except where the statute indicates to the contrary. It was observed at page 508:

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"**6.** It is a well-recognised principle of criminal jurisprudence that anyone can set or put the criminal law into motion, except where the statute enacting or creating an offence indicates to the contrary. The scheme of the Code of Criminal Procedure envisages two parallel and independent agencies for taking criminal offences to court. Even for the most serious offence of murder, it was not disputed that a private complaint can not only be filed but can also be entertained and proceeded with according to law. Locus standi of the complainant is a concept foreign to criminal jurisprudence, save and except that where the statute creating an offence provides for the eligibility of the complainant, by necessary implication, the general principle gets excluded by such statutory provision. Numerous statutory provisions, can be referred to in support of this legal position such as (*i*) Section 187-A of Sea Customs Act, 1878 (*ii*) Section 97 of Gold Control Act, 1968 (*iii*) Section 6 of Import and Export Control Act, 1947 (*iv*) Section 271 and Section 279 of the Income Tax Act, 1961 (*v*) Section 61 of the Foreign Exchange Regulation Act, 1973, (*vi*) Section 621 of the Companies Act, 1956 and (*vii*) Section 77 of the Electricity Supply Act. This list is only illustrative and not exhaustive. While Section 190 of the Code of Criminal Procedure permits anyone to approach the Magistrate with a complaint, it does not prescribe any qualification that the complainant is required to fulfil to be eligible to file a complaint. But where an eligibility criterion for a complainant is contemplated, specific provisions have been made, such as to be found in Sections 195 to 199 of the CrPC. These specific provisions clearly indicate that in the absence of any such statutory provision, a locus standi of a complainant is a concept foreign to criminal jurisprudence. In other words, the principle that anyone can set or put the criminal law in motion remains intact unless contra-indicated by a statutory provision. This general principle of nearly universal application is founded on a policy that an offence i.e. an act or omission made punishable by any law for the time being in force

[See Section 2(*n*) CrPC] is not merely an offence committed in relation to the person who suffers harm but is also an offence against society. The society, for its orderly and peaceful development, is interested in the punishment of the offender. Therefore, prosecution for serious offences is undertaken in the name of the State, representing the people, which would exclude any element of private vendetta or vengeance. If such is the public policy underlying penal statutes, who brings an act or omission made punishable by law to the notice of the authority competent to deal with it is immaterial and irrelevant unless the statute indicates to the contrary. Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a strait-jacket formula of locus standi unknown to criminal jurisprudence, save and except specific statutory exception. To hold that such an exception exists that a private complaint for offences of corruption committed by a public servant is not maintainable, the court would require an unambiguous statutory provision and a tangled web of argument for drawing a far-fetched implication, cannot be a substitute for an express statutory provision. In the matter of initiation of proceedings before a Special Judge under Section 8(1), the Legislature, while conferring power to take cognisance, had three opportunities to unambiguously state its mind whether the cognisance can be taken on a private complaint or not. The first one was an opportunity to provide in Section 8(1) itself by merely stating that the Special Judge may take cognizance of an offence on a police report submitted to it by an investigating officer conducting an investigation as contemplated by Section 5-A. While providing for investigation by designated police officers of superior rank, the Legislature did not fetter the power of the Special Judge to take cognisance in a manner otherwise than on a police report. The second opportunity was

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when, by Section 8(3), a status of a deemed public prosecutor was conferred on a private complainant if he chooses to conduct the prosecution. The Legislature, being aware of a provision like the one contained in Section 225 of the CrPC, could have as well provided that in every trial before a Special Judge, the prosecution shall be conducted by a Public Prosecutor, though that itself would not have been decisive of the matter. And the third opportunity was when the Legislature, while prescribing the procedure prescribed for warrant cases to be followed by a Special Judge, did not exclude by a specific provision that the only procedure which the Special Judge can follow is the one prescribed for trial of warrant cases on a police report. The disinclination of the Legislature to so provide points to the contrary and no canon of construction permits the court to go in search of a hidden or implied limitation on the power of the Special Judge to take cognizance unfettered by such requirement of its being done on a police report alone. In our opinion, it is no answer to this fairly well-established legal position that for the last 32 years no case has come to the notice of the court in which cognisance was taken by a Special Judge on a private complaint for offences punishable under the 1947 Act. If something that did not happen in the past is to be the sole reliable guide so as to deny any such thing happening in the future, the law would be rendered static and slowly wither away.

7. The scheme underlying the Code of Criminal Procedure clearly reveals that anyone who wants to give information of an offence may either approach the Magistrate or the officer in charge of a police station. If the offence complained of is a non-cognizable one, the police officer can either direct the complainant to approach the Magistrate, or he may obtain permission from the Magistrate and investigate the offence. Similarly, anyone can approach the Magistrate with a complaint, and even if the offence disclosed is a serious one, the Magistrate is competent to take cognisance of

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> the offence and initiate proceedings. It is open to the Magistrate but not obligatory upon him to direct an investigation by the police. Thus, two agencies have been set up for taking offences to court. One would therefore require a cogent and explicit provision to hold that Section 5-A displaces this scheme.

25. This position was reiterated in ***Vishwa Mitter v. O.P. Poddar, (1983) 4 SCC 701: 1984 SCC (Cri) 29: 1983 SCC OnLine SC 248***, wherein it was held at page 705:-

> **5.** It is thus crystal clear that anyone can set the criminal law in motion by filing a complaint of facts constituting an offence before a Magistrate entitled to take cognizance under Section 190 and unless any statutory provision prescribes any special qualification or eligibility criteria for putting the criminal law in motion, no court can decline to take cognizance on the sole ground that the complainant was not competent to file the complaint. Section 190 of the Code of Criminal Procedure indicates that the qualification of the complainant to file a complaint is not relevant. But where any special statute prescribes offences and makes any special provision for taking cognisance of such offences under the statute, the complainant requesting the Magistrate to take cognisance of the offence must satisfy the eligibility criterion prescribed by the statute. Even with regard to offences under the Penal Code, 1860, ordinarily, anyone can set the criminal law in motion but the various provisions in Chapter XIV prescribe the qualification of the complainant which would enable him or her to file a complaint in respect of specified offences and no court can take cognizance of such offence unless the complainant satisfies the eligibility criterion, but in the absence of any such specification, no court can throw out the complaint or decline to take the cognizance on the

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sole ground that the complainant was not competent to file the complaint.

6. Section 89 of the Act provides that no court shall take cognisance of an offence under Section 81, Section 82 or Section 83 except on a complaint in writing made by the registrar or any officer authorised by him in writing. This provision manifests the legislative intention that in respect of the three specified offences punishable under Sections 81, 82 and 83, the registrar alone is competent to file the complaint. This would simultaneously show that in respect of other offences under the Act, the provision contained in Section 190 of the Code of Criminal Procedure, read with sub-section (2) of Section 4, would permit anyone to file the complaint. The indication to the contrary, as envisaged by sub-section (2) of Section 4 of the Code of Criminal Procedure, is to be found in Section 89, and that section does not prescribe any particular eligibility criterion or qualification for filing a complaint for contravention of Sections 78 and 79 of the Act. Therefore, the learned Magistrate was in error in rejecting the complaint on the sole ground that the complainant was not entitled to file the complaint.

26. A similar view was taken in ***Manohar Lal v. Vinesh Anand, (2001) 5 SCC 407: 2001 SCC (Cri) 1322: 2001 SCC OnLine SC 634,*** and it was held at page 411:-

5. Before adverting to the matter in issue and the rival contentions advanced, one redeeming feature ought to be noticed here pertaining to criminal jurisprudence. To pursue an offender in the event of commission of an offence is to subserve a social need — society cannot afford to have a criminal escape his liability, since that would bring about a state of social pollution, which is neither desired nor warranted and this is irrespective of the concept of locus — the doctrine of locus standi is totally foreign to criminal jurisprudence. This

observation of ours, however, obtains support from the decision of this Court in ***A.R. Antulay v. Ramdas Sriniwas Nayak [(1984) 2 SCC 500: 1984 SCC (Cri) 277***].

27. This position was reiterated in ***Ratanlal v. Prahlad Jat, (2017) 9 SCC 340: (2017) 3 SCC (Cri) 729: 2017 SCC OnLine SC 1143*** and it was held at page 344:

> **8.** In *Black's Law Dictionary*, the meaning assigned to the term "locus standi" is "the right to bring an action or to be heard in a given forum". One of the meanings assigned to the term "locus standi" in *The Law Lexicon* of Shri P. Ramanatha Aiyar is "a right of appearance in a Court of justice". The traditional view of locus standi has been that the person who is aggrieved or affected has the standing before the court, that is to say, he only has a right to move the court for seeking justice. The orthodox rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea change with the development of constitutional law in India, and the constitutional courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hypertechnical grounds. It is now well-settled that if the person is found to be not merely a stranger to the case, he cannot be non-suited on the ground of his not having locus standi.
>
> **9.** However, a criminal trial is conducted largely by following the procedure laid down in the CrPC. Locus standi of the complaint is a concept foreign to criminal jurisprudence. Anyone can set the criminal law in motion, except where the statute enacting or creating an offence indicates to the contrary. This general principle is founded on a policy that an offence, that is an act or omission made punishable by any law for the time being in force, is not merely an offence committed in relation to the person who suffers harm, but is also an offence against society. Therefore, in respect of such offences

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which are treated against society, it becomes the duty of the State to punish the offender. In ***A.R. Antulay v. Ramdas Sriniwas Nayak [A.R. Antulay v. Ramdas Sriniwas Nayak, (1984) 2 SCC 500: 1984 SCC (Cri) 277]***, a Constitution Bench of this Court has considered this aspect as under: (SCC pp. 508-09, para 6)

> *6.* ... In other words, the principle that anyone can set or put the criminal law in motion remains intact unless contra-indicated by a statutory provision. This general principle of nearly universal application is founded on a policy that an offence i.e. an act or omission made punishable by any law for the time being in force [see Section 2(*n*) CrPC] is not merely an offence committed in relation to the person who suffers harm but is also an offence against society. The society, for its orderly and peaceful development, is interested in the punishment of the offender. Therefore, prosecution for serious offences is undertaken in the name of the State, representing the people, which would exclude any element of private vendetta or vengeance. If such is the public policy underlying penal statutes, who brings an act or omission made punishable by law to the notice of the authority competent to deal with it is immaterial and irrelevant unless the statute indicates to the contrary. Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a straitjacket formula of locus standi unknown to criminal jurisprudence, save and except specific statutory exception."

10. In ***Manohar Lal v. Vinesh Anand [Manohar Lal v. Vinesh Anand, (2001) 5 SCC 407: 2001 SCC (Cri) 1322]***, this Court has held that the doctrine of locus standi is totally foreign to criminal jurisprudence. To punish an offender in the event of the commission of an offence is to subserve a social need. Society cannot afford to have a criminal

> escape his liability since that would bring about a state of social pollution which is neither desired nor warranted, and this is irrespective of the concept of locus.

28. Therefore, the plea that only an aggrieved person could have filed the complaint and the informant had no right to file the complaint cannot be accepted.

29. It was submitted that the Copyright Act shows that it is enacted to protect the rights of the copyright holders and therefore, a third person should not be permitted to make a complaint of the violation of the copyright. This cannot be accepted. It was laid down by Hon'ble Supreme Court in ***Knit Pro International v. State (NCT of Delhi)*, *(2022) 10 SCC 221: (2023) 1 SCC (Cri) 143: (2023) 1 SCC (Civ) 632: 2022 SCC OnLine SC 668***, that the offence punishable under Section 63 of the Copyright Act is a cognizable offence. It was observed at page 223:

> "**8.** The short question which is posed for consideration before this Court is whether the offence under Section 63 of the Copyright Act is a cognizable offence as considered by the trial court or a non-cognizable offence as observed and held by the High Court.
>
> **9.** While answering the aforesaid question, Section 63 of the Copyright Act and Part II of the First Schedule to CrPC are required to be referred to, and the same are as under:
>
> > "**63.** ***Offence of infringement of copyright or other rights conferred by this Act.***—Any person who knowingly infringes or abets the infringement of—

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(*a*) the copyright in a work, or

(*b*) any other right conferred by this Act except the right conferred by Section 53-A,

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with a fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that where the infringement has not been made for gain in the course of trade or business, the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

Explanation.—Construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work shall not be an offence under this section."

Criminal Procedure Code, 1973 — Schedule I Part II:

"II. CLASSIFICATION OF OFFENCES AGAINST OTHER LAWS

Offence	*Cognizable or non-cognizable*	*Bailable or non-cognizable*	*By what court triable*
If punishable with death, imprisonment for life, or imprisonment for more than 7 years.	Cognizable.	Non-bailable.	Court of Session.
If punishable with imprisonment for 3 years and upwards, but not more than 7 years.	Cognizable.	Non-bailable.	Magistrate of the First Class.
If punishable with	Non-	Bailable.	Any

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imprisonment for less than 3 years or with a fine only.	cognizable.		Magistrate.

10. Thus, for the offence under Section 63 of the Copyright Act, the punishment provided is imprisonment for a term which shall not be less than six months but which may extend to three years and with a fine. Therefore, the maximum punishment which can be imposed would be three years. Therefore, the learned Magistrate may sentence the accused for a period of three years also. In that view of the matter, considering Part II of the First Schedule to CrPC, if the offence is punishable with imprisonment for three years and onwards but not more than seven years, the offence is a cognizable offence. Only in a case where the offence is punishable for imprisonment for less than three years or with a fine only, the offence can be said to be non-cognizable. In view of the above clear position of law, the decision in ***Rakesh Kumar Paul [Rakesh Kumar Paul v. State of Assam, (2017) 15 SCC 67 : (2018) 1 SCC (Cri) 401]*** relied upon by the learned counsel appearing on behalf of Respondent 2 shall not be applicable to the facts of the case on hand. The language of the provision in Part II of the First Schedule is very clear, and there is no ambiguity whatsoever.

30. Therefore, the police can take cognisance of the violation of the copyright, and since any person can make a complaint of the violation, therefore, the plea regarding the lack of locus standi cannot be accepted in the present case.

31. It was submitted that mere reproduction of some of the photographs does not amount to the infringement of the copyright. This cannot be accepted. It was laid down by the

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Hon'ble Supreme Court in ***R.G. Anand v. Delux Films, (1978) 4 SCC 118: 1978 SCC OnLine SC 195*** that the infringement does not consist of an exact or verbatim copy of the whole but merely a resemblance to a greater or lesser degree. It was observed at page 140:

> "**46.** Thus, on careful consideration and elucidation of the various authorities and the case law on the subject discussed above, the following propositions emerge:
>
> *1.* There can be no copyright in an idea, subject-matter, themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyrighted work.
>
> 2. Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. In such a case, the courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendant's work is nothing but a literal imitation of the copyrighted work with some variations here and there, it would amount to a violation of the copyright. In other words, to be actionable, the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy.
>
> *3.* One of the surest and the safest test to determine whether or not there has been a violation of copyright is to see if the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.

4. Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.

5. Where however, apart from the similarities appearing in the two works, there are also material and broad dissimilarities which negate the intention to copy the original, and the coincidences appearing in the two works are clearly incidental; no infringement of the copyright comes into existence.

6. As a violation of copyright amounts to an act of piracy, it must be proved by clear and cogent evidence after applying the various tests laid down by the case-law discussed above.

7. Where, however, the question is of the violation of the copyright of a stage play by a film producer or a director, the task of the plaintiff becomes more difficult to prove piracy. It is manifest that, unlike a stage play, a film has a much broader perspective, wider field and a bigger background where the defendants can, by introducing a variety of incidents, give a colour and complexion different from the manner in which the copyrighted work has expressed the idea. Even so, if the viewer, after seeing the film, gets the total impression that the film is by and large a copy of the original play, violation of the copyright may be said to be proved."

32. Similarly, it was held in ***Fateh Singh Mehta v. O.P. Singhal, 1989 SCC OnLine Raj 9: (1989) 1 RLW 409: AIR 1990 Raj 8 : (1989) 1 RLR 419*** that the reproduction of a substantial part or any material will constitute the infringement of the copyright. It was observed at page 413:-

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> **8.** Section 17 of the Act provides that, subject to the provisions of the Act, the author of a work shall be the first owner of the copyright therein. The copyright subsists within the lifetime of the author and until 50 years from the beginning of the calendar year next following the year in which the author dies. Copyright in a work is deemed to be infringed when any person, without a licence granted by the owner of the copyright, does anything, the exclusive right to do which is by the Act conferred upon the owner of the copyright. Where a person has copyright in a literary work, and any other person produces or reproduces the work or any substantial part thereof in any material form, he is committing an infringement of copyright.

33. It was held in ***State of A.P. v. Nagoti Venkataramana, (1996) 6 SCC 409***that the identification of the owner of a copyright is not a precondition for the violation of Section 63 and 68A as the case may be. It was observed at page 413:

> "**8.** A reading of these provisions does indicate that infringement of a copyright or deemed infringement of a copyright or publication of a work without the permission of the owner are offences under the Act. The question is whether identification of the owner of the copyright is a precondition for violation of the provisions of Section 63 or 68-A, as the case may be? The finding of the High Court and ably sought to be supported by Shri Prakash Reddy is that unless the owner is identified and he comes and gives evidence that he had a copyright of the video film which was sought to be in violation of Section 52-A or Section 51 of the Act, there is no offence made out by the prosecution and that, therefore, the conviction and sentence of the respondent is not valid in law. He contends that Section 4 expressly excludes publication of the work to be published. The identification of the owner being an essential element to

prove the offence of infringement of copyright, the prosecution has failed to establish the same. In the construction of the penal statute, strict construction should be adopted, and in that perspective, the benefit of doubt given by the High Court is well justified and does not warrant interference.

9. It is true that in the interpretation of penal provisions, strict construction is required to be adopted, and if any real doubt arises, necessarily the reasonable benefit of doubt would be extended to the accused. In this case, the question arises whether such a doubt has arisen. The object of amending the Copyright Act by the Amendment Act 65 of 1984, as noted above, was to prevent piracy, which became a global problem due to rapid advances in technology. The legislature intended to prevent piracy and punish pirates protecting copyrights. The law, therefore, came to be amended, introducing Section 52-A. Thereafter, the piracy of cinematograph films and of sound recording, etc., could be satisfactorily prevented. Moreover, the object of the pirate is to make quick money and avoid payment of legitimate taxes and royalties. The uncertified films are being exhibited on a large scale. Mushrooming growth of video parlours has sprung up all over the country, exhibiting such films recorded on video tapes by charging an admission fee from the visitors. Therefore, apart from increasing the penalty of punishment under law, it also provides a declaration on the offence of infringement and video films to display certain information on the recorded video films and containers thereof. Section 52-A thus has incorporated specifications of the prints in sub-section (2) thereof. The construction of Sections 52-A, 51, 63 and 68-A should be approached from this perspective. It would be further profitable to read the relevant provisions of the Cinematograph Act, 1952, in this regard. Section 2(*c*) defines 'cinematograph' to include any apparatus for the representation of moving pictures or a series of pictures. Section 2(*dd*) defines 'films' to mean a cinematograph

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film. The question, therefore, is whether video film is a cinematograph? It is settled view that video tapes come within the expression 'cinematograph' in view of the extended definition in Section 2(*c*) which includes apparatus for the representation of moving pictures or series of pictures as copy of the video should be created in respect of a cinematograph under the Cinematograph Act which gives protection to the purchasers of the cinematograph if they are registered under Chapter X of the Act. Section 44 gives the right of registration and once the entries have been made by operation of Section 48 the entries in the register of copyrights shall be prima facie evidence of the copyright and the entries therein are conclusive without proof of the original copyright which must be taken to have been created in respect of the video tape.

10. In ***Balwinder Singh v. Delhi Admn. [AIR 1984 Del 379: 1984 Rajdh LR 302]*** A Division Bench of the Delhi High Court had also held that both video and television are cinematographs. Licences for giving their public exhibition are necessary under the Cinematograph Act in spite of their having commercial licences under the Telegraph Act, 1885.

11. It is true that there is no specific charge under Section 52-A. The charge was under Section 51, read with Section 63 of the Act. In view of the above finding and in view of the findings of the courts below that the respondent was exhibiting the cinematograph films in his Video City for hire or for sale of the cassettes to the public which do not contain the particulars envisaged under Section 52-A of the Act, the infringement falls under Section 51(2)(*ii*) or Section 52-A of the Act. The former is punishable under Section 63, and the latter is punishable under Section 68-A of the Act. In view of the findings of the courts below, the offence would fall under Section 68-A of the Act. It would, therefore, be unnecessary for the prosecution to track on and trace out the owner of the copyright to come and adduce evidence of infringement of copyright. The

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> absence thereof does not constitute a lack of an essential element of infringement of copyright. If the particulars on video films, etc., as mandated under Section 52-A do not find place, it would be an infringement of copyright."

34. It was submitted that the copyright is not registered, and even if it were registered, the remedy lies to approach before the Registrar of Copyrights. This submission is not acceptable. It was laid down in ***Fr. K.O. Thomas v. State of Kerala, 2017 SCC OnLine Ker 237***, that the registration of the copyright is not mandatory. A person does not become an owner of the copyright because of the registration, but because he had produced some original work. It was observed:

> "**15.** As said already, registration is not mandatory. It is only optional. The registration may give the proprietor of the copyright some benefit. He becomes the proprietor of the copyright not because of the registration. Only a person having the copyright in a work is entitled to get it registered in their name. The registrar of copyrights should be satisfied with the inquiry held by him that the person applying for registration has the copyright in the particular work. It is not the registration which confers title to the copyright in a work. Therefore, the petitioner cannot be heard to say that he cannot be prosecuted as the copyright is not registered in the name of the 3rd respondent. Thus, looking at it from any angle, registration of copyright is not necessary to initiate and proceed with a prosecution under section 63. No provision in the Copyright Act is in aid of the contention of the petitioner that he cannot be prosecuted without registration of the copyright."

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35. Therefore, the submission that the complaint is not maintainable in the absence of registration is not acceptable.

36. It was submitted that civil remedies are available for the infringement of copyright. A complaint can be made to the Indian Council of Medical Research (ICMR), and the filing of the complaint with the police is not justified in the present case. This submission is only stated to be rejected. Merely because the alternative remedy is available will not take away the applicability of the criminal law. The infringement of the copyright can give rise to a civil remedy and a criminal remedy, and there is no bar to pursuing the two remedies. It was laid down by the Hon'ble Supreme Court in ***Trisuns Chemical Industry v. Rajesh Agarwal, (1999) 8 SCC 686: 2000 SCC (Cri) 47*** that the availability of the remedy of arbitration is no ground to quash the criminal proceedings. It was observed at page 690:

> "*9*. We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring the disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording relief to the party affected by a breach of the agreement, but the arbitrator cannot conduct a trial of any act which amounted to an offence, albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe

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> down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases as indicated in ***State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426***]."

37. Hence, the availability of the alternative remedy will not help the petitioner.

38. It was submitted that the Court cannot look into the documents annexed to the petition. There is no dispute with this proposition of law, and this Court has already held in ***Saurabh Bhardwaj*** (supra) that only the documents filed with the complaint or charge sheet can be looked into while deciding the petition.

39. The State has filed a reply asserting that the investigation is being conducted in the present matter. Therefore, it is premature to quash the FIR. It was held in ***Minu Kumari v. State of Bihar*, *(2006) 4 SCC 359: (2006) 2 SCC (Cri) 310: 2006 SCC OnLine SC 417*** that the High Court should refrain from giving a *prima facie* opinion when the facts are hazy and the evidence has not been collected. It was observed at page 366:

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> **"20.** As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide, and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in the exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. [See ***Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305: 1993 SCC (Cri) 36] and Raghubir Saran (Dr.) v. State of Bihar [(1964) 2 SCR 336: AIR 1964 SC 1: (1964) 1 Cri LJ 1]***.]

40. In the present case, the allegations in the FIR make out a *prima facie* cognizable offence, and the FIR cannot be quashed.

41. It was submitted that the FIR was lodged with a *mala fide* intention. There is a dispute between the informant and her husband-Amit Lakhani, and the petitioner has been made a scapegoat. This submission will not help the petitioner. It was laid down by the Hon'ble Supreme Court in ***Ramveer Upadhyay v. State of U.P., 2022 SCC OnLine SC 484,*** that a complaint cannot be quashed because it was initiated due to enmity. It was observed:

"30. The fact that the complaint may have been initiated because of a political vendetta is not in itself grounds for quashing the criminal proceedings, as observed by Bhagwati, CJ in ***Sheonandan Paswan v. State of Bihar (1987) 1 SCC 2884***. It is a well-established proposition of law that a criminal prosecution, if otherwise justified and based upon adequate evidence, does not become vitiated on account of mala fides or political vendetta of the first informant or complainant. Though the view of Bhagwati, CJ in ***Sheonandan Paswan*** (supra) was the minority view, there was no difference of opinion with regard to this finding. To quote Krishna Iyer, J., in ***State of Punjab v. Gurdial Singh (1980) 2 SCC 471***, "If the use of power is for the fulfilment of a legitimate object, the actuation or catalysation by malice is not legicidal."

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39. In our considered opinion, criminal proceedings cannot be nipped in the bud by the exercise of jurisdiction under Section 482 of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such a possibility would not justify interference under Section 482 of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after the closure of the earlier criminal case, cannot be ruled out. The allegations in the complaint constitute an offence under the Atrocities Act. Whether the allegations are true or untrue would have to be decided in the trial. In the exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence. The Complaint Case No. 19/2018 is not such a case which should be quashed at the inception itself

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> without further Trial. The High Court rightly dismissed the application under Section 482 of the Cr.P.C."

42. Therefore, it is impermissible to quash the FIR on the ground of *mala fide*.

43. In view of the above, the present petition fails and the same is dismissed.

44. The observations made herein before shall remain confined to the disposal of the petition and will have no bearing, whatsoever, on the merits of the case.

(*Rakesh* Kainthla)
Judge

26th June 2025
(*saurav pathania*)