* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved On: 16th June, 2020
Pronounced on: 22nd June, 2020

\+ CRL.M.A. No. 7661/2020 in W.P. (CRL.) 921/2020

GANGA RAM HOSPITAL ... Petitioner

Through: Mr. R. S. Suri and Mr. Siddharth Luthra, Sr. Advs with Mr. Rohit K Aggarwal and Ms. Gunjan Sinha Jain, Advs. along with Dr. (Brig.) S. Katosh (Medical Superintendent)

Versus

STATE ... Respondent

Through: Mr. Rahul Mehra, Sr. Standing Counsel (Crl.) with Mr. Rajesh Mahajan, ASC (Crl.) and Mr. Chaitanya Gosain, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

% **J U D G M E N T**
22.06.2020

Crl. M. A. 7661/2020 (for stay)

1. By the present application, the petitioner-applicant seeks interim stay of all proceedings consequent on FIR No 0133, dated 5th June, 2020, registered at PS Rajinder Nagar against the applicant. The

FIR alleges commission of offence, by the applicant, under Section 188 of the Indian Penal Code, 1860 (IPC). The complainant is "Amit Kumar Pamasi (C/O) Dy Secretary Health", and the applicant is the accused. The FIR (to the extent it is relevant) reads thus:

> "Sub: Request for filing FIR under Section 188 IPC. Sir This has reference to this department order No F. 2/08/2020/S.I/118 dated 30.04.2020 of order no. F. 52/DGHS/PH-IV/COVID-19/2020 prsecyhfw/6922-7022 dated 06.05.2020 of H & FW Department regarding guidelines for tracking and monitoring of every COVID-19 suspected cases tested in various accredited labs across Delhi wherein it was mandatory for the labs to collect sample only through RT-PCR App. Further, CDMO cum Mission Director, Central vide order dated 03.06.2020 has mentioned that Sir Ganga Ram Hospital is still not using the RT-PCR app even today i.e. 03.06.2020 which is a clear violation of direction issued under the Epidemic Disease, COVID-19 regulation, 2020 issued under The epidemic Diseases Act, 1897. In view of violation of orders of this department, it is requested to file an FIR under sections 188 IPC against Medical Superintendent, Sir Ganga Ram Hospital and informed accordingly to this department. This issues with prior approval of competent authority."

History

2. In exercise of the powers conferred by Sections 2, 3 and 4 of the Epidemic Diseases Act, 1897, the Hon'ble Lieutenant Governor of Delhi issued Notification, dated 12th March, 2020, notifying the Delhi Epidemic Diseases, COVID-19 Regulations, 2020 (hereinafter referred to as "the 2020 COVID Regulations"). The directives, contained in the said Regulations, are to be found in Regulations 4 to 17 thereof, which read thus:

> "4. All Hospitals (Government & Private) should have Flu corners for screening , of suspected cases COVID-19 (Corona Virus Disease 2019).
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> *****
>
> 17. With the concurrence of Health & Family Welfare Department of Govt of NCT of Delhi, District: Disaster Management Committee headed by District Magistrate IS authorized for planning strategy regarding containment measures for COVID-19 in their respective districts. The District Magistrate may co opt more officers from different departments for District Disaster Management Committee for this activity under these regulations."

3. Prior to the issuance of the Orders dated 30th April, 2020 and 6th May, 2020, by the DGHS, GNCTD – of which the impugned FIR alleges disobedience – guidelines, for COVID-19 testing were being issued, from time to time, by the ICMR. The petitioner has placed, on record, the Guidelines issued, by the ICMR, on 17th March, 2020, 20th March, 2020, 9th April, 2020 and 18th May, 2020. A reading thereof reveals that it was only in the Guidelines, dated 18th May, 2020, that a specific requirement was incorporated, to the effect that all testing of COVID-19 suspected cases, whether symptomatic or symptomatic, were to be conducted "by real-time RT-PCR test only".

4. Prior thereto, the petitioner asserts that a Specimen Referral Form (SRF) had been issued by the ICMR, which was required to be filled in, by the concerned labs, and transmitted, for communication, to the local/District/state health authorities. The said SRF, at a plain glance, is exhaustive, and contains all details, regarding the past history of the person being tested, his, or her, exposure history, clinical symptoms and signs, underlying medical conditions, and

hospital treatment and investigation, if any. This form was also modified, from time to time, incorporating further details, such as the details of the referring doctor, "patient category", and the like.

5. On 20th April, 2020, the Health and Family Welfare Department, GNCTD issued Order No F.51/DGHS/PH-IV/COVID-19/2020/M/prsecyhfw/5259-5303, informing that the GNCTD had created a COVID App, in which all Government/private COVID testing labs and COVID hospitals were required to fill the requisite data, to ensure proper follow-up of COVID-19 cases. The Order required all concerned government/private hospitals to get the requisite data filled on the COVID App immediately on regular basis to supplement efforts for checking the spread of COVID-19, and also directed all government/private labs to update the COVID App on regular and immediate basis, after submission of each and every sample for testing, as per the SRF.

6. On 30th April, 2020, Order No F. 2 / 08 / 2020 / S.1 / 118 was issued, by the Chief Secretary, Delhi, in his capacity as Chairperson, State Executive Committee, GNCTD. The Order expressed concern, regarding the pendency of test samples, sent by districts in hospitals, to various labs, for COVID-19 testing, multiplicity in reports, resulting in difficulties and reconciliation of the data, and assessment of the number of people getting infected with the COVID-19 virus. This, the Order recited, was hampering effective management of the COVID-19 pandemic by the GNCTD. Resultantly, the Order issued the following directions:

" a) Henceforth, the sampling and the testing data shall be at the level of supervision of District magistrates concerned in the enclosed format on a daily basis.

b) Further, the Heads of the Hospital/Institutions/testing-facilities/labs concerned shall be responsible for furnishing the requisite information to the District Magistrates of the district in which such Hospital/Institutions/testing-facilities/labs are located through the Chief District Medical Officer (CDMO) concerned.

c) Chief District Medical Officer (CDMO) of every district shall be responsible for submitting the said report to the Department of Health and Family Welfare, Govt. of NCT of Delhi on daily basis and updating the Test Report Format of the Delhi Disaster Management Authority (already shared with the Districts on April 29, 2020) by 6 PM every day.

d) District Magistrates shall ensure that correct and authentic reports are timely submitted/updated every day without fail."

7. The RT-PCR App, which forms the fulcrum of controversy in the present case, was developed by the ICMR, through the National Informatics Centre (NIC), to enable collection centres to enter the details of the SRF, while sending the swab samples to recognised labs for RT-PCR tests. Consequent thereupon, Office Order No. 174/DGHS/PHW-IV/COVID-19/RTPCR App/2020/2625-69, dated 6th May, 2020 was issued by the DGHS, GNCTD, informing that the said RT-PCR App could be downloaded from the Google store and the IOS and further directing that all lab collection and test requisitions for COVID-19 were to be processed only through the said App. With effect from 8th May, 2020, manual/physical SRFs, at collection centres, were required to be avoided. The said Office Order merits reproduction, *in extenso*, thus:

“ GOVT. OF NCT OF DELHI

DIRECTORATE GENERAL OF HEALTH SERVICES
PUBLIC HEALTH WING.IV
3rd Floor, DGD Building School Block, Shakarpur, Delhi-110092
Ph: 011-22482016, Email: idspdelhi5@gmail.com
F. No. 174/DGHS/PHW-IV/COVID-19/RTPCR App/2020/ 2625-69 dated : 06.05.2020

Office Order

To streamline the data flow of tested persons for COVID-19 an app has been developed by ICMR through NIC to enable collection centres to enter the details of Sample Reference Form (SRF), while sending the swab samples to ICMR recognized labs for RT-PCR tests.

The Government of India has launched this RT-PCR app which is available for download in google store and IOS. All lab collection and test requisition for COVID-19 are to be processed through this app only while collecting the swab sample for the test. The manual/physical sample Reference Form (SRF) at the collection centres are to be avoided; thus making the app mandatory w.e.f. 08.05.2020 onwards.

The ICMR accredited labs for COVlD-19 testing will also follow the same and will further process only the RT-PCR App received samples and may not accept the samples with the manual SRF from 08.05.2020 onwards, This will reduce the data entry at the labs and speed up results declaration. The laboratories are also directed to ensure that the tests results are reported within 24-48 hours in compliance of the WPC 3031/2020(Rakesh Malhotra Vs GNCTD & others).

The data entry initiated at the time of collection of swab for testing will enable data flow of suspect cases into the system for further action at the district Level as per the flow chart attached with this office order (Enclosure 1).

All collection centres must ensure that in the case of repeat and subsequent samples, the state unique ID communicated by IDSP should be mentioned on the SRF,

so that traceability of the sample testing of earlier positive cases of COVID-19 is ensured.

To get the above app, districts are authorized to enter the details of collection centres both public and private including the district collection teams from the containment zones. Once the details of these collection centres are entered in the portal the credential of the app will be sent to the registered phone numbers only.

The correction units are to be authorized by the DCs through their NIC login.

Once we switch to ICMR portal for the lab reports then all other efforts of testing without the RT-PCR lab will go in vain.

Further, it is also informed that the lab reports received without the address and contact details of the patients will not be accepted by the state at any cost and such reports will be reverted back to ICMR for de-recognization of the labs for COVID-19 testing. Therefore, all the collection centres are once again directed that the mobile number and the address of the patient are mandatory fields to be incorporated in the SRF, without which the exercise of collecting the sample is in vain

These fields (addresses & contact numbers) are non-negotiable as they are the foundation for surveillance and contact tracing activities for the containment of COVID.I9 pandemic."

(Emphasis in original)

8. A reading of the above Office Order reveals that the details, to be entered via the RT-PCR App, were the same as those contained in the SRF of the ICMR, and that the RT-PCR App was aimed at streamlining data flow of tested persons, reducing data entry at labs, speeding up declaration of results and enabling data flow of suspected cases into the system for further action at the district level. *Prima*

facie, the contention, in para 7.10 of the petition, that the "RT-PCR App is just an electronic (mobile) version of the physical Specimen Referral Form (SRF)" merits acceptance. Indeed, Mr. Rahul Mehra, learned Standing Counsel has not been able to demonstrate any difference, between the details contained in the SRF of the ICMR, and those required to be transmitted by the RT-PCR App.

9. On the same day, i.e. 6th May, 2020, Order No. 52/DGHS/PH-IV/COVID-19/2020/prsecyhfw/6922-7022 was issued, by the Health and Family Welfare Department, GNCTD, in exercise of the powers conferred by the Delhi Epidemic Diseases, COVID-19 Regulations, 2020 (hereinafter referred to as "the 2020 COVID Regulations"), which, in turn, were issued under the Epidemic Diseases Act, 1897 (hereinafter referred to as "the Epidemic Diseases Act"). The Order directed all COVID testing labs to adhere to the following guidelines, for effective tracking and monitoring of every COVID-19 suspected case getting tested in various accredited labs across Delhi:

"GOVERNMENT OF NATIONAL CAPITAL TERRITORY
OF DELHI
HEALTH & FAMILY WELFARE DEPARTMENT 9rn
LEVEL, A-WING, DELHI SECRETARIAT, IP ESTATE,
NEW DELHI - 110 002
Ph: 011-23392017, Fax 011-23392464, email:
pshealth@nic.in
No. 52/DGHS/PH-IV/COVID-
19/2020/prsecyhfw/6922-7022 Date: 06/05/2020

ORDER

In exercise of the powers conferred by the (Delhi Epidemic Diseases, COVID-19. regulations 2020 issued under the Epidemic Diseases Act, 1897, all COVID testing labs are

directed to follow the below mentioned guidelines for effective testing and monitoring of every COVID 19 suspected case getting tested at various accredited labs across Delhi:

1. Sample should only be collected by ICMR accredited labs for COVID-l9 testing;

2. All the pending samples with labs, as on 6.5.2020 must be processed within 24 hours, i.e. by 1pm of 7/5/2020.

3. From 7/5/2020, reports of all samples collected must be given within 24 hours and not later than 48 hours, in any case.

4. It is mandatory for all accredited labs to use RTPCR App for sample collection and they must ensure that all requisite details are duly filled in RTPCR app;

5. With effect from 8/5/2020, manual Sample Requisition Form (SRF) should not be accepted RT-PCR app filled samples only should be accepted;

6. The collection centres in Delhi shall fill the SRF in RT-PCR app only, else their samples would not be accepted by the labs.

7. NO labs shall collect samples more than 10% of its capacity, as overcrowding of samples lead to inordinate delays;

8. Labs must update total number of pending samples everyday by 6.00 pm, without fail at idsplabreporting@gmail.com

The above guidelines also include directions of Hon'ble High Court, Delhi dated 04.05.2020 in WP (C) 3031/2020 and CM No. 10549/2020 & 10550/2020. Non compliance of the orders will be viewed seriously and action will be taken immediately as per the provisions of the Delhi Epidemic Diseases, COVID-19 regulations, 2020 and other Rules and regulations in this regard. "

The Order also warned that non-compliance, with the above directions, would invite action, against the defaulting lab, as per the provisions of the 2020 COVID Regulations, and other Rules and Regulations applicable in that regard.

10. This was followed by a Corrigendum, dated 7th May, 2020, issued by the Nursing Home Cell of the Directorate General of Health Services, GNCTD (DGHS) which, *inter alia*, reiterated that, from that date onwards, no manual Sample Requisition Form (SRF) would be accepted, and the concerned private lab would receive samples only after confirming that the details had been entered on the RT-PCR app. The instructions contained in the said Corrigendum were to be found in a Note, appended towards the end thereof, which may be reproduced thus:

> "Note:
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> 1. The samples collected at Delhi Government COVID-19 designated hospitals/CHC/CIC/CTC and by O/o Chief District Medical Officer shall be labelled and packed in transport container provided by the Lab having requisite temperature as per protocol.
>
> 2. The collection centres/teams in Delhi shall fill details on RT-PCR app only.
>
> 3. Henceforth, no manual Sample Requisition From (SRF) shall be accepted.
>
> 4. The runner of the designated private Lab shall receive the sample(S) only after confirming that the details have been filled on RT-PCR app. He shall give a receipt of the number of samples being transported.

5. The designated private Labs shall send the report within 24 hours, but not later than 48 hours in any case, on E-mail ID: idsplabreportig@gmail.com

6. The bills along with copy of the Form ID(s) and report of the test(s) shall be submitted by the private Labs to O/o CDMO-cum-Mission Director / Director / Medical Director / Medical Superintendent of the hospital from where the requisition for COVID-19 test has been made for payment purposes in a weekly basis.

7. In case the designated private lab of Districts at S.Nos. 4 to 11 does not receive the sample or has informed that it has already reached its maximum capacity, the sample may be sent to Dr. Lal Path labs after consultation with the Nodal Person of the said Lab regarding available capacity.

8. All samples collected by Private Labs from a public facility shall ensure that the reports are submitted timely i.e. within 24 hours, but not later than 48 hours, failing which the payment for sample(s) tested will not be made.

9. No Labs shall collect sample more than 10% of its declared capacity, as overcrowding of samples leads to inordinate delays."

11. On 2nd June, 2020, a Show Cause Notice was issued, to the petitioner, by the Health and Family Welfare Department, GNCTD. The allegation, in the said Show Cause Notice, is not of particular relevance to the present case, dealing, as it did, with following of the ICMR Testing protocol for testing of asymptomatic patients. However, it was acknowledged, in the said Show Cause Notice, that the petitioner had been submitting daily reports, with regard to testing and results of samples, tested for COVID-19 infection, to the respondent.

12. On 3rd June, 2020, Order No F.50 (1) /PART FILE-III / 2020 / IDSP / CDMO / CENTRAL: 181 was issued, by the DGHS, observing that, in apparent disobedience of the aforenoted Office Order, dated 6th May, 2020, issued by the DGHS, proscribing use of manual/physical SRFs at sample collection centres with effect from 8th May, 2020, and usage, instead, of the RT-PCR App, the petitioner was still not using the said App. In view thereof, the petitioner was directed to explain, within two days, why it had not started using the RT-PCR App. The petitioner was also directed to stop RT-PCR sampling of COVID-19 suspects/contact cases, with immediate effect.

13. On the very same day, i.e. 3rd June, 2020, the Health and Family Welfare Department, GNCTD issued another Order No 52/DGHS/PH-IV/COVID-19/2020/prsecyhfw/9985-10040, directing the petitioner-Hospital, *inter alia*, to reserve 80% of its total bed strength for COVID-19 cases, of which 51 beds were to be reserved for Economically Weaker Section (EWS) category patients, who were to be treated free. 20% of the beds, in the petitioner-Hospital, were allowed to be reserved for treating non-COVID patients.

14. The petitioner has expressed chagrin, in the petition, at the fact that, on the very same day, the Health and Family Welfare Department of the GNCTD, directed the petitioner to reserve 80% of its beds for treating COVID-19 patients and, practically in the same breath, directed it to stop RT-PCR sampling of COVID-19 suspects/contact cases. There does appear to be some contradiction in

these orders; however, that is not, really, subject matter of controversy before me in the present case.

15. On 4th June, 2020, the petitioner responded to the aforesaid communications, dated 2nd June, 2020 and 3rd June, 2020, addressed, to it, by the Health and Family Welfare Department, GNCTD. Apropos the non-compliance, by it, with the requirement of using the RT-PCR App, it was submitted, in para 9 of the said communication, thus:

> "Meanwhile vide DGHS F. No. 174/DGHS/PHW-IV/COVID-19/RPTCT App/2020/2625-69 dated 06 May 20 RT PCR App was introduced which was required to be adopted by all hospitals. The very next day the Nodal Officer Sir Ganga Ram Hospital sought the User ID and the Password for the RT PCR Application and also requested for a Data Entry Operator from IDSP which was denied due to the prevailing Lockdown situation the very reason why IDSP was approached in the first place as this hospital too was affected by the lockdown and band of movement across the borders of Delhi as majority of our staff stay in Noida, Ghaziabad, Gurugram and Faridabad. The undersigned, therefore, approached the office of the Chief Minister for a Data Entry Operator and was promised one from the Education Department which also did not materialise. With concerted efforts one data entry operator has been hired the details of which are ready to be shared with CDMO who has been contacted. Meanwhile in a unilateral decision vide CDMO letter dated 03 June 20, RT-PCR sampling has been stopped and Registration of Sir Ganga Ram Hospital for the RT-PCR application denied, even when reporting was done within 24 hours of sampling, and no pending sufferers of 02 June remained on 03 June."

16. On 4th June, 2020, the petitioner responded to the Show Cause Notice, dated 2nd June, 2020 *supra*, in which it was averred that personnel had been identified, by it, for registration for the RT-PCR

App, and permission had been sought, but had not been granted by the GNCTD. On the next day, the petitioner addressed another communication, to the IDHS, regretting its lapse in obtaining timely registration for the RT-PCR App, which, it is submitted, was owing to a communication gap and work pressure. The petitioner informed, further, that it had identified a Data Entry Operator, for registration of the RT-PCR App, as well as nine phlebotomists, whose details were annexed. Once the Data Entry Operator was registered, the petitioner undertook to enter all past entries in the RT-PCR App and to ensure compliance, with the said requirement, in future.

17. On the very same day, i.e. 5th June, 2020, the impugned FIR came to be registered, against the petitioner, at PS Rajinder Nagar, by Amit Kumar Pamasi, from the office of the Deputy Secretary, Health, GNCTD, alleging commission of offence, by the petitioner, under Section 188 of the IPC. For ready reference, Section 188 of the IPC is reproduced, thus:

> "**188. Disobedience to order duly promulgated by public servant. –**
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> Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,
>
> shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one

month or with fine which may extend to two hundred rupees, or with both;

and, if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to 6 months, or with fine which may extend to one thousand rupees, or with both.

Explanation. – It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm."

18. By the present petition, the petitioner prays that the aforesaid FIR, dated 5th June, 2020, be quashed. Prayer b), in the writ petition, for issuance of an appropriate writ, quashing and setting aside the Order, dated 3rd June, 2020 *supra*, whereby the petitioner has been prohibited from conducting RT-PCR sampling for COVID-19 suspects/contact cases, has become infructuous, as the said order has been withdrawn and the petitioner has been permitted to conduct sampling.

19. Notice already stands issued in the writ petition. By the present order, I am disposing of Crl.M.A. 7661/2020, whereby stay of proceedings, consequent upon the impugned FIR, dated 5th June, 2020, has been sought.

Rival submissions and Analysis

20. I have heard, at exhaustive length, Mr. R. S. Suri and Mr. Sidharth Luthra, learned Senior Counsel for the petitioner, and Mr. Rahul Mehra, learned Senior Standing Counsel (Criminal), for the GNCTD/State.

21. Mr Suri and Mr Luthra, arguing for the petitioner, have, essentially, predicated their case on three premises, viz.

(i) that Section 195, read with Section 2(d), of the Cr PC, prohibited registration of an FIR in the case of commission of an alleged offence under Section 188 of the IPC,

(ii) that the recitals in the FIR did not disclose the commission of any cognizable offence, least of all under Section 188, IPC, the requisite ingredients of the said offence being absent, and

(iii) that, as the offence, if any, was trivial, Section 95 of the IPC, too, operated to justify interdiction of the investigation.

22. Mr Rahul Mehra, *per contra*, stressed on the inadvisability of High Courts interfering with the investigative process, consequent on registration of an FIR, save and except in the rarest of cases. He also characterized the reliance, by learned Senior Counsel for the petitioner, on Section 195 of the Cr PC, as totally misguided, as Section 195 came in for application only at the stage of taking of cognizance by the competent criminal court, and not at the stage of registration of an FIR. Finally, Mr Mehra submitted that, as public health and life were involved, the offence could not be considered, by

the farthest stretch of imagination, as "trivial" and that, therefore, Section 95 of the IPC had no application.

23. What is the scope of interference, by the High Court, with investigation, consequent to registration of an FIR? Can any interlocutory injunction, staying such investigation, be granted? These, undoubtedly, are the pivotal issues, on the basis whereof the prayer of the petitioner, for grant of *ad interim* stay, would be required to be appreciated.

24. ***Imtiyaz Ahmed v. State of U.P.***[1] is an oft-quoted judgement, on the issue of the power of the High Court, to stay investigation, consequent to registration of an FIR. The Supreme Court was, in the said case, seized with a challenge, to various interlocutory orders, passed by the High Court of Allahabad, in a case, staying investigation, consequent to registration of FIR, after which the matter remained pending, in the High Court, for a long period of time. This seriously impacted the investigative process, and compelled the complainant, before the court below, to approach the Supreme Court. After generally discussing, with statistics, the malady of criminal cases remaining pending, in High Courts, for long periods of time after grant of stay of investigation, the Supreme Court proceeded, in para 55 of the report, to issue certain directions, to High Courts, "for better maintenance of the rule of law and better administration of justice". These directions, having been issued by the Supreme Court,

[1] **(2012) 2 SCC 688**

are, naturally, binding on all High Courts. Para 55 of the report may be reproduced, thus:

> "Certain directions are given to the High Courts for better maintenance of the rule of law and better administration of justice:
>
> > While analysing the data in aggregated form, this Court cannot overlook the most important factor in the administration of justice. The authority of the High Court to order stay of investigation pursuant to lodging of FIR, or trial in deserving cases is unquestionable. But this Court is of the view that the exercise of this authority carries with it the responsibility to expeditiously dispose of the case. The power to grant stay of investigation and trial is a very extraordinary power given to the High Courts and the same power is to be exercised sparingly only to prevent an abuse of the process and to promote the ends of justice. It is therefore clear that:
> >
> > > (i) Such an extraordinary power has to be exercised with due caution and circumspection.
> > >
> > > (ii) Once such a power is exercised, the High Court should not lose sight of the case where it has exercised its extraordinary power of staying investigation and trial.
> > >
> > > (iii) The High Court should make it a point of finally disposing of such proceedings as early as possible but preferably within six months from the date the stay order is issued."

25. ***Imtiyaz Ahmed***[1] was followed, much more recently, by a bench of three Hon'ble Judges of the Supreme Court, in ***Asian Resurfacing of Road Agency Pvt Ltd v. C.B.I.***[2] This decision, again, addressed, specifically, the issue of grant of stay, by the High Court, in criminal

[2] **(2018) 16 SCC 299**

cases, and followed, with approval, the principles enunciated in ***Imtiyaz Ahmed***[1]. The following observations, contained in paras 30 to 32, and 36, of the report, are relevant:

> "**30.** It is well accepted that delay in a criminal trial, particularly in the PC Act cases, has deleterious effect on the administration of justice in which the society has a vital interest. Delay in trials affects the faith in Rule of Law and efficacy of the legal system. It affects social welfare and development. *Even in civil or tax cases it has been laid down that power to grant stay has to be exercised with restraint. Mere prima facie case is not enough. Party seeking stay must be put to terms and stay should not be an incentive to delay. The order granting stay must show application of mind. The power to grant stay is coupled with accountability.* ***[Siliguri Municipality v. Amalendu Das, (1984) 2 SCC 436, para 4; CCE v. Dunlop India Ltd., (1985) 1 SCC 260, para; State (UT of Pondicherry) v. P.V. Suresh, (1994) 2 SCC 70, para 15 and State of W.B. v. Calcutta Hardware Stores, (1986) 2 SCC 203, para 5]***
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> 31. Wherever stay is granted, a speaking order must be passed showing that the case was of exceptional nature and delay on account of stay will not prejudice the interest of speedy trial in a corruption case. Once stay is granted, proceedings should not be adjourned, and concluded within two-three months.
>
> **32.** The wisdom of the legislature and the object of final and expeditious disposal of a criminal proceeding cannot be ignored. In exercise of its power the High Court is to balance the freedom of an individual on the one hand and security of the society on the other. Only in case of patent illegality or want of jurisdiction the High Court may exercise its jurisdiction. *The acknowledged experience is that where challenge to an order framing charge is entertained, the matter remains pending for long time which defeats the interest of justice.*
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> *****

> **36.** In view of the above, *situation of proceedings remaining pending for long on account of stay needs to be remedied. Remedy is required not only for corruption cases but for all civil and criminal cases where on account of stay, civil and criminal proceedings are held up.* At times, proceedings are adjourned *sine die* on account of stay. Even after stay is vacated, intimation is not received and proceedings are not taken up. In an attempt to remedy this situation, *we consider it appropriate to direct that in all pending cases where stay against proceedings of a civil or criminal trial is operating, the same will come to an end on expiry of six months from today unless in an exceptional case by a speaking order such stay is extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay was more important than having the trial finalised. The trial court where order of stay of civil or criminal proceedings is produced, may fix a date not beyond six months of the order of stay so that on expiry of period of stay, proceedings can commence unless order of extension of stay is produced*."
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> (Emphasis supplied)

26. The afore-extracted passages reveals that the Supreme Court was concerned, principally – and, no doubt, justifiably – by the protraction of criminal proceedings, after grant of stay, resulting in frustrating of the cause of criminal justice. In the light of the decisions in ***Imtiyaz Ahmed***[1] and ***Asian Resurfacing of Road Agency Pvt. Ltd.***[2], while the authority, of the High Court, to stay criminal proceedings, in an appropriate case, cannot be gainsaid, such authority is to be exercised only on rare occasions, and, while so exercising such authority, the High Court is to remain alive to the necessity of

expeditious conclusion of criminal proceedings, and to take steps towards that end.

27. The governing principles, for grant of injunctions, nevertheless, remain the same, whether the *lis* be civil or criminal, i.e. the existence of a *prima facie* case, the balance of convenience being in favour of grant of injunction, and the likelihood of irreparable loss, or prejudice, resulting, were injunction not to be granted[3]. To these, who the decisions in ***Ramniklal N. Bhutta v. State of Maharashtra***[4] and ***Raunaq International Ltd v. I.V.R. Construction Ltd***[5] have added a fourth, namely public interest. Indeed, this fourth consideration may even, to an extent, predominate over the earlier three, in view of the principle, fossilised in jurisprudence worldwide, that public interest always outweighs private interest.

28. Where, however, the case is at the stage of investigation, the jurisdiction of the High Court – or of any court – to interdict the investigation at any interlocutory stage, remains heavily circumscribed, and the decisions, cited by Mr. Rahul Mehra, in this context, are undoubtedly relevant. I proceed, therefore, to examine the said decisions.

29. ***Sanapareddy Maheedhar Seshagiri v State of A.P.***[6] **–** on which, *inter alia*, Mr. Rahul Mehra relied **–** referred, exhaustively, to the

[3] **State of Mizoram v. Pooja Fortune Pvt Ltd, 2019 SCC OnLine 1741** being the most recent decision on the point
[4] **(1997) 1 SCC 134**
[5] **(1999) 1 SCC 492**
[6] **(2007) 13 SCC 165**

earlier pronouncements in ***R. P. Kapur v State of Punjab***[7], ***State of Haryana v. Bhajan Lal***[8] and ***Zandu Pharmaceutical Works Ltd v. Mohd Sharaful Haque***[9] and, on the basis thereof, culled out its own definitive principles. Paras 26 to 31 of the report merit reproduction, *in extenso*, thus:

> "26. At this stage, we may also notice the parameters laid down by this Court for exercise of power by the High Court under Section 482 Cr PC to give effect to any order made under Cr PC or to prevent abuse of the process of any court or otherwise to secure the ends of justice. In ***R.P. Kapur v. State of Punjab, AIR 1960 SC 866***, this Court considered the question whether in exercise of its power under Section 561-A of the Code of Criminal Procedure, 1898 (Section 482 Cr PC is pari materia with Section 561-A of the 1898 Code), the High Court could quash criminal case registered against the appellant who along with his mother-in-law was accused of committing offences under Sections 420, 109, 114 and 120-B of the Penal Code. The appellant unsuccessfully filed a petition in the Punjab High Court for quashing the investigation of the first information report (FIR) registered against him and then filed appeal before this Court. While confirming the High Court's order this Court laid down the following proposition: (AIR p. 866)
>
> > "The inherent power of the High Court under Section 561-A Cr PC cannot be exercised in regard to matters specifically covered by the other provisions of the Code. *The inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice.* Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. *It*

[7] **AIR 1960 SC 866**
[8] **1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426**
[9] **(2005) 1 SCC 122 : 2005 SCC (Cri) 283**

is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction."

27. *This Court then carved out some exceptions to the abovestated rule. These are:* (***R.P. Kapur case [AIR 1960 SC 866] , AIR p. 866)***

"(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.

(ii) *Where the allegations in the first information report 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.*

(iii) Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases 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 manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained."

28. In ***State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426]*** this Court considered the scope of the High Court's power under Section 482 Cr PC and Article 226 of the Constitution to quash FIR registered against the respondent, referred to several judicial precedents including those of ***R.P. Kapur v. State of Punjab [AIR 1960 SC 866]***, ***State of Bihar v. J.A.C. Saldanha [(1980) 1 SCC 554 : 1980 SCC (Cri) 272]*** and ***State of W.B. v. Swapan Kumar Guha [(1982) 1 SCC 561 : 1982 SCC (Cri) 283]*** and held that the High Court should not embark upon an enquiry into the merits and demerits of the allegations and quash the proceedings without allowing the investigating agency to complete its task. At the same time, *the Court identified the following cases in which FIR or complaint can be quashed*: (***Bhajan Lal case [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , SCC pp. 378-79, para 102***)

> "102.(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> (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 Act concerned (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 Act concerned, providing efficacious redress for the grievance of the aggrieved party.

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

29. The ratio of ***Bhajan Lal case [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426]*** has been consistently followed in the subsequent judgments. In ***Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283]*** this Court referred to a large number of precedents on the subject and observed: (SCC pp. 129-30, para 11)

"11. … 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. Court must be careful to see that its decision in 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. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premise arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings."

In the aforementioned judgment, this Court set aside the order of the Patna High Court and quashed the summons issued by the First Class Judicial Magistrate in Complaint Case No. 1613 (C) of 2002 on the ground that the same was barred by limitation prescribed under Section 468(2) Cr PC.

30. In ***Ramesh Chandra Sinha case [(2003) 7 SCC 254 : 2003 SCC (Cri) 1613]*** this Court quashed the decision of the

Chief Judicial Magistrate, Patna to take cognizance of the offence allegedly committed by the appellants by observing that the same was barred by time and there were no valid grounds to extend the period of limitation by invoking Section 473 Cr PC.

31. A careful reading of the abovenoted judgments makes it clear that the High Court should be extremely cautious and slow to interfere with the investigation and/or trial of criminal cases and should not stall the investigation and/or prosecution except *when it is convinced beyond any manner of doubt that FIR does not disclose commission of any offence or that the allegations contained in FIR do not constitute any cognizable offence* or that the prosecution is barred by law or the High Court is convinced that it is necessary to interfere to prevent abuse of the process of the Court. In dealing with such cases, the High Court has to bear in mind that judicial intervention at the threshold of the legal process initiated against a person accused of committing offence is highly detrimental to the larger public and societal interest. The people and the society have a legitimate expectation that those committing offences either against an individual or the society are expeditiously brought to trial and, if found guilty, adequately punished. Therefore, while deciding a petition filed for quashing FIR or complaint or restraining the competent authority from investigating the allegations contained in FIR or complaint or for stalling the trial of the case, the High Court should be extremely careful and circumspect. *If the allegations contained in FIR or complaint disclose commission of some crime, then the High Court must keep its hands off and allow the investigating agency to complete the investigation without any fetter and also refrain from passing order which may impede the trial.* The High Court should not go into the merits and demerits of the allegations simply because the petitioner alleges *malus animus* against the author of FIR or the complainant. The High Court must also refrain from making imaginary journey in the realm of possible harassment which may be caused to the petitioner on account of investigation of FIR or complaint. Such a course will result in miscarriage of justice and would encourage those accused of committing crimes to repeat the same. However, *if the High Court is satisfied that the complaint does not disclose commission of any offence or prosecution is barred by limitation or that the proceedings of criminal case would result in failure of justice,*

then it may exercise inherent power under Section 482 Cr PC."

(Emphasis supplied)

30. ***State of A. P. v. Golconda Linga Swamy***[10] expressed much the same sentiment, in the following passage (which was reproduced, and followed, in ***State of A. P. v. Bajjoori Kanthaiah***[11]):

"**5.** Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely: (i) to give effect to an order under the Code, (ii) *to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction.* No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess in the absence of any express provision, as inherent in their constitution, all such powers *as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alique concedit, conceditur et id sine quo res ipsa esse non potest (when the law gives a person anything, it gives him that without which it cannot exist).* While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. *It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone*

[10] **(2004) 6 SCC 522**
[11] **(2009) 1 SCC 114**

> *courts exist*. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. *It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In 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 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."*
>
> (Emphasis supplied)

Golconda Linga Swamy[10] – and, consequently, ***Bajjoori Kanthaiah***[11] – also went on to cite, with approval, ***R. P. Kapur***[7] and ***Bhajan Lal***[8].

31. ***M. N. Ojha v. Alok Kumar Srivastav***[12], on which, too, Mr. Rahul Mehra placed reliance, was a case in which the challenge was to the order, of the learned Judicial Magistrate, summoning the accused in an FIR. The Supreme Court held, on facts, that the FIR was a mischievous attempt to harass and persecute the persons accused therein (i.e. the appellants before the Supreme Court) and that, without examining the facts, the learned Judicial Magistrate erred in summoning the accused. That, therefore, was a case in which, in fact, the Supreme Court quashed the proceedings. Mr. Mehra sought to place reliance, on certain observations, contained in para 30 of the

[12] **(2009) 9 SCC 682**

report, to the effect that interference, by the High Court, with criminal proceedings, under Section 482 of the Cr PC, was permissible only where a clear case, for such interference was made out, and that frequent and uncalled for interference, at the preliminary stage of investigation, could result in causing obstruction in progress of the enquiry in a criminal case, which may not be in public interest. There can be no cavil with these propositions. Interestingly, the Supreme Court, in the said decision, relied on a passage from ***Pepsi Foods Ltd v. Special Judicial Magistrate***[13] , in which it was specifically held that criminal law could not be set into motion as a matter of course.

32. Mr. Rahul Mehra also placed reliance on ***D. Venkatasubramaniam v M.K. Mohan Krishnamachari***[14]. The Supreme Court ruled, in the said decision, on three aspects, viz. (i) the power of the High Court to interfere with the investigative process, consequent to the lodging of FIR or filing of a criminal complaint, (ii) the right, of the Police authorities, to investigate into the commission of an alleged cognizable offence, and the exclusive province, reserved, to them, in that regard and (iii) the jurisdiction, of the High Court, to issue directions, regarding the manner in which the investigation was to proceed. Regarding (ii) and (iii), which are fundamentally interlinked, the Supreme Court held that the High Court could not monitor the manner in which the investigation was to proceed, investigation being a matter within the exclusive province of the Police authorities. There can be no gainsaying this proposition which is not, however, particularly relevant to the case at hand, as the

[13] **(1998) 5 SCC 749 : 1998 SCC (Cri) 1400**
[14] **(2009) 10 SCC 488**

petitioner does not seek any directions, regarding the manner in which the Police is to investigate into the impugned FIR, nor does this Court intend to pass any such directions. The emphasis, placed by Mr. Rahul Mehra, on the autonomy of Police authorities, in the matter of investigation, and the desirability of courts abstaining from directing the manner in which the investigation is to be undertaken, is, therefore, not really relevant to the controversy in issue.

33. Insofar as aspect (i), is concerned, the judgement in ***D. Venkatasubramaniam***[14] observes, and holds, thus, relying on the judgement of the Privy Council in ***King Emperor v. Khwaja Nazir Ahmad***[15]***:***

> "**2.** It is well settled and this Court time and again reiterated that the police authorities have the statutory right and duty to investigate into a cognizable offence under the scheme of Code of Criminal Procedure (for short "the Code"). This Court, on more than one occasion, decried uncalled for interference by the courts into the domain of investigation of crimes by police in discharge of their statutory functions. The principle has been succinctly stated way back in ***King Emperor v. Khwaja Nazir Ahmad [(1943-44) 71 IA 203 : AIR 1945 PC 18]*** and the same has been repeatedly quoted with respect and approval.
>
> **3.** The Privy Council observed that: (***Khwaja Nazir Ahmad case [(1943-44) 71 IA 203 : AIR 1945 PC 18] , IA p. 212***)
>
> > "… Just as it is essential that every one accused of a crime should have free access to a court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province

[15] **AIR 1945 PC 18 : (1943-44) 71 IA 203**

and into which the law imposes on them the duty of inquiry."

4. The Privy Council further observed: (***Khwaja Nazir Ahmad case [(1943-44) 71 IA 203 : AIR 1945 PC 18] , IA pp. 212-13)***

> "… In India, as has been shown, there is 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, and it would, as Their Lordships think, *be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the court*. 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 Section 491, Criminal Procedure Code 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 Section 561-A 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 possesses 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."
>
> (emphasis supplied)

5. In ***State of W.B. v. S.N. Basak [AIR 1963 SC 447 : (1963) 2 SCR 52]*** a Division Bench of three Judges of this Court, while referring to the observations of the Privy Council referred to hereinabove, observed: (AIR p. 448, para 3)

> "3. … With this interpretation, which has been put on the statutory duties and powers of the police and of the powers of the Court, we are in accord."

and it was further held: (AIR p. 448, para 3)

> "3. … The powers of investigation into cognizable offences are contained in Chapter XIV of the Code of Criminal Procedure. Section 154 which is in that Chapter deals with information in cognizable offences and Section 156 with investigation into such offences and under these sections the police has the statutory right to investigate into the circumstances of any alleged cognizable offence … and this statutory power of the police to investigate cannot be interfered with by the exercise of power under Section 439 or under the inherent power of the court under Section 561-A of the Criminal Procedure Code."

This Court, having found that the High Court had exceeded its jurisdiction in interfering with the investigation, interfered with the orders of the High Court by allowing the appeal preferred by the State.

6. In ***State of Bihar v. J.A.C. Saldanha [(1980) 1 SCC 554 : 1980 SCC (Cri) 272 : (1980) 2 SCR 16]*** , a three-Judge Bench, speaking through Desai, J., after referring the precedents including ***Khwaja Nazir Ahmad [(1943-44) 71 IA 203 : AIR 1945 PC 18]*** , held:

> "25. There is a clear-cut and well demarcated sphere of activity in the field of crime detection and crime punishment. 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. Once it investigates and finds an offence having been committed it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits

> report to the Court requesting the Court to take cognizance of the offence under Section 190 of the Code its duty comes to an end. On a cognizance of the offence being taken by the Court the police function of investigation comes to an end subject to the provision contained in Section 173(8), there commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime by the police in its report to the Court, and to award adequate punishment according to law for the offence proved to the satisfaction of the Court. There is thus a well-defined and well-demarcated function in the field of crime detection and its subsequent adjudication between the police and the Magistrate. This has been recognised way back in King Emperor v. Khwaja Nazir Ahmad [(1943-44) 71 IA 203 : AIR 1945 PC 18] ….
>
> *****
>
> 26. This view of the Judicial Committee clearly demarcates the functions of the executive and the judiciary in the field of detection of crime and its subsequent trial and it would appear that the power of the police to investigate into a cognizable offence is ordinarily not to be interfered with by the judiciary."

34. Though Mr. Rahul Mehra places strong reliance on the afore-extracted passages from ***D. Venkatasubramaniam***[14], the principles enunciated therein, in the opinion of this Court, relate, *prima facie*, to the jurisdiction of this Court to interfere with the investigative process, rather than with the issue of whether, in a case where the FIR does not disclose the commission of a cognizable offence, investigation ought to be permitted to be undertaken at all. These are distinct, and different, aspects, though the drawing line, between

them, is subtle; the submissions of Mr. Rahul Mehra, to that extent, essentially obfuscate this distinction.

35. Yet another decision, on which Mr. Rahul Mehra placed great reliance, is the judgement in ***State of Karnataka v. Pastor P. Raju***[16], specifically to the following passage, therefrom:

> "**15.** There is another aspect of the matter which deserves notice. The FIR in the case was lodged on 15-1-2005 and the petition under Section 482 Cr PC was filed within 12 days on 27-1-2005 when the investigation had just commenced. The petition was allowed by the High Court on 23-2-2005 when the investigation was still under progress. No report as contemplated by Section 173 Cr PC had been submitted by the in-charge of the police station concerned to the Magistrate empowered to take cognizance of the offence. Section 482 Cr PC saves inherent powers of the High Court and such a power can be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice. This power can be exercised to quash the criminal proceedings pending in any court but the power cannot be exercised to interfere with the statutory power of the police to conduct investigation in a cognizable offence. This question has been examined in detail in ***Union of India v. Prakash P. Hinduja, (2003) 6 SCC 195]***, where after referring to ***King Emperor v. Khwaja Nazir Ahmad, AIR 1945 PC 18, H.N. Rishbud v. State of Delhi, AIR 1955 SC 196, State of W.B. v. S.N. Basak, AIR 1963 SC 447, Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117*** and ***State of Bihar v. J.A.C. Saldanha, (1980) 1 SCC 554***, it was observed as under in para 20 of the Report (SCC):
>
> > "20. Thus the legal position is absolutely clear and also settled by judicial authorities that the court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the first information report till the submission of the report by the officer in charge of the

[16] **(2006) 6 SCC 728**

> police station in court under Section 173(2) Cr PC, this field being exclusively reserved for the investigating agency."
>
> This being the settled legal position, the High Court ought not to have interfered with and quashed the entire proceedings in exercise of power conferred by Section 482 Cr PC when the matter was still at the investigation stage."

36. Though the above observations of the Supreme Court, read in isolation, may seem to support the submission, assiduously pressed by Mr. Rahul Mehra, that this Court should adopt a "hands off" approach in the present case, as the matter was still at the stage of investigation, the observations have, in my opinion, to be seen in the backdrop of the controversy which was before the Supreme Court. The respondent Pastor P. Raju (hereinafter referred to as "Pastor", for the sake of convenience), before the Supreme Court, was alleged to have appealed, to certain persons, who were celebrating the *Sankranthi* festival, to convert themselves to Christianity. This was resented, by the said persons, resulting in the lodging of an FIR, against Pastor, under Section 153-B of the IPC. Pastor was arrested and produced before a Magistrate, who remanded him to judicial custody, as no application for bail had been filed. The bail application, filed subsequently, was rejected by the learned Magistrate on the ground that Section 153-B of the IPC was a non-bailable offence. Pastor moved the High Court, under Section 482, CrPC, contending that, before initiation of proceedings under Section 153-B, IPC, prior sanction, of the Central Government, or of the State Government or the District Magistrate, as required by Section 196(1-A), CrPC, had necessarily to be obtained and that, in the absence of such sanction,

the proceedings initiated against him were illegal and without jurisdiction. This submission found favour with the High Court which, accordingly, quashed the proceedings against Pastor. The Supreme Court found the approach of the High Court to be erroneous, on the ground that sanction, under Section 196 (1-A), CrPC, was required before cognizance of the offence was taken, by the learned Magistrate, and not before registration of an FIR. This provision, the Supreme Court held, did not create any embargo to registration of a criminal case, or investigation by the Police, or to submission of the report, by the Police on completion of the investigation. When, consequent thereto, the learned Magistrate was to take cognizance of the offence, previous sanction of the Central Government, or the State Government or the District Magistrate, was necessarily required to be forthcoming, in the absence whereof violation of Section 196 (1-A), CrPC, could be alleged. It was, therefore, held that, prior to taking of cognizance by the learned Magistrate, and at the stage of investigation by the Police, Section 196 (1-A), CrPC, had no application.

37. A holistic reading of the judgement of the Supreme Court discloses that exception was taken, by the Supreme Court, to the High Court quashing the proceedings, at the investigation stage, essentially because the ground on which the High Court proceeded was fundamentally erroneous in law, as it invoked Section 196 (1-A) of the CrPC at a stage when the provision was not applicable at all. Wholesale quashing of the investigation, on such an erroneous premise, was, therefore, found, by the Supreme Court, to be unsustainable.

38. The law declared by the Supreme Court, while, unquestionably, binding on all judicial authorities, hierarchically below the Supreme Court, under Article 141 of the Constitution of India, has, on occasion, to be appreciated in the light of the controversy with which the Supreme Court was engaged. It is for this reason that, on more than one occasion, the Supreme Court has held that its judgements are not to be read as Euclid's theorems[17]. ***Pastor P. Raju***[16] is a case in which the findings, on which Mr. Rahul Mehra places reliance, have necessarily to be appreciated in the backdrop of the controversy before the Supreme Court. They cannot, therefore, be treated as eviscerating, in its entirety, Section 482 of the CrPC, or foreclosing, completely, the power of the High Court to stay the investigative process, consequent to the lodging of FIR, thereunder. In any event, in the wake of the judgement in ***Imtiyaz Ahmed***[1], as followed, as late as in 2018, by the Supreme Court in ***Asian Resurfacing of Road Agency Pvt Ltd***[2], it can hardly be sought to be contended that interference, by the High Court, at the stage of investigation by the police, consequent to registration of FIR, or filing of the complaint, is completely proscribed.

39. Mr. Rahul Mehra, in fairness, did not pitch his case that high; even while conceding the power, of this Court, to interfere, at the stage of investigation consequent to FIR, and to stay the proceedings in an appropriate case, he submits that such power is required to be exercised on exceptional and rare occasions, where the investigation is

[17] **Union of India v Major Bahadur Singh (2006) 1 SCC 368; Haryana Financial Corporation v. Jagdamba Oil Mills (2002) 3 SCC 496**, among others

found to be completely unsustainable or *mala fide*, and cannot justify interdiction, by this Court, in a case such as the present.

40. On the need for restraint, by the High Court, in such matters, the last decision, on which Mr. Rahul Mehra relies, is ***Satvinder Kaur v. State***[18] , specifically on the following passages, therefrom:

> "**14.** 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. [***State of W.B. v. Swapan Kumar Guha, (1982) 1 SCC 561***] It is also settled by a long course of decisions of this Court that for the purpose of exercising its power under Section 482 Cr PC 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. [***Pratibha Rani v. Suraj Kumar, (1985) 2 SCC 370, 395***]
>
> **15.** Hence, in the present case, the High Court committed a grave error in accepting the contention of the respondent that the investigating officer had no jurisdiction to investigate the matters on the alleged ground that no part of the offence was committed within the territorial jurisdiction of the police station at Delhi. The appreciation of the evidence is the function of the courts when seized of the matter. At the stage of investigation, the material collected by an investigating officer cannot be judicially scrutinized for arriving at a conclusion that the police station officer of a particular police station would not have territorial jurisdiction. In any case, it has to be stated that in view of Section 178(c) of the Criminal Procedure Code, when it is uncertain in which of the several

[18] **(1999) 8 SCC 728**

local areas an offence was committed, or where it consists of several acts done in different local areas, the said offence can be enquired into or tried by a court having jurisdiction over any of such local areas. Therefore, to say at the stage of investigation that the SHO, Police Station Paschim Vihar, New Delhi was not having territorial jurisdiction, is on the face of it, illegal and erroneous. That apart, Section 156(2) contains an embargo that no proceeding of a police officer shall be challenged on the ground that he has no territorial power to investigate. The High Court has completely overlooked the said embargo when it entertained the petition of Respondent 2 on the ground of want of territorial jurisdiction.

16. 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, (1999) 2 SCC 651*** 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 or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. 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. In the case of ***State of U.P. v. O.P. Sharma, (1996) 7 SCC 705*** a three-Judge Bench of this Court indicated that the High Court should be loath to interfere at the threshold to thwart the prosecution exercising its inherent power under Section 482 or under Articles

> 226 and 227 of the Constitution of India, as the case may be, and allow the law to take its own course. The same view was reiterated by yet another three-Judge Bench of this Court in the case of ***Rashmi Kumar v. Mahesh Kumar Bhada, (1997) 2 SCC 397*** where this 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 Court had also 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."

41. On the aspect that the FIR is required to disclose the commission of a cognizable offence, Mr. Rahul Mehra submits that an FIR is not an encyclopaedia, and relies, for the said proposition, on the judgements of the Supreme Court in ***Supdt of Police, C.B.I. v. Tapan Kumar Singh***[19] and ***State of U.P. v Naresh***[20]**.**

42. Mr. Rahul Mehra has placed reliance on the following passages, from ***Tapan Kumar Singh***[19]:

> "**19.** The High Court fell into an error in thinking that the information received by the police could not be treated as a first information report since the allegation was vague inasmuch as it was not stated from whom the sum of rupees one lakh was demanded and accepted. Nor was it stated that such demand or acceptance was made as motive or reward for doing or forbearing to do any official act, or for showing or forbearing to show in exercise of his official function, favour or disfavour to any person or for rendering, attempting to render any service or disservice to any person. Thus there was no basis for a police officer to suspect the commission of an

[19] **(2003) 6 SCC 175**
[20] **(2011) 4 SCC 324**

offence which he was empowered under Section 156 of the Code to investigate.

20. It is well settled that a first information report is not an encyclopaedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eyewitness so as to be able to disclose in great detail all aspects of the offence committed. *What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence.* At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all the details he must find out those details in the course of investigation and collect all the necessary evidence. *The information given disclosing the commission of a cognizable offence* only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. *The true test is whether the information furnished provides a reason to suspect the commission of an offence,* which the police officer concerned is empowered under Section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. *The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses the commission of a*

cognizable offence. Even if the information does not give full details regarding these matters, the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can."

(Italics and underscoring supplied)

43. Likewise, Mr. Rahul Mehra relies on the following passages, from ***Naresh***[20]:

"**31.** The High Court has also fallen into error in giving significance to a trivial issue, namely, that in respect of the morning incident all the accused had not been named in the complaint/NCR.

32. It is a settled legal proposition that an FIR is not an encyclopaedia of the entire case. *It may not and need not contain all the details. Naming of the accused therein may be important but not naming of the accused in FIR may not be a ground to doubt the contents thereof in case the statement of the witness is found to be trustworthy.* The court has to determine after examining the entire factual scenario whether a person has participated in the crime or has falsely been implicated. *The informant fully acquainted with the facts may lack necessary skill or ability to reproduce details of the entire incident without anything missing from this. Some people may miss even the most important details in narration. Therefore, in case the informant fails to name a particular accused in the FIR, this ground alone cannot tilt the balance of the case in favour of the accused.* (Vide ***Rotash v. State of Rajasthan, (2006) 12 SCC 64 and Ranjit Singh v. State of M.P., (2011) 4 SCC 336.***)

(Emphasis supplied)

44. I may dispose of this submission, of Mr. Rahul Mehra, at this juncture itself. There can be no gainsaying the proposition that an FIR is not an encyclopaedia, and need not, necessarily, contain all details of the act, constituting the offence alleged. The two decisions, on

which Mr. Rahul Mehra relies, i.e. ***Tapan Kumar Singh***[19] and ***Naresh***[20], make the legal position, in this regard, clear. "All facts and details relating to the offence", need not be contained in the FIR. The informant, on the basis of whose information the FIR is registered, may not know how the occurrence took place, and may not be an eyewitness, who can disclose, in great detail, all aspects of the offence. Non-naming of the accused, in the FIR, may not be a ground to doubt the contents thereof. The informant "may lack necessary skill or ability to reproduce details of the entire incident without anything missing", and "may miss even the most important details in narration" (as specifically noted in ***Naresh***[20]). That, by itself, would not vitiate the FIR. This principle, needless to say, is practically axiomatic. Equally axiomatic, however, is the caveat, consciously entered, by the Supreme Court, in the afore-extracted passage from ***Tapan Kumar Singh***[19]**,** that "the information given must disclose the commission of a cognizable offence and … must provide a basis for the police officer to suspect the commission of a cognizable offence". As observed in ***Tapan Kumar Singh***[19], "the question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question *whether the report discloses the commission of a cognizable offence*".

45. In the ultimate eventuate, therefore, the litmus test is whether the allegations, and recital, in the FIR, disclose the commission of a cognizable offence. If the answer to the question is in the negative,

there is no embargo, on the High Court, interfering with the investigation, or in interdicting the process of the FIR – subject, of course, in the case of any interlocutory interdiction, with satisfaction of the requirement of a *prima facie* case, balance of convenience, irreparable loss and public interest.

46. The only allegation in the impugned FIR, in the present case, is, clearly, violation, by the petitioner, of the directions contained in the Orders, dated 30th April, 2020 *supra*, of the GNCTD, and 6th May, 2020 *supra*, of the Health and Family Welfare Department, GNCTD, to the extent these orders required collection of samples, for COVID-2019 testing, to be done only through the RT-PCR App. There is no other allegation in the FIR. There is no reference, in the FIR, to this infraction, on the part of the petitioner, in collecting samples through the RT-PCR app, having caused or obstruction, annoyance or injury, or risk of obstruction, annoyance, or injury, to any person lawfully employed, or having caused, or attempted to cause, danger to human life, health or safety, or riot or affray. Disobedience of an order, promulgated by a public servant, is, clearly, by itself not an offence under Section 188 of the IPC. Section 188 is categorical in treating such disobedience as an offence *only if one or more of the consequences, visualised in the Section, follow, as a result of such disobedience.* The FIR does not so allege, either expressly or by necessary implication; consequently, it has to be held that the allegations in the FIR do not disclose the commission of a cognizable offence.

47. As already noted hereinabove, and at the cost of repetition, an FIR need not be an encyclopaedia, or contain, within it, all minute factual details, regarding the incident, which is alleged to amount to an offence. Even so, the facts, stated in the FIR, and the allegations contained therein, must disclose the commission of a cognizable offence. Else, the very registration of the FIR would be unjustified.

48. Mr. Rahul Mehra, to his credit, strained every sinew, to convince this Court that the alleged infraction, on the part of the petitioner, imperilled not one, but many human lives. He endeavoured to submit that the very purpose of introducing the RT-PCR App, was to enable real-time monitoring of testing of COVID-2019 cases, and, if necessary, providing immediate treatment. He also submitted that several casualties had occurred, merely because of delay, in transmitting, to the concerned authorities, the fact of a person, or persons, being COVID-2019 positive. It was to avoid such delays, submits Mr. Mehra, that the RT-PCR App was introduced. By failing to take samples in accordance with the RT-PCR App, the petitioner, therefore, submits Mr. Mehra, had disabled the authorities from being able to react promptly, and, in the consequence, saving as many lives as possible. The interlink, between the infraction alleged to have been committed by the petitioner, and impairment of human health and, in fact, loss of human life is, Mr. Mehra would submit, undeniable. The COVID-2019 pandemic had created, Mr. Rahul Mehra submits, an unprecedented situation, in which there was no room for complacency. An example was required to be set, in his submission, and while, ultimately, it was quite possible that the charge, against the

petitioner, of having committed an offence, under Section 188 of the IPC, might be dropped, hospitals, and laboratories, who blindly decided to violate governmental directives, regarding sampling of COVID-2019 test cases, were required to be made aware of the fact that no such aberration would be lightly tolerated.

49. This Court is, prima facie, not inclined to agree with Mr. Rahul Mehra. In the first place, the impugned FIR does not allege any impediment to human health, or loss to human life, having resulted, as a consequence of the default, on the part of the petitioner, in complying with the requirement of using the RT-PCR App. Secondly, and, probably, more importantly, the various communications, between the respondent as the petitioner, prior to launching of the impugned FIR, do not disclose that, as a consequence of the failure, on the part of the petitioner, to collect samples, for COVID-2019 testing using the RT-PCR App, any danger to human life, much less any loss to human life, had resulted. The communications, to which exhaustive reference has already been made hereinabove, merely allege infraction, by the petitioner, in failing to comply with the directive of using the RT-PCR App, and nothing more. The impugned FIR, too, contains no such suggestion. It is only during oral arguments, of Mr. Rahul Mehra, that it has been sought to be suggested that, as a consequence of the default, on the part of the petitioner, in using the RT-PCR App, human lives may have been imperilled. The validity of the impugned FIR cannot be tested on the basis of such an oral submission, unsupported by the official record. Rather, the Show Cause Notice, dated 2nd June, 2020, issued to the

petitioner, acknowledges, candidly, that the petitioner had, daily, been submitting the record of COVID-2019 testing, and its outcome, to the respondent. No default, on the part of the petitioner, in submitting the said data, or error or aberration therein, is alleged in the impugned FIR.

50. The submission, of Mr. Mehra, that implicit obedience, by all functionaries, with governmental directives, issued for the management of the COVID-2019 pandemic, command implicit obedience, is obviously unexceptionable. That, however, cannot justify initiation of criminal action, against a hospital, alleging commission, by it, of an offence, which the allegations in the FIR, even taken at their face value, do not disclose. The necessity to ensure compliance, with public functionaries, with governmental instructions, cannot justify proceeding in a manner opposed to the law. That the ends justify the means may, axiomatically, be true; legally, however, the ends, as well as the means, have to conform to the law.

51. The first two circumstances, in which ***Bhajan Lal***[8] permits interference, by the High Court, at the stage of investigation consequent to registration of an FIR, are "where the allegations made in the first information report, 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" and "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 ...".

Without adverting to the other circumstances visualized, by the Supreme Court, in the said decision, as meriting interference with the investigative process, it is self-evident that, as the recitals, in the impugned FIR, do not disclose the commission of any cognizable offence, under Section 188, IPC, a clear *prima facie* case, in the petitioner's favour, is made out, falling squarely within the parameters of the ***Bhajan Lal***[8] principles.

52. This Court is aware of the fact that Regulation 18 of the 2020 COVID Regulations contains a warning, to the effect that any person/institution/organization found violating any provision of the said Regulations would be deemed to have committed an offence punishable under Section 188 of the IPC. This caveat, entered as it is in Regulations – albeit issued under the Epidemic Diseases Act – cannot wish away the ingredients of Section 188 of the IPC, which constitutes a plenary parliamentary legislation. If, therefore, the failure, on the part of any person/institution/organization, to comply with any provision of the 2020 COVID Regulations, results in one of the consequences envisaged under Section 188, then, and only then, can an offence, under the said provision, be said to have been committed; not otherwise. The recital, to such effect, has necessarily to find place in the FIR, though the truth, or sustainability, thereof, may be subject matter of investigation to be conducted thereafter. Besides, in the present case, violation, by the petitioner is alleged, not directly of the 2020 COVID Regulations, but of governmental Office Orders, issued thereunder. Be that as it may, the criminal process cannot be initiated, against an institution, merely on the ground that

such violation has taken place, sans any allegation that it has led to one of the consequences statutorily engrafted in Section 188 of the IPC.

53. An *ad interim* injunction, restraining the Police from investigating, consequent on the impugned FIR, would also seem to be justified, on the touchstone of balance of convenience, irreparable loss, and public interest – considerations which, in the facts of the present case, and in the present times, are inextricably intertwined. The petitioner-Hospital is, admittedly, a frontliner, in the war against the COVID-2019 pandemic, being fought by the nation at present. Though Mr. Rahul Mehra attempted to dichotomise the role of the Hospital, vis-à-vis the doctors administering treatment therein, this distinction, in my view, has no legs to stand on. A hospital, as a unit, is a cohesive whole, comprising its administration, its doctors, its paramedical staff, and every other person associated with its working, and with administering therapy to the ailing. Allowing investigation, consequent on the impugned FIR, to be undertaken, at this stage, on the basis of a perceived distinction between the hospital, and the doctors working therein, as suggested by Mr Rahul Mehra, would, in my view, be severely detrimental to public interest, especially as there is nothing in the FIR to suggest that the petitioner-Hospital has, in any way, impeded its doctors in treating patients suffering from the COVID-2019 pandemic, which is of paramount importance. Any such investigation is bound to involve, and invite, its inevitable sequelae, including summons, visits by the Police, and other associated activities, with which, in my opinion, as things stand at

present, the petitioner-Hospital, at present, should not be burdened. Involving the petitioner-Hospital in a criminal investigative process, at this point of time, is bound to have its impact on the efforts, of the petitioner-Hospital, to contribute to the management of the COVID-2019 pandemic. Any such investigation would, therefore, be, in my view, intrinsically opposed to public interest.

54. Any such investigation is also likely to result in irreparable prejudice to the petitioner-Hospital, as subjection, to a criminal investigation, with the publicity which it inevitably entails, would irreparably mar the reputation of the petitioner-Hospital. In a case in which the FIR does not even disclose the commission of a cognizable offence, under Section 188 of the IPC, I am, prima facie, of the view that no justification, for subjecting the petitioner-Hospital to such an investigation, exists.

55. The balance of convenience would also be in favour of interdicting, for the present, any investigation, consequent to the impugned FIR. As and when the present petition is finally decided, if it is found that no case, for quashing the impugned FIR, or the investigation following thereupon, is made out, the Police could always resume its investigation. If, on the other hand, this Court is, ultimately, to find that the FIR is liable to be quashed, the detriment caused, to the working, as well as to the reputation, of the petitioner-Hospital, consequent to any investigation that may be undertaken in the interregnum, would be irreversible.

56. I am, therefore, convinced that, tested on the principles of existence of a *prima facie* case, balance of convenience, irreparable loss, and public interest, the process of investigation, consequent to the registration of the impugned FIR against the applicant, deserves to be stayed, pending final disposal of the present writ petition.

57. In view thereof, I abstain from returning any findings, on other issues raised by the petitioner, including the applicability of Section 95 of the IPC and Section 195 of the CrPC, leaving these issues open, to be decided when the matter is finally heard.

58. In keeping with the directives issued by the Supreme Court in such cases – especially directive (iii) in ***Imtiyaz Ahmed***[1] – and in the interests of expediting of the proceedings, it is made clear that, on the next date of hearing, i.e. 11th August, 2020, W.P. (Crl.) 921/2020 would be finally heard and disposed of. Counter affidavit, and rejoinder, be mandatorily filed within the period stipulated in the order, dated 15th June, 2020. No extension of time would be permitted therefor, and, ordinarily, no adjournment would be granted on 11th August, 2020.

59. The stay application is, accordingly, allowed. All proceedings, consequent to the registration of the impugned FIR No 0133, dated 5th June, 2020, registered at PS Rajinder Nagar, including investigation by the Police, shall remain stayed, pending disposal of W.P. (Crl.) 921/2020.

60. All observations, in this judgement, are *prima facie*, and intended only for disposing of the prayer of *ad interim* injunction, and are not to be treated as a final expression of opinion, on the contentions of either side.

C. HARI SHANKAR, J.

JUNE 22, 2020
HJ