IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1297 OF 2021

Nandakumar Sukumar Panicker
[redacted] … Petitioner.

V/S.

1. State of Maharashtra
Through the office of he Public Prosecutor
(through Samata Nagar Police Station).

2. [redacted] … Respondents.

Mr. Haresh Jagtiani, Senior Counsel a/w Mr. Nikhil Ghate, Mr. Pushpvijay Kanoji i/b. Haresh Jagtiani and Associates for the Petitioner.
Mr. Y. M.Nakhwa, APP, for the Respondent-State.
Mr. Dilip Shukla i/b. Priya Pandey for Respondent No.2.

CORAM : RANJITSINHA RAJA BHONSALE , J.

RESERVED ON : 23rd FEBRUARY 2026.

PRONOUNCED ON : 10th JUNE 2026.

JUDGMENT :-

1) The present Petition is filed under Article 226 of the Constitution of India seeking to quash FIR No.139/2019 dated 2nd April 2019 registered with the Samata Nagar Police Station, Kandivali, Mumbai under section 354 of the Indian Penal Code, 1860 (for short, 'IPC') and the resultant proceedings being C.C.No.175/PW/2020 pending before the learned Metropolitan Magistrate (17th Court), Borivali, Mumbai.

2) Perusal of the FIR would indicate that, Respondent No.2/ original Complainant used to work with a bureau by name Book My Bai Bureau, Malad, Mumbai which provided employment opportunities for household work. Six months prior to filing of the present FIR, Respondent No.2 had left her aforesaid job and therefore was in need of employment. That, on 27th February 2019, [redacted] a Watchman working with Spring Grove UNO Society, Lokhandwala, Kandivali (East), Mumbai informed Respondent No.2 that, the resident of Flat [redacted] requires a housemaid for cooking food. As Respondent No.2 was agreeable to take up the job, the said Watchman introduced Respondent No.2 to the present Petitioner. The Respondent No.2 was employed and was to attend the work twice a day to cook meals at the consideration of Rs.5,000/- per month. The Respondent No.2 joined from 1st March 2019. It is alleged that, on 2nd March 2019, when Respondent No.2 was attending work at the said flat,

the Petitioner allegedly approached Respondent No.2 and while referring to her husband made enquiries i.e. “is your husband a weak person, why do you come to work”. Allegedly, Respondent No.2 replied that, “there was nothing like that”. It is alleged that, Petitioner then told Respondent No.2 to inform him if she required any help.

3) On 10th March 2019, i.e. the date of incident, Respondent No.2 visited the said flat at about 12.00 noon for cooking food. That, at about 12.15 p.m. when Respondent No.2 was cleaning the utensils in the kitchen, Petitioner allegedly caught her from behind and before she would react or resist the Petitioner he pulled her saree and touched her private parts. That, Respondent No.2, after rescuing herself, escaped and ran away from there. That, she made inquires with the watchman standing at the gate about the whereabouts of watchman Vijay. She was allegedly informed that, Vijay was not on duty. Respondent No.2 did not discuss the incident with anybody as she was under impression that her husband will get upset and scold her. That, later on the same date of the alleged incident she informed her husband of the incident, which led to a quarrel between Respondent No.2 and her husband. That, thereafter Respondent No.2 along with her husband visited the Society and informed the people present about the alleged incident. That, persons present in the Society vide telephonic conversation informed the Petitioner about the incident of

which he was accused. The Petitioner informed them that he was out of station and would return on Saturday. That, on 2nd April 2019, the Respondent No.2 filed the present complaint under section 354 of IPC. Investigation was conducted and pursuant to the investigation, chargesheet bearing [redacted], came to be filed.

4) Heard Mr. Jagtiani, learned Senior Counsel for the Petitioner, Mr. Y. M. Nakhwa, learned APP for the Respondent-State and Mr. Dilip Shukla, learned Advocate for the Respondent No. 2.

5) Mr. Jagtiani, learned Senior Counsel appearing for the Petitioner submitted that:-

i) The FIR is an afterthought and filed at a belated stage. The incident is alleged to have been taken place on 10th March 2019 and the FIR is filed on 2nd April 2019 i.e. after a delay of 21 days. That, the explanation offered for delay is vague and any man of ordinary prudence and intelligence would refuse to believe or accept the same. That, the present FIR is nothing but an attempt to extort monies from the Petitioner and pressurize him in dealing with illegal demands.

ii) That, the C.C.T.V. footage of the Society shows that Respondent No.2 entered the said flat at 12.14 p.m. and immediately left at 12.15 or 12.16 p.m. That, the statement of the Watchman with whom Respondent No.2 is alleged to have made inquiries while leaving has not

been recorded.

iii) That, as the Petitioner was not satisfied with the cooking/ food prepared by Respondent No.2, he had requested her to improve cooking so as to make the food edible. This was on 4th March 2019. That, after 4th March 2019 till 8th March 2019, the Petitioner was travelling, therefore, Respondent No.2 had worked only for four days. On 9th March 2019, when Petitioner realized that the food cooked/ prepared by Respondent No.2 was not edible, the Petitioner had informed Respondent No.2 not to come for cooking.

iv) That, on 10th March 2019, Respondent No.2 came to the flat at about 12.00 p.m. The Petitioner expressed his displeasure over the food and the utensils which were spoiled/burnt. Respondent No.2 was informed that her services, were no longer required. An amount of Rs.2,000/- was handed over to Respondent No.2 for the period from 1st March 2019 to 10th March 2019. That, Respondent No.2 refused to accept the said act. That, Respondent No.2 threatened the Petitioner to face with dire consequences and left the flat. The entire conservation lasted for 2 to 3 minutes, which according to the learned counsel for the Petitioner is corroborated by the C.C.T.V. footage.

v) That, on 10th March 2019, when the Petitioner was preparing to leave for an outstation trip to Surat, the Petitioner received a

threatening call from the husband of the Respondent No.2 from mobile number [redacted]. That, the Petitioner was threatened and blackmailed. A demand was made for payment of 1½ months salary, as a compensation. The Petitioner was threatened with filing of a false complaint against him of sexual molestation if salary of 1½ months is not paid to Respondent No.2. That the Petitioner received a second call from mobile number [redacted] where a demand was made of Rs.30,000/- which was equivalent to the salary of six months. That, similar such demands were made and when the Petitioner refused to pay, the present complaint has been filed.

vi) That, on 14th March 2019, i.e. before the present FIR was filed, the Petitioner through his Advocate's letter had informed the Senior Police Inspector, Samata Nagar Police Station about the mischievous act of Respondent No.2, wherein the Petitioner detailed the correct facts as also the threats given to him of being implicated in false prosecution of sexual harassment. That, pursuant to the said letter/complaint, Respondent No.2 and her husband were called by the Senior Police Officer Mr. Vikas Pathare at the Police Station. That, on the pleas of Respondent No.2 and her husband and solely on humanitarian ground, an amount of Rs.5,000/- was given to Respondent No.2 in presence of Senior Police Officer Mr. Vikas Pathare. That, three of Petitioner's friends, namely, Mr. Yogesh Bhatt,

Mr.Ashwin Kaccha and Mr.Shivam Hindia were also present at the police station. The learned counsel for the Petitioner submitted that the aforesaid facts have been mentioned in the anticipatory bail application filed by the Petitioner in May 2019.

vii) That, the statement of Respondent No.2, under Section 164 (5A) of the Cr.P.C. has not been recorded by the Investigating Officer. That, Respondent No.2 has refused to give the said statement. From the said conduct, the intentions of Respondent No.2 are clear.

viii) Criminal trials must be right, just, fair and must not be arbitrary, fanciful or oppressive. That, Article 21 enshrines and guaranties the right of life and personal liberty to a person which can be deprived on following the procedure established by law in a fair trial which shows safety of the accused. That, the assurance of a fair trial is stated to be a first imperative of the dispensation of justice. That, a fair trial can be conducted only if the investigation itself is fair and just. That, the procedural requirement which is a fundamental requirement under Article 21 of the Constitution of India, cannot be doubted or overlooked. Relying on the said judgment he submitted that, it is judicially acknowledged that fair trial includes fair investigation as envisaged under Articles 20 and 21 of the Constitution. That, if the investigation is neither effective nor purposeful nor objective nor fair, it would the be the solemn

obligation of the Court, if considered necessary, to order further investigation or reinvestigation as the case may require to discover the truth and to prevent the miscarriage of justice.

ix) That, it is the primary objective of the investigation to unearth the true facts through a committed, resolved, and competent investigation which should be fair complete and purposeful. That, the investigation should be fair and proper which means that the investigation must be unbias, honest, just and in accordance with law. The emphasis should be to bring out the truth of the case.

x) That, in case of delay, a proper and plausible explanation for the delay in lodging the FIR is a must. In the absence of such explanation, the delay becomes fatal. Reliance was placed on the judgment of the Hon'ble Supreme Court in the case of *Kishan Singh V.s Gurpal Singh and others reported in (2010) 8 SCC 775.*

xi) Referring to the judgment of the Hon'ble Supreme Court in the case of *Madhavrao Jivajirao Scindia v. Sambhajirao Chandrojirao Angre and others reported in 1988 (1) SCC 692*, it is submitted that, when the prosecution at an initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations have made out *prima facie* establishing the offence. That, special features which appear in a particular case ought to be taken into consideration to decide

whether it is expedient and in the interest of justice to permit the prosecution to continue. That, the prosecution cannot be continued for ulterior motives and purposes. If, in the opinion of the Court, the ultimate chances of conviction is bleak, no useful purpose would be served in allowing the said criminal prosecution to continue. In such cases, proceedings may be quashed even though at a preliminary stage.

6) The learned Advocate for Respondent No.2 submitted that:-

i) That, the present case is registered under section 354 of the I.P.C. That, perusal of FIR would indicate that Respondent No.2 has clearly and, in unequivocal terms, stated about the said incident.

ii) That, delay in filing the FIR cannot be fatal to the present prosecution. That, the arguments raised by the Petitioner are his defences and the same can be considered at the time of the trial.

iii) That, at the stage of quashing, this Court cannot conduct a mini-trial and/or consider the defences of the Petitioner. Reliance was placed on the order of this Court passed in Criminal Writ Petition No.05/2021 in the case of Akhil Anil Chitre V/s State of Maharashtra and another.

iv) That, non-recording of statement of Respondent No.2 under section 164(5A) of Cr.P.C cannot be the sole ground for rejecting the entire investigation and throwing out the prosecution. That, the said provision

has been introduced in order to protect the witnesses.

7) Before considering the facts of the present case it may be useful to refer Sections 482 and 164(5A) of CrPC, Section 354 of the IPC and relevant judgments hereunder:-

7.1) Section 482 of the Code of Criminal Procedure reads as under:-

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

7.2) Section 354 of the Indian Penal Code reads as under:-

> *"354. Assault or criminal force to woman with intent to outrage her modesty.—*
>
> *Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine"*

7.3) Section 164(5A) of Cr.PC reads as under:-

> *"(5A)[(a) In cases punishable under section 354, section 354A, section 354B, section 354C, section 354D, sub-section (1) or sub-section (2) of section 376, [section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB,] [Inserted by Criminal Law (Amendment) Act, 2013] section 376E or section 509 of the Indian Penal Code, the*

Judicial Magistrate shall record the statement of the person against whom such offence has been committed in the manner prescribed in sub-section (5), as soon as the commission of the offence is brought to the notice of the police:

Provided that if the person making the statement is temporarily or permanently mentally or physically disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement:

Provided further that if the person making the statement is temporarily or permanently mentally or physically disabled, the statement made by the person, with the assistance of an interpreter or a special educator, shall be video-graphed.

(b)A statement recorded under clause (a) of a person, who is temporarily or permanently mentally or physically disabled, shall be considered a statement in lieu of examination-in-chief, as specified in section 137 of the Indian Evidence Act, 1872 such that the maker of the statement can be cross-examined on such statement, without the need for recording the same at the time of trial.]"

7.4) The Hon'ble Supreme Court in the case of *Pradeep Kumar Kesarwani Vs. The State of Uttar Pradesh and Anr. in Criminal Appeal No.3831 of 2025,* has observed that :-

"20. The following steps should ordinarily determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:

(i)Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the materials is of sterling and impeccable quality?
(ii) Step two, whether the material relied upon by the accused,

would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the 13prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice? If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal – proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused. [(See: Rajiv Thapar & Ors. v. Madan Lal Kapoor (Criminal Appeal No. 174 of 2013)].”

7.5) This Court in the case of *Akhil Anil Chitre Vs. State of Maharashtra and Anr. in Criminal Writ Petition No.05 of 2021* has observed that:-

“10. In our opinion, the said observations are squarely applicable to the present case. The investigation clearly shows the participation of the Petitioner in the present crime. The manner in which assault has taken place etc, is a matter of trial. We cannot, and ought not to under the jurisdiction of Section 482 of Criminal Procedure Code, enter into that arena. According to us, this is not a case, which calls for exercise of jurisdiction under section 482 of the Criminal

Procedure Code. According to us, no case for quashing is made out. What the Petitioner raises before us is his defence, which can only be tested or tried at the trial. The FIR, makes out a prima facie case. The defences raised by the Petitioner are all required to be raised in evidence at the trial.

11. We may also make a useful reference to the Judgment of the Supreme Court in the case of Central Bureau of Investigation V/s. Aryan Singh, reported in (2023) 18 SCC 399, wherein, the Supreme Court has categorically held that, while considering an application for quashing under Section 482 of Criminal Procedure Code, the High Court cannot conduct mini trial. Further, in the case of Manik B. V/s. Kadapala Sreyes Reddy & Anr., reported in (2023) Live Law SC 642, the Hon'ble Supreme Court has held that, the Court would exercise its power of quash a proceeding only if it finds that taking the case at its face value, no case is made out. The Supreme Court has observed that, it is not permissible for Court to go into the correctness or otherwise of the material placed by the prosecution in a chargesheet. The argument and submissions advanced by the Petitioner across the bar, amount to entering into the arena of evidence and trial, which in our opinion is not permitted. We have already noted that, the investigation of the crime is already completed and chargesheet is ready to be filed.

12. This Court has in a recent decision, in the case of Hemendra Pranjivan Bosmiya V/s. The State of Maharashtra & Anr in Criminal Application No.277 of 2023, observed that;

> *"5. In the case of Central Bureau of Investigation vs. Aryan Singh (AIR 2023 SC 1987), the Apex Court held that, the High Court cannot conduct a mini trial for appreciation of evidence on record while dealing with an application under Section 482 of Cr.P.C., as if it is a mini trial and consider the application as if those are against the Judgment and Orders of the Trial Court on conclusion of trial.*
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> *5.1. In the case of Manik B vs. Kadapala Sreyes Reddy, the Apex Court has held that, the scope of interference while quashing*

the proceedings under Section 482 of Cr.P.C. is very limited and the power would be exercised only if the Court finds that taking the case at its face value, no case is made out at all. That, it is not permissible for the Court to go into correctness or otherwise of the material placed by the prosecution in the chargesheet.

5.2. In the case of Iqbal @ Bala and Ors. vs. State of U.P. and Ors., (2023 SCC Online SC 949), the Apex Court declined to interfere in the order of the High Court rejecting the petition filed for quashing of the FIR, taking note of the fact that, the investigation had been completed and chargesheet is required to be filed. The view taken by the Apex Court is that the Trial Court should be allowed to look into materials which the investigation officer might have collected forming part of the chargesheet, despite the observation of the Apex Court that the allegation leveled in the FIR do not inspire any confidence."

7.6) The Delhi High Court in the case of *Maksood Ahmad v. State of NCT of Delhi and Anr. reported in 2024 SCC Online Del 418*, while stressing on the need and importance of recording of statement under section 164(5A) of Cr.P.C., has observed that:-

"28. This Court notes that the recording of the statement of the rape victim under Section 164(5A) is an essential part of the investigation, as it serves several critical purposes in ensuring a fair and effective adjudication process.

29. It is trite law that statements recorded under Section 164 of Cr. P.C. before the learned Magistrate, of a victim of sexual offence, has to be made voluntarily by the person giving such statement. Further, it is crucial that the concerned Magistrate must record his satisfaction that the person making such a statement is not temporarily or

permanently disabled, either physically or mentally. In case the Magistrate forms an opinion that the victim of sexual assault who is making such statement is either temporarily or permanently disabled, physically or mentally, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement and such proceedings will be video-graphed.

30. Thus, the learned Magistrate recording statement under Section 164 of Cr. P.C. is entrusted with a very crucial duty of writing the incident of sexual assault of victim within the four walls of chamber of the Magistrate, to ensure that the security so felt to disclose without fear or pressure the real facts, incident or happening will give right direction to a case under Section 376 of IPC. In this regard, there is a practice to ask preliminary questions which is in the form of interaction between the witness and the Magistrate to ascertain the competence of the witness to understand as to where she/he is, he understands why he is before the judge, and an assurance to the judge that the victim is not under any pressure, coercion or threat to give a statement. In case of child victims, more caution is required as the administration of oath may need to be dispensed with and the capacity to make the statement may be judged and is reflected in the statement. It is also to ensure that at the time of trial when the statement is put to the witness and at times to the Magistrate himself, the defence counsel and the concerned Trial Court Judge, in case of need for proving or confrontation are able to appreciate its evidentiary value and the defence taken by the accused effectively. The questions are asked for the above purposes.

31. The statement made by a victim under section 164(5A) of Cr. P.C. transcends its role as mere evidence; it stands as a testament to the profound agony the victim suffers from due to the wrongful actions of accused. It is also an emotional release, laying bare the deep pain and suffering

inflicted upon her — a harrowing experience akin to witnessing the shattering of her hopes and dreams and in the hope of getting justice. The words recorded in the statement under section 164 of Cr. P.C., the victim not only communicates the immediate physical harm but also the enduring impact on her dignity and self worth.

32. The role of Courts thus while recording such statements becomes paramount, and the same must be done with a deep sense of sensitivity towards the victim and professionalism towards the criminal adjudicatory process.

33. Recording of statement under Section 164 Cr. P.C. in a case of sexual assault is a critical responsibility of a magistrate as the statements so recorded also becomes part of edifice of building of a case. The preliminary examination of the victim is to ascertain her competence, intelligence and being under no pressure as well as her capacity to understand a vernacular language."

7.7) The Hon'ble Supreme Court in the case of *Vinubhai Haribhai Malaviya and others v. State of Gujarat and another reported in (2019) 17 SCC 1*, has observed that:-

"17. Article 21 of the Constitution of India makes it clear that the procedure in criminal trials must, after the seminal decision in Maneka Gandhi v. Union of India[3], be "right, just and fair and not arbitrary, fanciful or oppressive" (see para 7 therein). Equally, in Commr. of Police v. Delhi High Court[4], it was stated that Article 21 enshrines and guarantees the precious right of life and personal liberty to a person which can only be deprived on following the procedure established by law in a fair trial which assures the safety of the accused. The assurance of a fair trial is stated to be the first imperative of the dispensation of justice (see para 16 therein).

18. It is clear that a fair trial must kick off only after an investigation is itself fair and just. The ultimate aim of all investigation and inquiry, whether by the police or by the Magistrate, is to ensure that those who have actually committed a crime are correctly booked, and those who have not are not arraigned to stand trial. That this is the minimal procedural requirement that is the fundamental requirement of Article 21 of the Constitution of India cannot be doubted. It is the hovering omnipresence of Article 21 over CrPC that must needs inform the interpretation of all the provisions of CrPC, so as to ensure that Article 21 is followed both in letter and in spirit.

19. Pooja Pal v. Union of India[5] is an important judgment which speaks of the fundamental right under Article 21 of the Constitution in the context of the goal of "speedy trial" being tempered by "fair trial". The Court put it thus : (SCC pp. 175-76, paras 83 & 86)

> *"83. A "speedy trial", albeit the essence of the fundamental right to life entrenched in Article 21 of the Constitution of India has a companion in concept in "fair trial", both being inalienable constituents of an adjudicative process, to culminate in a judicial decision by a court of law as the final arbiter. There is indeed a qualitative difference between right to speedy trial and fair trial so much so that denial of the former by itself would not be prejudicial to the accused, when pitted against the imperative of fair trial. As fundamentally, justice not only has to be done but also must appear to have been done, the residuary jurisdiction of a court to direct further investigation or reinvestigation by any impartial agency, probe by the State Police notwithstanding, has to be essentially invoked13 pt if the statutory agency already in charge of the investigation appears to have been ineffective or is presumed or inferred to be not being able to discharge its functions fairly, meaningfully and fructuously. As the cause of justice has to reign supreme, a court of law cannot reduce itself to be a resigned and a helpless spectator and with the foreseen consequences apparently unjust, in the face of a faulty investigation, meekly complete the formalities to record a*

foregone conclusion. Justice then would become a casualty. Though a court's satisfaction of want of proper, fair, impartial and effective investigation eroding its credence and reliability is the precondition for a direction for further investigation or reinvestigation, submission of the charge-sheet ipso facto or the pendency of the trial can by no means be a prohibitive impediment. The contextual facts and the attendant circumstances have to be singularly evaluated and analysed to decide the needfulness of further investigation or reinvestigation to unravel the truth and mete out justice to the parties. The prime concern and the endeavour of the court of law is to secure justice on the basis of true facts which ought to be unearthed through a committed, resolved and a competent investigating agency."

7.8) The Hon'ble Supreme Court in the case of *Pooja Pal v. Union of India and others, reported in (2016) 3 SCC 135* has observed that:-

"86. A trial encompasses investigation, inquiry, trial, appeal and retrial i.e. the entire range of scrutiny including crime detection and adjudication on the basis thereof. Jurisprudentially, the guarantee under Article 21 embraces both the life and liberty of the accused as well as interest of the victim, his near and dear ones as well as of the community at large and therefore, cannot be alienated from each other with levity. It is judicially acknowledged that fair trial includes fair investigation as envisaged by Articles 20 and 21 of the Constitution of India. Though well-demarcated contours of crime detection and adjudication do exist, if the investigation is neither effective nor purposeful nor objective nor fair, it would be the solemn obligation of the courts, if considered necessary, to order further investigation or reinvestigation as the case may be, to discover the truth so as to prevent miscarriage of the justice. No inflexible guidelines or hard-and-fast rules as such can be prescribed by way of uniform and universal invocation and the decision is to be conditioned to the attendant facts and circumstances, motivated dominantly by the predication of advancement of the cause of

justice …..

88. The expression "fair and proper investigation" in criminal jurisprudence was held by this Court in Vinay Tyagi v. Irshad Ali [Vinay Tyagi v. Irshad Ali[34], to encompass two imperatives; firstly, the investigation must be unbiased, honest, just and in accordance with law; and secondly, the entire emphasis has to be to bring out the truth of the case before the court of competent jurisdiction.

89. Prior thereto, in the same vein, it was ruled in Samaj Parivartan Samudaya v. State of Karnataka[35] that the basic purpose of an investigation is to bring out the truth by conducting fair and proper investigation in accordance with law and to ensure that the guilty are punished. It held further that the jurisdiction of a court to ensure fair and proper investigation in an adversarial system of criminal administration is of a higher degree than in an inquisitorial system and it has to take precaution that interested or influential persons are not able to misdirect or hijack the investigation, so as to throttle a fair investigation resulting in the offenders, escaping the punitive course of law. Any lapse, it was proclaimed, would result in error of jurisdiction.

….. ….. ….. ….. …..

92. That the pre-eminence of truth is the guiding star in a judicial process forming the foundation of justice, had been aptly propounded by this Court in Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira[38]. It was ruled that the entire judicial system had been created only to discern and find out the real truth and that the Judges at all levels have to seriously engage themselves in the journey of discovering the same. Emphasising that the quest for truth is the mandate of law and indeed the bounden duty of the courts, it was observed that the justice system will acquire credibility only when the people will be convinced that

justice is based on the foundation of the truth. While referring with approval, the revealing observation made in Ritesh Tewari v. State of U.P.[39] that every trial is voyage of discovery in which truth is the quest, the following passage of Lord Denning scripted in Jones v. National Coal Board[40] was extracted in affirmation : (Maria Margarida case[38], SCC p. 384, para 39)

> *"39. … '… It's all very well to paint justice blind, but she does better without a bandage round her eyes. She should be blind indeed to favour or prejudice, but clear to see which way lies the truth.' (Jones case[40], QB p. 64)"*

7.9) This Court in the case of *Hitesh Suresh Borse Vs. State of Maharashtra and Anr. in Criminal Application No.808 of 2025 dated 10th April, 2026* in paragraph Nos.10 to 13 read as under:-

> *"**10.** In the case of Joseph Paul de Sousa Vs. State at the instance of Crime Branch and Ors., reported in 2024 SCC OnLine Bom 2719 : (2024) 3 AIR Bom R (Crl) 889 this Court has observed that:-*
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> > *"8.13. In the case of M. M. Harries v. State of Kerala (supra) the Learned Single Judge, while holding that a bunch of anonymous letters received by a woman containing offensive and foul words, outraging her modesty falls within the scope and ambit of the offense under Section 509 of the I. P. C., observed as follows :*
> >
> > *"8. ...But, what does the expression 'gesture' actually mean? Lord Denning, an English Judge cautioned in Seaford Court Estates's case (vide [1949] 2 All ER 155) that 'the English language is not an instrument of mathematical precision'. To an Indian Judge, English is even more intrinsic being a foreign language. So, to understand the real meaning of an*

English word, I shall safely depend upon the dictionary first.

9. A reference to the dictionary is inevitable in this case because the word 'gesture' not defined under the Penal Code, 1860. The meaning of the word 'gesture' as per Concise Oxford Dictionary, eighth edition is, "a significant movement of a limb or the body; the use of such movements esp. to convey feeling or as a rhetorical device; an act to evoke a response or convey intention". As per Collins Cobuild 'English Dictionary for advanced learners' third edition, 'gesture' is something that you say or do in order to express your attitude or intentions, often something that you know will not have much effect". As per Law Lexicon, the word 'gesture' means "a posture or movement of the body; an action expressive of the sentiment or passion of intended to show inclination or disposition".

10. It is thus clear from the above discussion that the word 'gesture' refers not merely to body signs. Though the word 'gesture' is ordinarily used to mean movement of the limbs or body to convey a person's feelings, it can also connote an act done by a person to convey his intentions. According to dictionary meaning, an act done by a person to express his attitude or intentions also is a 'gesture'. A person can express his attitude or convey his intentions in a number of ways. For example, by speaking, giving, looking, writing etc., etc. In that sense of the word, a person can make a gesture by doing an act without involving any body signs.

18. ……Later, legislature found that a woman must be protected not only from physical aggressions made in the course of outraging her modesty, but she should also be shielded from various other acts which do not involve even a touch. Legislature was quite aware that a woman's modesty can be insulted or outraged in various ways. A mere word, a wink, a touch or even a look would suffice to insult the modesty of a Woman. Physical

advances may not be necessary in all cases. Everything depends on the intention of the mischief-maker and the manner in which he conveys his intentions. It is evident that legislature intended that any aggression into a woman's modesty whether by any word, deed, touch or look need be curbed and deterred.

19. That is why even a verbal attack on a woman, a gesture and other acts stated in Section 509 I.P.C. were brought under the said Section. It is clear from a reading of Section 509 I.P.C. that by introducing the said provision, legislature intended that any sort of aggression into a woman's modesty whether by any word, deed or act should be deterred, as evident from the title to the Section itself. Thus, the acts which are done intending to insult the modesty of a woman which may not necessarily involve even any physical advances are also brought within the sweep of a separate provision viz., Section 509 I. P. C. …….

11. *The Hon'ble Supreme Court in the case of Ramkripal s/o Shyamlal Charmakar V. State of Madhya Pradesh reported in (2007) 11 SCC 265 in paragraph 8 has observed that:-*

"12. …… As indicated above, the word 'modesty' is not defined in IPC. The Shorter Oxford Dictionary (3rd Ed.) defines the word 'modesty' in relation to a woman as follows:

'Decorous in manner and conduct; not forward or lewd; shamefast; scrupulously chaste.'

13. Modesty is defined as the quality of being modest; and in relation to a woman, 'womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct'. It is the reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions.

14. Webster's Third New International Dictionary of the English language defines modesty as 'freedom from coarseness, indelicacy, or indecency: as regard for propriety in dress, speech, or conduct'…..

> *15. .....From the above dictionary meaning of 'modesty' and the interpretation given to that word by this Court in Major Singh case (AIR 1967 SC 63 : 1967 Cri LJ 1) the ultimate test for ascertaining whether modesty has been outraged is whether the action of the offender is such as could be perceived as one which is capable of shocking the sense of decency of a woman. The above position was noted In Rupan Deol Bajaj v. Kanwar Pal Singh Gill[3]."*

12. *The Hon'ble Supreme Court in the case of State of Punjab v. Major Singh reported in AIR 1967 SC 63 has observed that the ultimate test for ascertaining whether modesty has been outraged is whether the action of the offender is such as could be perceived as one which is capable of shocking the sense of decency of a women.*

13. *The Hon'ble Supreme Court in the case of Madhushree Datta v. State of Karnataka and another reported in (2025) 3 SCC 612 has observed that:-*

> *27. For ascertaining whether, prima facie, the provision of Section 509IPC was attracted, it is essential to first understand the meaning of the term "modesty", to determine whether modesty has been insulted. While modesty is not explicitly defined in IPC, this Court has addressed the essence of a woman's modesty in the decision in Ramkripal v. State of M.P.[3] Excerpts from the decision read as under : (SCC pp. 266-67, para 7)*
>
> > *"7. … '12. What constitutes an outrage to female modesty is nowhere defined in IPC. The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty in this Section is an attribute associated with female human beings as a class. It is a virtue which attaches to a*

female owing to her sex.' "

(emphasis supplied)

28. Further, this Court while discussing the test for outraging the modesty of a woman under Section 509IPC in Rupan Deol Bajaj v. Kanwar Pal Singh Gill[4], observed as under : (SCC p. 206, para 15)

> *"15. In State of Punjab v. Major Singh[5] a question arose whether a female child of seven-and-a-half months could be said to be possessed of "modesty" which could be outraged. In answering the above question Mudholkar, J., who along with Bachawat, J. spoke for the majority, held that when any act done to or in the presence of a woman is clearly suggestive of sex according to the common notions of mankind that must fall within the mischief of Section 354IPC. Needless to say, the "common notions of mankind" referred to by the learned Judge have to be gauged by contemporary societal standards. The other learned Judge (Bachawat, J.) observed that the essence of a woman's modesty is her sex and from her very birth she possesses the modesty which is the attribute of her sex. From the above dictionary meaning of "modesty" and the interpretation given to that word by this Court in Major Singh case[5]- it appears to us that the ultimate test for ascertaining whether modesty has been outraged, is the action of the offender such as could be perceived as one which is capable of shocking the sense of decency of a woman."*

8) Perusal of F.I.R. indicates that, the allegation against the

Petitioner is one under Section 354 of the IPC. Section 354 of the IPC provides for assault or use of criminal force to any woman intending to outrage or knowing it to be likely that the act will amount to outraging modesty of a woman.

9) In the present case, the allegation is that, when the Respondent No.2 was washing utensils in the kitchen, the Petitioner allegedly held Respondent No.2 from behind and before Respondent No.2 could say anything, the Petitioner pulled Respondent No.2 saree and while holding her pressed her breast. A bare reading of the F.I.R. would prima facie indicate that the offence of section 354 of IPC is made out.

10) The arguments advanced on behalf of the Petitioner that delay is not explained, or that perusal of the C.C.T.V. footage of the Respondent No.2 after leaving the house of the Petitioner and in the lift makes the incident doubtful, are all the defences of the Petitioner. The said defences of the Petitioner can be considered at the time of trial. The F.I.R. has been filed after a period of 21 days and there is no explanation given therein for the said delay. The reasons for delay may vary, and in such cases there can be various reasons for the delay. Such case, attach to them as a social stigma and on many occasions, the complainant may take some time to gather the courage to file a complaint, anticipating uncomfortable questions and social stigma. Only because a delay of a few days is not

explained, cannot be a ground to throw out a criminal prosecution. For delay to be considered as a ground to throw out a criminal prosecution, the delay has to be considerably long and unexplained. It is important to keep in mind that, the delay has to be understood, considered and construed, keeping in mind the offence. The manner in which unexplained delay is to be viewed to a large extend depends on the nature of the offence, the age of victim, the social strata to which the victims belongs. In my opinion, it cannot be a straight jacket formula. In offences like the present one under Section 354 of the IPC, the sexual offences or any other offence under the Protection of Children from Sexual Offences Act, 2012 (for short, "POCSO Act"), or even a offence under Section 498-A of the IPC, the delay will have to be construed and considered in the facts and circumstances in which the offence takes place. In a traditional society like ours, unfortunately many families find it exceedingly and extremely difficult to initiate even a genuine criminal prosecution when such nature of offences are involved. In my view, in such matters delay alone cannot be a ground to quash a criminal prosecution. The delay is required to be exceptionally long and has to be considered with the surrounding circumstances. Whether delay is reasonably explained will depend on the facts of each case. The reasonableness of the delay will depend on the nature and severity of the allegations and the attending circumstances. In my opinion, cases relating

to the offences against women and similar cases, the criminal prosecution ought not to be thrown out on the sole ground of unexplained delay unless the delay is attributed to some mala fides, personal vengeance or vendetta which is prima facie made out and writ large on the record.

11) The next point raised on behalf of the Petitioner was the non-recording of the statement of Respondent No.2 and under section 164(5A) of the Cr.P.C. Perusal of the section and the judgment cited by the Petitioner in support of the said contention, it is required that the object and purpose of section 164(5A) is to be considered. The said provision was inserted in and became effective from 3rd February, 2013. The said provision deals with specific situation and is applicable to offences punishable under Section 354, 354A, 354B, 354C, 354D, 376D(1) or (2), 376DA, 376-DB, 376E and section 509 of the IPC. A provision is introduced and provides that in offences pertaining to the aforenoted sections, the Judicial Magistrate shall record the statement of the person against whom such offences have been committed in accordance with sub-section 5 of section 164 of the IPC. The said statement is a statement recorded during investigation and in the aid of investigation.

12) The provision would indicate that, the statement recorded under Section 164(5A) of CrPC would be a integral and essential part of the evidence which would serve and support various purposes during the

trial. It would ensure a fair and effective administrative process and that the statement is made voluntarily by the victim without any fear. If the said provision is observed minutely it is clear that, the object of the provision is to provide a sense of security and a fear free atmosphere so as to enable the victim to depose the real and correct facts so as to further assist and help the investigation. The procedure provided by the said section would also indicate that, what the learned Magistrate is required to do is to ascertain the competence of the witness and to ascertain whether the witness is aware of the purpose and reason for recording the statement. The learned Magistrate is to ensure that the victim is not under any pressure or threat. The object of Section 164(5A) is to get the correct and precise narration of the incident so as to decide the direction and requirements of the further investigation. Perusal of section 164(5A) would indicate that, various safeguard are inbuilt. I have also noted that, the statement is recorded only in the offences which are specifically mentioned therein. The provision itself does not provide for the effect of non-recording of the statement under Section 164 (5A) of the CrPC. A non recording of the Section 164 (5A) or refusal of the victim in recording the statement though called upon cannot in all cases prove fatal to the prosecution or imply that an automatic benefit accrues to the accused. The non recording of Section 164(5A) statement cannot be the sole ground for

rejecting a criminal prosecution which is otherwise prima facie made out. It may in some cases and to a certain extent assist the accused in canvasing a point that, the incident is attended with malafides against the accused. This in my considered view, would again depend upon the facts of each case, nature of the allegations made and the attending circumstances. I am of the considered view that, non recording of the 164 (5A) statement under the CrPC does not vitiate a criminal prosecution as one of the objects of recording the statement is to assist the investigation and get further clarity of facts for the investigation. It therefore can be rightly stated that, the statement under Section 164(5A) of the CrPC is in aid and for the furtherance of an investigation. Only because statement under 164(5A) is not recorded it cannot be said that, the investigation is unjust, unfair or has not proceeded in the right direction.

13) The other point raised by the Petitioner was in respect of the C.C.T.V. footage. It was the case of the Petitioner that, considering the C.C.T.V. footage, the conduct and demeanor of Respondent No.2, it is highly impossible that, the incident as alleged could have even taken place. It was also argued that, the Petitioner has through his Advocates addressed a letter to the police station stating the correct facts and further that pursuant to the same a meeting was held with Respondent No.2. That, in the said meeting, the Petitioner on humanitarian grounds paid an amount

of Rs.5000/- to Respondent No.2 in the presence of the Police Officer. Mr. Viraj Pathode and the Petitioner's friends namely, Mr. Yogesh Bhatt, Mr. Ashwin Kacha and Mr. Shivam Hincha. It is also argued that, the investigating officer has not investigated the said angle nor are the statement of the Petitioner friends recorded under section 161 of the Cr.P.C. According to me, all of these arguments are in fact the pure defences of the Petitioner. In my opinion, the same cannot be considered in a quashing petition. Only on the basis of the C.C.T.V. footage and the timing mentioned therein, one cannot in all cases infer whether a crime as alleged has taken place or not taken place. In the present case, the argument is that, if one consider the timing in the C.C.T.V. footage, the demeanor of the Respondent No.2 it is hard to believe that the incident as alleged has taken place. Though, there is a slight/minor difference in the timing as mentioned in the F.I.R. and as indicated in the C.C.T.V. footage, the same is not sufficient to draw the inference that no incident at all took place. A C.C.T.V. footage, drawn from a independent third party source, indicating the impossibility of the occurrence of a incident, may be considered in a quashing petition, only if it indicates a total impossibility that the incident could have taken place or it negates every possibility of the incident having taken place and brings the case within the categories 1, 3, 5 and 7 of the categories mentioned by the Hon'ble Supreme Court in the case of State of

Haryana Vs. Bhajanlal 1992 Supp (1) SCC 355. In addition, the C.C.T.V. footage/such material if considered as defence material sought to be relied upon and pressed into service in a quashing proceeding have to comply with and satisfy all the four steps, as observed by the Hon'ble Supreme Court in the case of *Pradeep Kumar Kesarwani Vs. The State of Uttar Pradesh and Anr. (Supra).*

14) As regards the arguments that, the investigation is not proper as the 164(5A) statement was not recorded or even that the statement of the Petitioner's friends were not recorded under Section 161 of the Cr.P.C; I am of the considered opinion that, the same are not fatal to the prosecution. The statement under section 164(5A),is extremely desirable for the prosecution to ensure that all the facts are correctly recorded and the time at the trial is reduced. Considering the object and purpose of Section 164(5A), it cannot by any stretch of reading, be said that non-compliance of 164(5A) of the Cr.P.C. is fatal to the prosecution and that the prosecution ought to be thrown out due to an act of omission of the investigating agency or even for the non-availability of the complainant for any reason. Section 164(5A) is a protective shield provided to the complainant, the non-compliance of which cannot be stretched to mean that, the prosecution should be rejected. Similarly, non recording a statement of the friends of the

Petitioner would also not be fatal to the prosecution, it would always open to the Petitioner to lead its own defence witness at the trial. I am of the opinion that, the Petitioner will be at liberty to examine his own witness and/or cross-examine the complainant and other prosecution witnesses on the ground of delay, non recording of the statement as contended.

15) In my considered view, the perusal of the statement of Respondent No.2, prima facie makes out a case under Section 354 of the IPC. Respondent No.2 has made a clear and categorical statement, making out the offence under Section 354 of the IPC. What, the Petitioner has raised, are his defences, which are required to be tested at the trial.

16) The inherent powers of this Court under Section 482 CrPC are extraordinary in nature and are required to be exercised sparingly, with circumspection, and only in the rarest of cases to prevent the abuse of process of law or to secure the ends of justice. At the stage of considering a petition for quashing, the Court is not expected to undertake a meticulous examination of the evidence or embark upon a mini-trial. I may also make a useful reference to the Judgment of the Hon'ble Supreme Court in the case of *Central Bureau of Investigation V/s. Aryan Singh, reported in (2023) 18 SCC 399*, wherein, the Supreme Court has categorically held that, while considering an application for quashing under Section 482 of

Criminal Procedure Code, the High Court cannot conduct a mini trial. Further, in the case of *Manik B. V/s. Kadapala Sreyes Reddy & Anr., reported in (2023) SCC OnLine 2540*, the Hon'ble Supreme Court has held that, the Court would exercise its power of quash a proceeding only if it finds that taking the case at its face value, no case is made out. Upon a prima facie consideration of the allegations contained in the FIR and the material collected during investigation, this Court finds sufficient grounds for proceeding against the applicant. Consequently, no case is made out for this Court to exercise its inherent jurisdiction under Section 482 of Code of Criminal Procedure. The petition, therefore deserves to be dismissed.

17) In view of the aforesaid facts and circumstances and after considering the law as enunciated by the Supreme Court, I am of the opinion that the Petitioner has not made out any case for exercising the powers under section 482 of the Criminal Procedure Code, 1973.

18) In view thereof, Petition is dismissed.

(RANJITSINHA RAJA BHONSALE, J.)