

Supreme Court revisits and reviews the powers of the High Court to quash criminal proceedings - Directs circumspection and reasoned orders at *Interim Stage*.

1. Recently, a 3-judge bench of the Hon'ble Supreme Court of India in *Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra & Ors. (Criminal Appeal No. 330 of 2021)*, laid down the circumstances and parameters that would justify the passing of an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of a Petition for quashing of a FIR/Complaint filed u/s 482 of the Code of Criminal Procedure ("CrPC") and/or under Article 226 of the Constitution of India.
2. The Criminal Appeal arose out of an interim Order dated 28.09.2020 passed by the Hon'ble Bombay High Court ("**High Court**"), wherein the High Court directed that "no coercive measures shall be adopted" by the investigating officer against the Original Accused in respect of a FIR lodged against them.
3. The brief facts of the case are as follows:-
 - a) The Appellant/Original Complainant had lodged a FIR against the Original Accused for offences u/s 406, 420, 465, 468, 471 and 120-B of the Indian Penal Code.
 - b) Apprehending arrest in connection with the said FIR, the Original Accused filed an Anticipatory Bail Application ("**ABA**") u/s 438 of the CrPC before the Sessions Court, Mumbai and were granted interim protection from arrest by the Sessions Court, Mumbai.
 - c) During the pendency of the ABA before the Sessions Court, Mumbai, the Original Accused preferred a Petition for quashing of the said FIR u/s 482 of the CrPC read with Article 226 of the Constitution of India, before the High Court.
 - d) Vide an interim Order dated 28.09.2020, the High Court directed that "no coercive measures shall be adopted" by the investigating officer against the Original Accused in respect of the FIR lodged against them.
 - e) Being aggrieved by the interim Order dated 28.09.2020 passed by the High Court, the Original Complainant preferred the present Appeal before the Hon'ble Supreme Court of India.
4. The Appellant/Original Complainant challenged the said interim Order inter alia on

the grounds that : –

- a) No reasons were assigned by the High Court while passing the impugned interim Order;
- b) By issuing such a blanket direction restraining the investigating officer from taking coercive measures against the original Accused, the valuable right of the investigating officer to investigate the offences has been hampered and/or taken away;
- c) In cases where the Accused is apprehending arrest, the appropriate remedy in law would be to file an ABA u/s 438 of CrPC.

5. The Respondent's/Original Accused defended the said interim Order *inter alia* on the grounds that:-

- a) The powers possessed by the High Court u/s 482 of CrPC and/or under Article 226 of the Constitution of India are very wide.
- b) The High Court may exercise the said powers in relation to cognizable offences to prevent the abuse of process of any court or otherwise to secure the ends of justice.
- c) The High Court would be justified and entitled to pass such an order if it is of the *prima facie* view that further investigation or proceedings pursuant to the FIR is likely to cause unwarranted and unjustified harassment to the Petitioner.

6. After an extensive analysis of a catena of judicial pronouncements governing the field of exercise of the High Court's 'inherent powers' to quash a FIR/Complaint under Section 482 of the CrPC and/or Article 226 of the Constitution of India, the Supreme Court *inter alia* observed and held as under:-

- a) The powers possessed by the High Court u/s 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Ordinarily the Court and the judicial process should not interfere at the stage of investigation of offences and the power of quashing should be exercised sparingly with circumspection, and in exceptional cases where non-interference would result in miscarriage of justice.
- b) A balance has to be struck between the rights of the genuine complainants and the FIR's disclosing commission of a cognizable offence and the statutory obligation/duty of the investigating agency to investigate into the cognizable

offences on the one hand and those innocent persons against whom the criminal proceedings are initiated which may be in a given case abuse of process of law.

- c) In cases where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, the High Court ought to consider the broad parameters of quashing and self-restraint as laid down in several judicial pronouncements, more particularly in ***R.P. Kapur v. State of Punjab (AIR 1960 SC 866)*** and ***State of Haryana v. Bhajanlal (1992 Supp (1) SCC 335A)***. A non-exhaustive list of the broad parameters of quashing and self-restraint that are to be considered by the High Court while exercising its power under Section 482 CrPC and/or Article 226 of the Constitution of India to quash a FIR/Complaint, are as follows:-
- i. 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.
 - ii. 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.
 - iii. 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.
 - iv. 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.
 - v. 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.
 - vi. Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceedings in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.

- vii. 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 CrPC.
- d) An interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection, but, such an interim order should not be passed routinely, casually and/or mechanically.
- e) The Court is to ensure that such a power is not to be exercised liberally so as to convert quashing proceedings into ABA proceedings. However, in a given case where the Court is of the opinion that if the protection against pre-arrest is not given, it would amount to gross miscarriage of justice and no case, at all, is made for arrest pending trial, the High Court would be free to grant the relief in the nature of anticipatory bail in exercise of its powers under Section 482 CrPC and Article 226 of the Constitution of India, keeping in mind that this power has to be exercised sparingly in those cases where it is absolutely warranted and justified.
- f) If the facts are hazy and the investigation has just begun, the High Court would be circumspect in exercising such powers and the High Court must permit the investigating agency to proceed further with the investigation in exercise of its statutory duty under the provisions of the CrPC.
- g) The High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.
- h) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied.
7. The Supreme Court held that the impugned interim Order passed in the present case was a cryptic order and that no reasons whatsoever were assigned by the High Court while passing such a blanket order of 'no coercive steps to be adopted by the police'. Moreover, the Apex Court held that it was not clear as to what the High Court meant by 'not to adopt any coercive steps', especially in light of the fact that the Original Accused were already granted Anticipatory Bail by the Sessions Court and hence, the impugned interim order effectively restrained the investigating agency to further

investigate the matter in accordance with law. For the aforesaid reasons, the Supreme Court quashed and set aside the impugned interim order dated 28.09.2020 passed by the Bombay High Court.

8. The Supreme Court further directed that the law laid down in the present case is to be scrupulously followed by all the High Courts in the country.
9. Hence, it can be concluded that in a Petition for quashing of a FIR/Complaint filed u/s 482 of CrPC and/or Article 226 of the Constitution of India, an interim relief directing the investigating agency to not take any coercive action against the Accused will only be granted in exceptional cases where the non-interference by the Court would result in grave miscarriage of justice. In analyzing whether an exceptional case is made out for grant of interim stay of further investigation, the High Court ought to consider the broad parameters of quashing and self-restraint referred to hereinabove and the High Court also ought to give brief reasons why such an interim order is warranted and/or required in the facts and circumstances of the case.

DISCLAIMER

This alert has been written for general information of our clients and should not be treated as a substitute for legal advice. We recommend that you seek proper legal advice prior to taking any action pursuant to this alert. We disclaim all liability for any errors or omissions. For further clarifications you may write to Subhash Jadhav (subhash.jadhav@parinamlaw.com), Neha Prashant (neha.prashant@parinamlaw.com) and Amit Patil (amit.patil@parinamlaw.com)

MUMBAI

4TH Floor Express Towers, Ramnath Goenka Marg, Nariman Point, Mumbai - 400 021

Tel - 022 42410000

NEW DELHI

4 Todarmal Lane, Bengali Market, New Delhi 110001

Tel - 9810400283

PUNE

2nd Floor, Kundan Chambers, Thube Park, Next to Sancheti Hospital, Shivajinagar, Pune- 411 005.

Tel - 020 2553 0711

WWW.PARINAMLAW.COM