HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No. 2784/2021
URN: CRLMP / 5117U / 2021

Babloo Sharma Alias Pramod Sharma S/o Shri Hanuman Sahai, Aged About 42 Years, Resident Of Plot No. 242, Taruchaya Nagar, Opposite Airport, Tonk Road, Jaipur (Raj).

----Petitioner

Versus

1. State Of Rajasthan, Through P.p.
2. Additional Commissioner Income Tax, Central Circle 1, Ncr Building, Bhagwan Dass Road, Statue Circle, C Scheme, Ashok Nagar, Jaipur, Rajasthan- 302005.
3. Income Tax Officer, Ward 7(2), C-95, Baba Siddhanath Bhawan Janpath Lal Kothi Jaipur, Rajasthan-302005.

----Respondents

Connected With

S.B. Criminal Miscellaneous (Petition) No. 2570/2021
URN: CRLMP / 4724U / 2021

Babloo Sharma Alias Pramod Sharma S/o Shri Hanuman Sahai, Aged About 42 Years, - Resident Of Plot No. 242, Taruchaya Nagar, Opposite Airport, Tonk Road, Jaipur (Raj).

----Petitioner

Versus

1. State Of Rajasthan, Through P.p.
2. Additional Commissioner Income Tax, Central Circle 1, Ncr Building, Bhagwan Dass Road, Statue Circle, C Shceme, Ashok Nagar, Jaipur, Rajasthan-302005.
3. Income Tax Officer, Ward No. 7(2), Ncr Building, Bhagwan Dass Road, Statue Circle, C Scheme, Ashok Nagar, Jaipur, Rajasthan-302005.

----Respondents

S.B. Criminal Miscellaneous (Petition) No. 2571/2021
URN: CRLMP / 4725U / 2021

Babloo Sharma Alias Pramod Sharma S/o Shri Hanuman Sahai, Aged About 42 Years, Resident Of Plot No. 242, Taruchaya Nagar, Opposite Airport, Tonk Road, Jaipur (Raj).

----Petitioner

Versus

1. State Of Rajasthan, Through P.p.
2. Additional Commissioner Income Tax, Central Circle 1, Ncr Building, Bhagwan Dass Road, Statue Circle, C Shceme, Ashok Nagar, Jaipur, Rajasthan-302005.
3. Income Tax Officer, Ward No. 7(2), Ncr Building, Bhagwan Dass Road, Statue Circle, C Scheme, Ashok Nagar, Jaipur, Rajasthan-302005.

----Respondents

S.B. Criminal Miscellaneous (Petition) No. 2575/2021
URN: CRLMP / 4732U / 2021

Babloo Sharma Alias Pramod Sharma S/o Shri Hanuman Sahai, Aged About 42 Years, Resident Of Plot No. 242, Taruchaya Nagar, Opposite Airport, Tonk Road, Jaipur (Raj).

----Petitioner

Versus

1. State Of Rajasthan, Through P.p.
2. Additional Commissioner Income Tax, Central Circle 1, Ncr Building, Bhagwan Dass Road, Statue Circle, C Shceme, Ashok Nagar, Jaipur, Rajasthan-302005.
3. Income Tax Officer, Ward No. 7(2), Ncr Building, Bhagwan Dass Road, Statue Circle, C Scheme, Ashok Nagar, Jaipur, Rajasthan-302005.

----Respondents

S.B. Criminal Miscellaneous (Petition) No. 2800/2021
URN: CRLMP / 5133U / 2021

Babloo Sharma Alias Pramod Sharma S/o Shri Hanuman Sahai, Aged About 42 Years, Resident Of Plot No. 242, Taruchaya Nagar, Opposite Airport, Tonk Road, Jaipur (Raj).

----Petitioner

Versus

1. State Of Rajasthan, Through P.p.
2. Additional Commissioner Income Tax, Central Circle 1, Ncr Building, Bhagwan Dass Road, Statue Circle, C Scheme, Ashok Nagar, Jaipur, Rajasthan- 302005.
3. Income Tax Officer, Ward 7(2), C-95, Baba Siddhanath

Bhawan Janpath Lal Kothi Jaipur, Rajasthan-302005.

----Respondents

S.B. Criminal Miscellaneous (Petition) No. 2815/2021
URN: CRLMP / 5159U / 2021

Babloo Sharma Alias Pramod Sharma S/o Shri Hanuman Sahai, Aged About 42 Years, Resident Of Plot No. 242, Taruchaya Nagar, Opposite Airport, Tonk Road, Jaipur (Raj).

----Petitioner

Versus

1. State Of Rajasthan, Through P.p.
2. Additional Commissioner Income Tax, Central Circle 1, Ncr Building, Bhagwan Dass Road, Statue Circle, C Scheme, Ashok Nagar, Jaipur, Rajasthan- 302005.
3. Income Tax Officer, Ward 7(2), C-95, Baba Siddhanath Bhawan Janpath Lal Kothi Jaipur, Rajasthan-302005.

----Respondents

For Petitioner(s) : Mr. Prakul Khurana
Mr. Aryan Kukkar

For Respondent(s) : Mr. Manvendra Singh Shekhawat, PP

Mr. Sandeep Pathak
Ms. Jaya Pathak
Ms. Shafali Sharma

JUSTICE ANOOP KUMAR DHAND

Order

1.	Date of conclusion of arguments	22/07/2026
2.	Date on which the order was reserved	22/07/2026
3.	Whether the full order or only the operative part is pronounced	Full Judgment
4.	Date of pronouncement	28/07/2026

Reportable

For convenience of exposition, this judgment is divided in the following parts: -

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Factual Matrix:

1. Since common question of law and facts are involved in all these criminal misc. petitions, hence, with the consent of counsel for the parties, these matters are taken up together for final disposal and are being decided by this common order.

2. In all these criminal misc. petitions, the petitioner-Babloo Sharma has made a prayer for quashing of the proceedings pending against him before the Court of Chief Metropolitan Magistrate (Economic Offence), Jaipur Metropolitan-II for the offence punishable under Section 276CC of the Income Tax Act, 1961 (hereinafter referred to as "the Act of 1961").

3. For the sake of convenience, the prayer mentioned in SB Criminal Misc. Petition No.2784/2021 has been taken into consideration and the same reads as under:

> "It is, therefore, humbly prayed that your Lordship may be pleased to quash the prosecution proceedings pending before the Learned Chief Metropolitan Magistrate (Economic Offence) Jaipur Metropolitan-Jaipur-I under Section 276CC of Income Tax Act, 1961 for Assessment Year 2006-07 in Case

No. 71/2013, Titled As, "Additional Commissioner Income Tax, Central Circle 1, Jaipur Vs. Babloo Sharma" against the petitioner.

Any other appropriate order/direction, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case may kindly be passed in favour of the petitioner."

Submissions of counsel for the petitioner:

4. Learned counsel for the petitioner submits that a search was conducted on 18.11.2010 by the Income Tax Department (hereinafter referred to as respondent-Department) at the business and residential premises of the company-M/s Gold Sukh Trade India Limited and its Directors, wherein the petitioner is also one of the directors. Thereafter, a notice dated 09.08.2011, under Section 153A of the Act of 1961 was issued by the respondent-Department to the petitioner to file his Income Tax Returns, which came to be received by the petitioner on 11.08.2011. Learned counsel submits that the Income Tax Returns were supposed to be submitted within a period of 35 days from the date of receipt of the aforesaid notice. Learned counsel further submits that on 06.12.2010 and 19.01.2011, the petitioner sent two letters to the respondent-Department for providing him copies of the material seized during the course of search along with the *panchnama* and statements recorded by the search party. Learned counsel submits that despite the aforesaid repeated requests of the petitioner, when the desired documents were not supplied to him, on 19.10.2011, a letter was once again sent by the petitioner to the respondent-Department for providing the aforesaid documents.

5. Learned counsel for the petitioner submits that till date, the aforesaid desired documents have not been supplied to the

petitioner by the respondent-Department, but a note has been appended by the respondent-Department at the bottom of the petitioner's letter dated 19.10.2011, indicating therein the fact that the representative of the petitioner has received the desired documents, but in fact, these documents were never received by his authorised representative. Learned counsel submits that in the reply to the instant petition, a document has been placed on record to show that certain documents were supplied by the respondent-Department to the authorised representative of the petitioner on 21.11.2011. Learned counsel submits that the letter written by VKJ and Company (Chartered Accountants) dated 21.11.2011 does not give any reference of the case pertaining to the petitioner and even the name of the petitioner is not mentioned therein. Hence, it is clear that the desired documents were never supplied to the petitioner. He further submits that even at the time of filing of the complaint against the petitioner, no documentary evidence was produced on record to show that the desired documents were ever supplied to the petitioner. He further submits that as per the mandate contained under Section 132 of the Act of 1961, the respondent-Department was supposed to supply the copy of *panchnama*, statements recorded by the search party and all the annexures prepared during the search proceedings, but aforesaid exercise was not done and straightaway, a notice was issued without supplying copies of the same to the petitioner.

6. Learned counsel submits that since the aforesaid desired documents were not supplied to the petitioner, he was not in a position to file Income Tax Returns, hence, under these

circumstances, the petitioner has not committed any offence for which the impugned complaints have been submitted against him.

7. In support of his contentions, learned counsel has placed reliance upon the following judgments:-

1. **Lal Saraf Vs. State of Bihar & Anr.** reported in **1997 SCC OnLine Pat 731;**

2. **Assistant Commissioner of Income Tax Vs. V.K. Gupta** reported in **[2020] 424 ITR 602 (Delhi);**

3. **The Income Tax Officer, Ward-2 Vs. Rajendra Prasad Vaish** reported in **2024 SCC OnLine Raj 933**

8. Lastly, it has been prayed that the impugned proceedings arising out of the aforesaid complaint be quashed.

<u>Submission on behalf of the respondents:</u>

9. *Per contra*, learned counsel appearing on behalf of the respondent-Department opposed the arguments raised by learned counsel for the petitioner and an objection has also been taken with regard to inordinate delay of 8 years in filing the instant petitions. Learned counsel submits that the complaint was submitted against the petitioner in the year 2013, while these criminal misc. petitions have been submitted in the year 2021, i.e., after a delay of 8 years without giving any justified reason for approaching this Court at such a belated stage. Learned counsel submits that no request was made by the petitioner prior to expiry of the period of limitation of submission of the Income Tax Return. The 35-day time period, as mentioned in the notice dated

09.08.2011, received by the petitioner on 11.08.2011, came to be expired on 15.09.2011, while the petitioner wrote a letter to the respondent-Department for the first time on 19.10.2011 and the desired documents were supplied to his authorized representatives on the same day, i.e. 19.10.2011. Learned counsel submits that the petitioner is raising a dispute regarding receipt of the desired documents by his authorized representative. Although, the signatures of the petitioner's authorized representative appeared to be a match, but still, the question whether the aforesaid desired documents were received by the petitioner's authorized representative or not is a disputed question of fact, which cannot be adjudicated by this Court in exercise of its inherent jurisdiction, contained under Section 482 Cr.P.C. He submits that whatever arguments have been raised by the learned counsel for the petitioner, in his defence, would be appreciated by the Trial Court, at the appropriate stage of trial. The defence of the accused cannot be looked into and appreciated by this Court by conducting a mini trial or making fishing & roving enquiry. He submits that now the case is posted before the Trial Court for recording of evidence of the witnesses. He further submits that at the time of search, the mandate contained under Section 132 of the Act of 1961 was complied with.

10. In support of his contentions, learned counsel for the respondent-Department has placed reliance upon the following judgments passed by the Hon'ble Apex Court:-

1. **Anukul Singh Vs. State of Uttar Pradesh & Anr.** reported in **2025 SCC OnLine SC 2060;**

2. **Digvijaysinh Himmatsinh Jadeja Vs. The State of Gujarat & Ors.** reported in **(2023) 20 SCC 398;**

3. **HMT Watches Ltd. Vs. M.A. Abida & Anr.** reported in **(2015) 11 SCC 776; &**

4. **Rajiv Thapar & Ors. Vs. Madan Lal Kapoor** reported in **(2013) 3 SCC 330.**

11. Lastly, he argued that in view of the submissions made hereinabove, these criminal misc. petitions submitted by the petitioner be dismissed.

<u>Discussions and Analysis:</u>

12. Heard and considered the submissions made at the Bar and perused the material available on record.

13. Perusal of the record indicates that as many as six different complaints have been submitted against the petitioner under Section 276CC of the Act of 1961 with the allegation of non-filing of the revised Income Tax Returns for the assessment years 2005-06, 2006-07, 2007-08, 2008-09, 2009-10 & 2010-11 within the time prescribed in the notice dated 09.08.2011 issued to him under Section 153A of the Act of 1961, i.e., on or before 15.09.2011. This notice was issued to the petitioner on 09.08.2011 and the same was received by him on 11.08.2011, whereby the 35-days time period mentioned in the aforesaid notice expired on 15.09.2011.

14. As per the provisions of Section 276CC of the Act of 1961, if a person willfully fails to furnish the Income Tax Return by the due date, then the same amounts to violation of the aforesaid Section. Section 276CC of the Act of 1961 reads as under:-

276CC. Failure to furnish returns of income. If a person willfully fails to furnish in due time the return of fringe benefits which he is required to furnish under sub-section (1) of section 115WD or by notice given under sub-section (2) of the said section or section 115WH or the return of income which he is required to furnish under sub-section (1) of section 139 or by notice given under clause (i) of sub-section (1) of section 142 or section 148 or section 153-A, he shall be punishable,-

(i) in a case where the amount of tax, which would have been evaded if the failure had not been discovered, exceeds twenty five hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case, with imprisonment for a term which shall not be less than three months but which may extend to two years and with fine:

Provided that a person shall not be proceeded against under this section for failure to furnish in due time the return of fringe benefits under sub-section (1) of section 115WD or return of income under sub-section (1) of section 139

-(i) for any assessment year commencing prior to the 1st day of April, 1975; or

(ii)for any assessment year commencing on or after the 1st day of April, 1975, if - (a) the return is furnished by him before the expiry of the assessment year; or

(b) the tax payable by such person, not being a company, on the total income determined on regular assessment, as reduced by the advance tax or self-assessment tax, if any, paid before the expiry of the assessment year, and any tax deducted or collected at source, does not exceed ten thousand rupees.

15. Section 153A of the Act of 1961 deals with the provisions of assessment in case of search or requisition. Section 153A of the Act of 1961 reads as under:-

"**153A. Assessment in case of search or requisition.**—

(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall—

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years [and for the relevant assessment year or years] referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;

(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made [and for the relevant assessment year or years]:

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years [and for the relevant assessment year or years]:

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years [and for the relevant assessment year or years] referred to in this [sub-section] pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate:

Provided also that the Central Government may by rules made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second proviso), specify the class or classes of cases in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made [and for the relevant assessment year or years]:

Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless—

(a) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years;

(b) the income referred to in clause (a) or part thereof has escaped assessment for such year or years; and

(c) the search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.

(2) If any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Principal Commissioner or Commissioner:

Provided that such revival shall cease to have effect, if such order of annulment is set aside."

16. The case of the petitioner is that a search was conducted at the business and residential premises of the company-M/s Gold Sukh Trade India Limited and its Directors, including the petitioner, on 18.11.2010 and the notice under Section 153A of the Act of 1961 was issued to him on 09.08.2011 by the respondent-Department and the same was received by him on 11.08.2011. By way of the aforesaid notice, directions were issued to the petitioner to file Income Tax Return within 35 days of receipt of the aforesaid notice. However, it is the case of the petitioner that the copies of the material seized during the course

of search along with the *panchnama* and statements recorded by the search party were not provided to him by the respondent-Department, as per the Taxpayers' Charter. Hence, under these circumstances, the petitioner sent the letters dated 06.12.2010 and 19.01.2011 to the respondent-Department, requesting for providing him copies of the aforesaid desired documents. However, these documents were not supplied to him, hence, again on 19.10.2011, a letter was sent by the petitioner to the respondent-Department with the request for providing him the desired documents, but the same were still not supplied to him. Therefore, he could not file the Income Tax Returns and hence, there was no willful default on his part.

The above facts have been contended and disputed by the respondent-Department on the ground that they have not received the aforementioned letters dated 06.12.2010 and 19.01.2011. It is the case of the respondent-Department that the first letter received by them was the one dated 19.10.2011 and the desired documents were supplied to the authorized representative of the petitioner on the very same day, i.e. on 19.10.2011.

It is also the case of the respondent-Department that again on 21.11.2011, the desired documents were supplied to the authorized representative of the petitioner when the same letter was received on 21.11.2011. This fact has been disputed and denied by the petitioner.

17. Now the questions that remain for consideration of this Court are "Whether the petitioner requested the respondent-Department on 06.12.2010 and 19.01.2011 for furnishing the seizure

documents, *panchnama* etc. or not?; Or "Whether for the first time this request was made on 19.10.2011, i.e., after expiry of 35 days on 15.09.2011?; Or "Whether the desired documents were supplied to the authorized representative of the petitioner or not?"

All these questions are disputed questions of facts which are required to be proved by both the sides by leading evidence in this regard.

18. At this initial stage, this Court while exercising its inherent jurisdiction contained under Section 482 Cr.P.C. is not supposed to conduct a "mini-trial" or "fishing enquiry" or weigh the sufficiency of the evidence. Certainly, this task falls within the domain of the Trial Court and is supposed to be undertaken by the Trial Court itself at the appropriate stage of trial.

19. The Hon'ble Apex Court in the case of **Rajiv Thapar (supra)** has held in paras 25 to 28, which reads as under:-

> **25.** Section 482 CrPC is being extracted hereunder:
>
> "**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."
>
> The discretion vested in a High Court under Section 482 CrPC can be exercised suo motu to prevent the abuse of process of a court, and/or to secure the ends of justice.
>
> **26.** This Court had an occasion to examine the matter in *State of Orissa* v. *Debendra Nath Padhi* [(2005) 1 SCC 568 : 2005 SCC (Cri) 415] (incidentally the said judgment was heavily relied upon by the learned counsel for the respondent complainant), wherein it was held thus: (SCC p. 581, para 29)
>
> "*29.* Regarding the argument of the accused having to face the trial despite being in a position to produce material of unimpeachable character of sterling quality, *the width of the powers of the High Court under Section 482 of the Code and Article 226 of the Constitution of India is unlimited whereunder*

in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of the process of any court or otherwise to secure the ends of justice within the parameters laid down in Bhajan Lal case [*State of Haryana* v. *Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426]."

27. Recently, this Court again had an occasion to examine the ambit and scope of Section 482 CrPC in *Rukmini Narvekar* v. *Vijaya Satardekar* [(2008) 14 SCC 1 : (2009) 1 SCC (Cri) 721] wherein in the main order it was observed that the width of the powers of the High Court under Section 482 CrPC and under Article 226 of the Constitution of India, was unlimited. In the said judgment, this Court held that the High Court could make such orders as may be necessary to prevent abuse of the process of any court, or otherwise to secure the ends of justice. In a concurring separate order passed in the same case, it was additionally observed that under Section 482 CrPC, the High Court was free to consider even material that may be produced on behalf of the accused, to arrive at a decision whether the charge as framed could be maintained. The aforesaid parameters shall be kept in mind while we examine whether the High Court ought to have exercised its inherent jurisdiction under Section 482 CrPC in the facts and circumstances of this case.

28. The High Court, in exercise of its jurisdiction under Section 482 CrPC, must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of the allegations levelled by the prosecution/complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused are. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. This is so because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed by establishing his defences by producing evidence in accordance with law. There is an endless list of judgments rendered by this Court declaring the legal position that in a case where the prosecution/complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed material before the Court, prima facie evidencing the truthfulness of the allegations levelled, trial must be held."

20. Even in the case of **HMT Watches Ltd. (supra)**, the Hon'ble Apex Court has held that the disputed question of facts would be determined by the Trial Court and the defence of the accused would not be looked into and adjudicated under Section 482 Cr.P.C. It has been held in paras 10 to 15, which reads as under:-

> "**10.** Having heard the learned counsel for the parties, we are of the view that the accused (Respondent 1) challenged the proceedings of criminal complaint cases before the High Court, taking factual defences. Whether the cheques were given as security or not, or whether there was outstanding liability or not is a question of fact which could have been determined only by the trial court after recording evidence of the parties. In our opinion, the High Court should not have expressed its view on the disputed questions of fact in a petition under Section 482 of the Code of Criminal Procedure, to come to a conclusion that the offence is not made out. The High Court has erred in law in going into the factual aspects of the matter which were not admitted between the parties. The High Court further erred in observing that Section 138(*b*) of the NI Act stood uncomplied with, even though Respondent 1 (accused) had admitted that he replied to the notice issued by the complainant. Also, the fact, as to whether the signatory of demand notice was authorised by the complainant company or not, could not have been examined by the High Court in its jurisdiction under Section 482 of the Code of Criminal Procedure when such plea was controverted by the complainant before it.
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> **11.** In *Suryalakshmi Cotton Mills Ltd.* v. *Rajvir Industries Ltd.*, (2008) 13 SCC 678, this Court has made the following observations explaining the parameters of jurisdiction of the High Court in exercising its jurisdiction under Section 482 of the Code of Criminal Procedure: (SCC pp. 685-87, paras 17 & 22)
>
> "*17*. The parameters of jurisdiction of the High Court in exercising its jurisdiction under Section 482 of the Code of Criminal Procedure is now well settled.

Although it is of wide amplitude, a great deal of caution is also required in its exercise. What is required is application of the well-known legal principles involved in the matter.

* * *

22. Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of the said jurisdiction. Yet again, the High Court at that stage would not ordinarily enter into a disputed question of fact. It, however, does not mean that documents of unimpeachable character should not be taken into consideration at any cost for the purpose of finding out as to whether continuance of the criminal proceedings would amount to an abuse of process of court or that the complaint petition is filed for causing mere harassment to the accused. While we are not oblivious of the fact that although a large number of disputes should ordinarily be determined only by the civil courts, but criminal cases are filed only for achieving the ultimate goal, namely, to force the accused to pay the amount due to the complainant immediately. The courts on the one hand should not encourage such a practice; but, on the other, cannot also travel beyond its jurisdiction to interfere with the proceeding which is otherwise genuine. The courts cannot also lose sight of the fact that in certain matters, both civil proceedings and criminal proceedings would be maintainable."

12. In *Rallis India Ltd.* v. *Poduru Vidya Bhushan*, (2011) 13 SCC 88, this Court expressed its views on this point as under: (SCC p. 93, para 12)

"*12*. At the threshold, the High Court should not have interfered with the cognizance of the complaints having been taken by the trial court. The High Court could not have discharged the respondents of the said liability at the threshold. Unless the parties are given opportunity to lead evidence, it is not possible to come to a definite conclusion as to what was the date when the earlier partnership was dissolved and since what date the respondents ceased to be the partners of the firm."

13. In view of the law laid down by this Court as above, in the present case the High Court exceeded its jurisdiction by giving its opinion on disputed questions of fact, before the trial court.

14. Lastly, it is contended on behalf of Respondent 1 that it was not a case of insufficiency of fund, as such, ingredients of the offence punishable under Section 138 of the NI Act are not made out. We are not inclined to accept the contention of the learned counsel for Respondent 1. In this connection, it is sufficient to mention that in *Pulsive Technologies (P) Ltd.* v. *State of Gujarat*, (2014) 13 SCC 18, this Court has already held that instruction of "stop payment" issued to the banker could be sufficient to make the accused liable for an offence punishable under Section 138 of the NI Act. Earlier also in *Modi Cements Ltd.* v. *Kuchil Kumar Nandi*, (1998) 3 SCC 249, this Court has clarified that if a cheque is dishonoured because of stop payment instruction even then the offence punishable under Section 138 of the NI Act gets attracted.

15. For the reasons as discussed above, we find that the High Court has committed grave error of law in quashing the criminal complaints filed by the appellant in respect of the offence punishable under Section 138 of the NI Act, in exercise of powers under Section 482 of the Code of Criminal Procedure by accepting factual defences of the accused which were disputed ones. Such defences, if taken before the trial court, after recording of the evidence, can be better appreciated."

21. Similar view has been reiterated by the Hon'ble Apex Court in the case of **Anukul Singh (supra)** that disputed and factual appreciation of evidence of both sides is beyond the scope of jurisdiction of this Court under Section 482 Cr.P.C. and it has been held in paras 9.2 to 11.3 as under:-

"**9.2.** Learned Senior Counsel further submitted that this Court has consistently held that at the stage of charge sheet, factual disputes and appreciation of evidence are beyond the scope of inquiry under Section 482 Cr.P.C. The veracity of allegations is a matter for trial. Reliance was placed on ***Md. Allauddin Khan* v. *State of Bihar***, wherein this Court observed:

> *"17. In our view the High Court had no jurisdiction to appreciate the evidence of the proceedings under of the Code of Criminal Procedure, because whether there are contradictions or/and inconsistencies in the statements of the witnesses is essentially an issue relating to appreciation of evidence and the same can be gone into by the Judicial Magistrate during Trial when the entire evidence is adduced by the parties."*

9.3. Placing reliance on the above principle, it was submitted that the impugned order dated 22.10.2019 passed by the High Court dismissing the appellant's Section 482 petition suffers from no illegality. The High Court correctly recorded as follows:

> *"No material irregularity in the procedure followed by Court below has been pointed out. It is not a case of grave injustice justifying interference in this application at this stage. In view thereof, I do not find any illegality or infirmity in impugned charge sheet. This application lacks merit and is accordingly dismissed."*

9.4. Therefore, the learned Senior Counsel contended that a cognizable offence is clearly made out from the material gathered during investigation; the matter is under trial; and if the appellant has any defence, the same can only be established before the trial Court. The proceedings under Section 482 Cr.P.C. cannot be invoked to short-circuit the trial process. Accordingly, the present Criminal Appeal is devoid of merit and liable to be dismissed.

10. We have heard the rival submissions and perused the materials available on record including the judgments relied by them.

11. Before adverting to the facts of the present case, it is necessary to recapitulate the settled legal principles governing the exercise of inherent powers under Section 482 Cr.P.C. It is well established that though the High Court possesses wide and plenary inherent jurisdiction, such power is not unbridled or unlimited, but circumscribed by self-imposed restraints evolved through judicial pronouncements.

11.1. This Court in ***State of Haryana* v. *Bhajan Lal***, at paragraph 102, laid down illustrative categories where quashing of proceedings is justified. These are:

> "*(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."*

The categories in *Bhajan Lal* are illustrative and not exhaustive, but they provide guiding principles to balance two competing considerations - (a) preventing abuse of process of law, and (b) ensuring that criminal proceedings are not stifled at the threshold on disputed questions of fact.

11.2. Equally, this Court has consistently cautioned that the High Court, while exercising jurisdiction under Section 482 Cr.P.C., cannot embark upon a "mini-trial" or weigh the sufficiency of evidence, which falls within the domain of the trial Court. The scope of enquiry is confined to whether, on a plain reading of the FIR/complaint and accompanying material, the ingredients of the alleged offence are disclosed. [See: ***Rajiv Thapar* v. *Madal Lal Kapoor***, ***HMT Watches* v. *Abida***, and ***Rathish Babu Unnikrishnan* v. *the State (Govt. of NCT of Delhi) and others***].

11.3. In ***Md. Allauddin Khan* v. *State of Bihar***, it was reiterated that appreciation of contradictions or inconsistencies in witness statements lies within the exclusive domain of the trial Court and not in proceedings under Section 482 Cr.P.C. Similarly, in ***CBI***

v. *Aryan Singh*, it was emphasized that the High Court had exceeded its jurisdiction by examining the merits of the prosecution's case and holding that charges were not proved, which is a matter strictly for trial."

22. Had it been the case of the petitioner that he sent two letters dated 06.12.2010 and 19.01.2011 to the respondent-Department with a request for providing him the seizure documents, *panchnama,* etc. and had it been his case that even after receipt of the notice under Section 153A of the Act of 1961, the same request was made prior to expiry of 35 days, the situation might have been different for appreciating the arguments of the petitioner.

23. Since, no documentary evidence or proof in this regard has been placed on the record by the petitioner to show even *prima facie* that the needful exercise was done at his end to show his *bonafides*, the situation could have been different. But not a single document/letter dated 06.12.2010 & 19.01.2011 has been placed on record in support of the contentions. Simply a reference of those letters is given in the letter dated 19.10.2011, which has been placed on record. The fact of submitting and sending the letters dated 06.12.2010 & 19.01.2011 by the petitioner to the Department has been seriously disputed by the respondents.

24. Furthermore, no document has been placed on record by the petitioner to demonstrate that from the date of issuance and receipt of notice under Section 153A of the Act of 1961 and before the expiry of the period mentioned therein, i.e., in between 09.08.2011/11.08.2011 to 15.09.2011, any such request was made by the petitioner to the respondent-Department for

providing him the search/seizure documents, *panchnama,* etc. for submission of the revised returns.

25. Hence, in absence of such *prima facie* evidence, it cannot be presumed that the petitioner was 'innocent' or not or that non-filing of the Income Tax Return within the prescribed time was willful or not? and Whether there was any 'mensrea' in the mind or on the part of the petitioner or not? All these questions are disputed questions of facts which need to be proved and established by the petitioner and the respondents at the appropriate stage of the trial and certainly these disputed questions of facts would be appreciated by the Trial Court at the appropriate stage by evaluating the evidence led by both the sides.

26. It is a well-established principle of law that at the stage of quashing the proceedings, under Section 482 Cr.P.C., at the stage of taking cognizance and even at the stage of framing of charge, only *prima facie* case is required to be seen. The defence of the accused is not supposed to be looked into, at this initial stage and the same would be appreciated by the Trial Court at the appropriate stage of the trial.

Conclusion:

27. In view of the discussions made hereinabove, this Court finds no merits and substance in these petitions and the judgments relied upon by the petitioner would not apply at this stage because in all these judgments, there was appreciation of evidence before the Trial Court and accordingly, benefit of the same was extended to the accused persons by giving them benefit of doubt.

Hence, the instant petitions are liable to be and are hereby rejected. Stay applications and all pending applications, if any, also stand rejected.

Parting Remarks:

28. Before parting with this order, it is made clear that whatever has been observed by this Court is not an expression of opinion by this Court on the merits of the case. The Trial Court is directed to decide all the pending matters, on the basis of the evidence led by both the sides and on the basis of the merits, without being influenced by any of the opinions or expressions made by this Court, while passing the instant order.

29. Parties are left free to bear their own costs.

30. Let a copy of this order be placed separately in each file of the misc. petitions.

(ANOOP KUMAR DHAND),J

25-30/Karan