

IN THE HIGH COURT OF BOMBAY AT GOA.***CRIMINAL WRIT PETITION NOS.207 AND 213 OF 2017.******CRIMINAL WRIT PETITION NO. 207 OF 2017.***

Prof. Y. V. Reddy, major in age, Presently functioning as the Registrar Goa University, Taleigao Plateau, Taleigao, Goa.

..... Petitioner.

Versus

1 Shri Sakharay Naik,
S/o. Shri Ulhas Naik,
age 39 years, Advocate,
residing at H. No.78,
Patto, Ribandar, Goa.

2 State of Goa Through
Police Inspector
Agacaim Police Station,
Agacaim, Tiswadi-Goa.

3 Superintendent of Police
(North) Porvorim-Goa.

..... Respondents.

Mrs. A. Agni, Senior Advocate with Ms. E. Esteibeiro, Advocate for the Petitioner.

Respondent no.1 in person.

Mr. M. Amonkar, Additional Public Prosecutor for the Respondent nos. 2 and 3.

WITH

CRIMINAL WRIT PETITION NO. 213 OF 2017

Dr. Gopakumar V. S/o Shri Velayudhan Pillai Aged 56 years, occupation service, Residing at house No. BS-2, Chandradeep Apts, Patto, Ribandar Goa.

..... Petitioner.

Versus

- 1 State, Through Police Inspector, Agacaim Police Station, Agacaim, Tiswadi-Goa.
- 2 Superintendent of Police (North), Porvorim-Goa.
- 3 Adv. Sakharay Naik, s/o Shri Ulhas Naik, aged 39 years, Advocate, Residing at H. No.78, Patto, Ribandar, Goa. Respondents.

Mr. S. N. Joshi and Mrs. Sameera Bhat, Advocates for the Petitioner.

Mr. M. Amonkar, Additional Public Prosecutor for the Respondent nos.1 and 2.

Respondent no.3 in person.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.***

Reserved on :7 June 2018.

Pronounced on:-27 June 2018.

JUDGMENT (Per Prithviraj K. Chavan,J.)

Rule.

2. Rule made returnable forthwith. Heard finally with the consent of the learned Counsel appearing for the Petitioners and Respondents in both petitions. The learned Additional Public prosecutor waives service of notice on behalf of the respondent nos. 2 and 3 in Writ Petition No. 207 of 2017 and Respondent nos.1

and 2 in Writ Petition No.213 of 2017.

3. These two identical petitions raise a common question of law arising from similar facts and, are therefore, disposed of by a common judgment and order.

4. The Petitioner in Criminal Writ Petition No. 213 of 2017, pursuant to an advertisement published in the news paper had applied and appointed as a Librarian in Goa University after recommendation of the Selection Committee on 16 October, 2009. It is contended that after scrutiny of the documents submitted by the Petitioner along with his application dated 3 March 2009, an offer of appointment was issued as a librarian in Goa University. Accordingly, the Petitioner joined Goa University on 15 January 2010.

5. In the year 2013, objections were raised regarding the appointment of the Petitioner as a university librarian by one Mr. Kashinath Shetye who lodged a complaint alleging fraud, criminal conspiracy etc in the selection of the Petitioner with Deputy Superintendent of Police, Anti Corruption Branch, inter alia, addressing a letter to the Registrar of the said University. One more complaint was lodged by one Mr. C. S. Barretto against the appointment of the Petitioner on 11 October 2013, however, a Committee constituted by Goa University, on 31 October 2013

found the Petitioner eligible for appointment of librarian and submitted a report to that effect.

6. Subsequently, the Respondent no.3 who is a practicing Advocate sought personal information of the Petitioner by moving various applications under the Right to Information Act dated 6 April 2015, 15 April 2015, 24 April 2015, 9 May 2015 and 10 June 2015. University of Goa again constituted a one man inquiry committee which had considered all the allegations made by the Respondent no.3(Advocate Naik) and gave negative findings upholding the appointment of the Petitioner.

7. The Respondent no.3, thereafter, filed a complaint with Agacaim Police Station and Superintendent of Police for registration of FIR against the Petitioner and the Authorities of the Goa University alleging irregularities in the selection of the Petitioner. The police machinery, after conducting the necessary inquiry found no irregularities in the selection of the petitioner as a librarian.

8. The Respondent no.3, thereafter, approached the learned Judicial Magistrate, First Class and moved an application under Section 156(3) of the Cr.P.C. The Agacaim police and the Superintendent of police filed a detailed reply before the learned JMFC reiterating their earlier stand that the appointment of the

Petitioner was in accordance with the statue of the Goa University and that no irregularities were found therein. It is contended that despite a negative report from the police, the learned JMFC, directed concerned police station to register an FIR against the Petitioner within 30 days from the date of the order. Accordingly, Inspector of police attached to Agacaim police station registered an FIR bearing no.70 of 2017 against both the Petitioners (Petitioner in WP 207 of 2017 is the present Registrar of Goa University). The Petitioners have therefore, approached this Court under Articles 226 and 227 of the Constitution of India read with Section 482 of Cr.P.C., for quashing the impugned order, complaint dated 23 January 2015 and the FIR.

9. We have heard the learned Counsel for the Petitioners, learned Additional Public Prosecutor for State and Advocate Naik in person.

10. Ms. A. Agni, learned Senior Counsel appearing for the Registrar of Goa University has assailed the impugned order of the learned Judicial Magistrate, First Class by contending that it has been passed without application of mind and ignoring the report submitted by the police as well as the report of the Selection Committee who recommended the appointment of the Petitioner- Dr. Gopakumar as a librarian.

11. The learned Senior Counsel drew our attention to the fact that none of the members of the Screening Committee or Selection Committee are referred to in the complaint by their names by Respondent no.3 nor the complaint is directed against any such members. It is further pointed out that the complaint does not make any allegations against the incumbent professor Sangodkar who was then Registrar in 2009 or Professor Dr. V. P. Kamat who was the Registrar in the year 2012, when the Petitioner Dr. Gopakumar was confirmed as a librarian. The present Petitioner has joined as Registrar of the Goa University in 2016.

12. It is, inter alia, contended that there is absolutely no material to register the FIR under any of the Sections under I.P.C. i.e. 415, 463, 464, 468 and 472 as against the Petitioners.

13. Shri S. N. Joshi, learned Counsel appearing for the Petitioner in Criminal Writ Petition No.213 of 2017 drew our attention to the various documents annexed on record in order to substantiate his contention that the Petitioner came to be appointed by following due procedure of law by the Goa University. It is also brought to our notice that the Petitioner has satisfied all the prerequisites for his appointment as a librarian. While assailing the impugned order, it is contended that it has been passed mechanically without application of mind and, therefore,

sought quashing of the same along with the complaint and FIR.

14. On a query made by us Respondent no.3 candidly admitted that he had not levelled any allegation against the Petitioner (Professor Reddy) in Writ Petition No.207 of 2017 and that said professor Reddy is innocent. However, he tried to justify his stand taken by him in the complaint and supported the impugned order.

15. This can be said to be a classic case of abuse of process of Court by the Respondent no.3 who appears to have invoked jurisdiction of the learned JMFC under Section 156(3) of Cr.P.C., at his own whim only in order to harass the Petitioners without any rhyme or reason. At the outset, it is clear that the Respondent no.3 is not a person who has been really aggrieved with the appointment of the Petitioner Mr. Gopakumar as a Librarian in the University of Goa. One would have understood if the said powers of the Magistrate had been invoked by a person who is really aggrieved by the said appointment.

16. It is apparent from the record that the first complaint was lodged against the Petitioner Dr. Gopakumar in the year 2013 with the Anti Corruption Branch of the Directorate of Vigilance, Government of Goa wherein it is alleged that by hatching a criminal conspiracy and by fraud the Petitioner came to be

appointed as a librarian in Goa University. It is not in dispute that the Petitioner came to be appointed as one of the seven candidates who were shortlisted by the Selection Committee of the University in accordance with the statute in force. Interestingly, none of the unsuccessful candidates objected the appointment of the Petitioner. The Petitioner was issued an offer of appointment as a librarian by a communication dated 16 October 2009. Pursuant to the complaint with the Anti Corruption Branch, police officials summoned the members of the Screening Committee as well as the Selection Committee and found that no irregularities were committed in the selection process. Inquiry was, therefore, closed.

17. The record further reveals that thereafter one Shri C. Barreto made a representation dated 11 October 2013 to the police authority including Prime Minister of India, Governor/Chancellor, Goa University, University Grants Commission raising the same issue of appointment of the Petitioner on the post of librarian. He obtained information about Educational qualification and C.V of the Petitioner under Right to Information Act. He was supplied with all the necessary documents by Goa University.

18. Thereafter, Respondent no.3 sought all the personal information of the Petitioner in the form of his office timings,

Attendance records, Biometric Attendance Record, Muster Roll, Joining report, details of leave obtained alongwith its breakup including earned leave, Balance leave, participation by the Petitioner in out station conferences and seminars, copies of the Leave Sanction Orders, number and types of holidays the Petitioner was entitled to, Lectures delivered by the Petitioner, emoluments paid to the Petitioner for the Lectures, Documents such as PAN card, Form 16 etc. The Petitioner contended that Respondent no.3 and his group were trying to corner and blackmail him for some unknown reasons.

19. In view of the aforesaid allegations by the Respondent no.3 the University constituted one man Enquiry Committee under no.GA/Admin.(NT) PA/VG/543/2017/2188 dated 23 January 2017. The said Enquiry Committee considered all the allegations and gave negative findings. The Committee gave a specific finding about the recruitment of the Petitioner to the post of "librarian" in the University and not "University Librarian." It is also made clear that the appointment of the Petitioner was in accordance with the Recruitment Rules as stipulated in Status SA-19(ix)(4), which did not require NET/SET Certificate. A perusal of the said inquiry committee's report clearly indicates that the committee had dealt with each and every allegation levelled by the Respondent no.3 and satisfactorily explained as to how the Petitioner came to the appointed by following the rules for recruiting the librarian in the

University of Goa.

20. It appears that despite having received such a detailed report, the Respondent no.3 was perhaps not satisfied with the same for the reason best known to him and made a representation to Police Authority of Agacaim Police Station with a copy to the Superintendent of Police for seeking registration of the FIR against the Petitioner and Goa University authorities alleging irregularities in the selection of the Petitioner.

21. The Police Authority after collecting all the necessary documents and information and conducting an inquiry found that the appointment of the Petitioner was as per rules of the Goa University.

22. Despite having reports from the University of Goa as well as from the Police Authorities, it seems that the Respondent no.3 was not still satisfied and persisted to perhaps for the reason that he could not succeed in his devilish design to harass the Petitioners. He, therefore, approached the learned Judicial Magistrate, First Class by filing an application under Section 156(3) of Cr.P.C., bearing Criminal Misc. Application No. 251/2016/B.

23. Respondent nos.1 and 2/Police Authorities filed a reply-

cum report dated 1 October 2016 in the said proceedings before the learned JMFC. The said reply/report reads thus:-

“The Appointment of the Petitioner was as per the Statute SA-19(ix)(4) for the post of Librarian, which lays down the qualifications required for the post. In terms of the said Statute, Candidate ought to possess minimum qualification such as Master's Degree in Librarian Science/Information Science/Documentation with at least 55% marks and consistently good academic record and 13 years as Dy. Librarian in a University Library or 18 years' experience as a College Librarian, evidence of Innovative Library Service and Organization of Published works. Therefore it is incorrect to state that major documents for University Librarian post are as experience certificates, publication and M-Lib.Sc. Certificate. It may be noted that Phd. Qualification and NET/SET certificate was not essential at the time of appointment of Librarian.”

24. Despite receipt of the aforesaid report from the Respondent nos.1 and 2, it is manifest that the learned Magistrate without application of mind and ignoring the reports of the Committee of University of Goa as well as Police, mechanically passed the impugned order directing the Respondent nos.1 and 2 to register an FIR against the Petitioner within 30 days from passing of the order dated 7 October 2017. This order was passed on the basis of the application of the Respondent no.3 under Section 156(3) of Cr.P.C, seeking directions to the Respondents to register an FIR under Sections 415, 463, 464, 468 and 472 of IPC against the Petitioner, Principal of University College, Palayam, Thiruvananthapuram, Kerala and Registrar of Goa University. As a

matter of fact, prima facie, ingredients of the aforesaid sections are not attracted. The Magistrate is not supposed to step into the shoes of an investigator which is exclusively the domain of police machinery. The investigation should be conducive of justice then only directions could be issued to register an FIR. It is difficult to understand as to how the learned Magistrate has failed to take into consideration the well reasoned report of the Committee of the University of Goa as well as the report of the Police which clearly indicate that there was absolutely no irregularities in the appointment of the Petitioner as a librarian. The learned Magistrate appears to have erred in both law and fact in issuing directions to the Police to register an FIR as above, unmindful of the fact that the Respondent no.3 had approached her Court with unclean hands.

25. It has been held by the Hon'ble Supreme Court in case of ***Priyanka Srivastava and another Vs State of Uttar Pradesh and others, (2015)6 SCC 287*** that it is now mandatory while invoking the power of the Court under Section 156(3) of Cr.P.C. to be supported by an affidavit. Power under Section 156(3) of Cr.P.C cannot be invoked by a litigant at his own whims to harass the others.

26. It would be apposite to quote paragraphs 30 and 31 which read thus:-

A stage has come in this country where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores. The warrant for giving a direction that an application under Section 156(3) Cr.P. C. be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to causally invoke the authority of the Magistrate under Section 156(3) of Cr. P.C.

27. It has been held by many decisions of this Court and Supreme Court that remedy available under Section 156(3) of Cr.P.C. is not a routine nature but exercise of power thereunder should be by application of judicial mind by remaining vigilant with the nature of the allegations made in the application after verifying the truth and veracity of the allegations made. Here there is no such affidavit filed by the Respondent no.3 Advocate Naik. The special committee constituted by University of Goa clearly held that the Petitioner was eligible who came to be

appointed by following due procedure prescribed by the rules and regulations of the University.

28. It would be apposite to reproduce part of the impugned order by which it appears that the learned Magistrate was not satisfied with the report of the Police which reads thus:-

“The Investigating officer, however have not taken into consideration the main allegation against the accused as regards the accused obtaining the experience certificate of 18 years issued to him by the Principal of University Palayam when it is the contention of the application that the said Principal of University Palayam, Kerala could not have issued such certificate as the same was issued on the basis of misrepresentation of facts and therefore the IO ought to have first registered the FIR and then conduct proper investigation as the alleged offence is based on the documentary evidence and no such efforts have been seen to be done by the IO, except he placing reliance on the reply filed by the Registrar of Goa University.”

29. A duty cast on the Magistrate while exercising power under Section 156(3) of Cr.P.C., cannot be marginalized. When the police machinery does not take steps at the stage of Section 154 of Cr. P.C., the Magistrate may exercise power under Section 156(3) of Cr.P.C. However, the Magistrate is required to remain vigilant with regard to the allegations made and the nature of the allegations. Here is the case where the Respondent no.3 approached the Magistrate only with a intention to harass the Petitioners. It is now high time to curb menace of such unscrupulous element by issuing suitable orders and directions.

30. It is also pertinent to note that the Petitioner Gopakumar came to be appointed in the year 2009, however, the Respondent no.3 approached learned JMFC in the month of October, 2017 after about eight years. There can be no other example than the one in hand exhibiting gross abuse of process of the Court wherein this Court can definitely exercise its inherent powers under Section 482 of Cr.P.C. for quashment of the FIR and the complaint.

31. It would be apposite to refer paragraphs 20, 21, 22, 27, 28 and 29 from **Priyanka Srivastava** (Supra).

20. *The learned Magistrate, as we find, while exercising the power under Section 156(3) Cr.P.C. has narrated the allegations and, thereafter, without any application of mind, has passed an order to register an FIR for the offences mentioned in the application. The duty cast on the learned Magistrate, while exercising power under Section 156(3) Cr.P.C., cannot be marginalized. To understand the real purport of the same, we think it apt to reproduce the said provision:*

"156. Police officer's power to investigate cognizable case. -

- (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.
- (2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under Section 190 may order such an investigation as above-mentioned."

21. Dealing with the nature of power exercised by the Magistrate under Section 156(3) of the CrPC, a three-Judge Bench in [Devarapalli Lakshminarayana Reddy and others v. V. Narayana Reddy and others](#)[2], had to express thus:

"It may be noted further that an order made under sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or chargesheet under Section 173."

22. [In Anil Kumar v. M.K. Aiyappa](#)[3], the two-Judge Bench had to say this:

"The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in *Maksud Saiyed* [(2008) 5 SCC 668] examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation."

27. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain

vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. The present is a case where the accused persons are serving in high positions in the bank. We are absolutely conscious that the position does not matter, for nobody is above law. But, the learned Magistrate should take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the SARFAESI Act, invokes the jurisdiction under Section 156(3) Cr.P.C. and also there is a separate procedure under the Recovery of Debts due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to.

28. *Issuing a direction stating "as per the application" to lodge an FIR creates a very unhealthy situation in the society and also reflects the erroneous approach of the learned Magistrate. It also encourages the unscrupulous and unprincipled litigants, like the respondent no.3, namely, Prakash Kumar Bajaj, to take adventurous steps with courts to bring the financial institutions on their knees. As the factual exposition would reveal, he had prosecuted the earlier authorities and after the matter is dealt with by the High Court in a writ petition recording a settlement, he does not withdraw the criminal case and waits for some kind of situation where he can take vengeance as if he is the emperor of all he surveys. It is interesting to note that during the tenure of the appellant No.1, who is presently occupying the position of Vice-President, neither the loan was taken, nor the default was made, nor any action under the SARFAESI Act was taken. However, the action under the SARFAESI Act was taken on the second time at the instance of the present appellant No.1. We are only stating about the devilish design of the respondent No.3 to harass the appellants with the sole intent to avoid the payment of loan. When a citizen avails a loan from a financial institution, it is his obligation to pay back and not play*

truant or for that matter play possum. As we have noticed, he has been able to do such adventurous acts as he has the embedded conviction that he will not be taken to task because an application under Section 156(3) Cr.P.C. is a simple application to the court for issue of a direction to the investigating agency. We have been apprised that a carbon copy of a document is filed to show the compliance of Section 154(3), indicating it has been sent to the Superintendent of police concerned.

29. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same."

32. The Supreme Court in the case of **Gian Singh Vs State of Punjab and another, (2012)10 SCC 303**, discussed the scope of Section 482 of Cr.P.C. Paragraphs 55 and 56 of the Judgment can be reproduced for advantage which read thus:-

55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim *quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest*. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. *Ex debito justitiae* is inbuilt in such exercise; the whole idea is to do real, complete and

substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection.

56. *It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a straitjacket formula regulating the exercise of inherent powers under Section 482. No precise and inflexible guidelines can also be provided.*

33. In a recent pronouncement the Hon'ble Supreme Court in the case of ***Parbatbhai Aahir Alias Parbatbhai Bhimsinhbhai Vs State of Gujarat and others, (2017)9 SCC641*** reiterated the scope of Section 482 of Cr.P.C. The Hon'ble Supreme Court held thus:-

Section 482 is prefaced with an overriding provision. The statute saves the inherent power of the High Court, as a superior court, to make such orders as are necessary (i) to prevent an abuse of the process of any court; or (ii) otherwise to secure the ends of justice.

The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions :

- (i) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;
- (ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to

quash under Section 482 is attracted even if the offence is non-compoundable.

- (iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;
- (iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;
- (v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;
- (vi) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;
- (vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;
- (viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;
- (ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

- (x) There is yet an exception to the principle set out in propositions (viii) and
- (ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.

34. Keeping in mind the ratio laid down by the Hon'ble Supreme Court in the cases cited supra, this is a fit case in which inherent powers under Section 482 of Cr.P.C. need to be exercised not only in order to prevent an abuse of process of the Court by the Respondent no.3 but also to do real, complete and substantial justice for which such power exists.

35. To a query made by us to the Respondent no.3 Advocate Naik about his intention to file a complaint against the Petitioners, he could not reply. However, he reiterated that he had not alleged anything against the Petitioner, Y. V. Reddy who is present Registrar of Goa University. It is surprising as to how without naming a particular individual a complaint could be filed indicating designations as Registrar of the University or a Principal of a college, etc.

36. In the light of the discussions made hereinabove, there is absolutely no criminality. Interest of justice, therefore, demands

that entire criminal proceedings needs to be quashed.

37. Before parting with the Judgment, we are constrained to observe that in order to inculcate a sense of discipline amongst unprincipled and unscrupulous litigants like that of the Respondent no.3 herein who, despite being in a noble profession, has abused the process of the Court to unnecessarily harass the Petitioner, is required to be dealt with in such a manner which would give a proper message. We therefore, direct the Respondent no.3(Advocate Naik) to pay costs of Rs.5,000/- (Rupees five thousand only) each to both the Petitioners within a period of two weeks from today.

38. Consequently, the impugned order dated 7 October 2017 passed by the learned JMFC in Criminal Miscellaneous Application No.251/2016/B, complaint dated 23 January 2015 and the FIR No.70/2017 dated 4 November 2017 registered with the Agacaim Police station Goa are hereby quashed and set aside.

39. Rule is made absolute in the aforesaid terms. Petitions stand disposed of.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.