

HAZARI LAL GUPTA

v.

RAMESHWAR PRASHAD & ANR.

December 2, 1971

[A. N. RAY AND D. G. PALEKAR, JJ.]

*Code of Criminal Procedure (5 of 1898), ss. 496, 497, 498 and 561A
—Powers of High Court under.*

The appellant was living and doing business in the United Kingdom. He was arrested for offences under ss. 406 and 420 I.P.C., when he came to India, on information given by the complainants. Pending investigation, he applied for bail and the court ordered that he may be released on bail on his furnishing personal bonds and sureties. He then applied to the High Court for modification of the order, undertaking not to leave India and to surrender his passport, and the High Court reduced the amount of the personal bonds and of the sureties. Thereafter, the complainants applied to the High Court under ss. 498 and 561A, Cr. P.C., praying that the appellant should be directed to surrender his passport before enlarging him on bail and the High Court passed orders accordingly. The appellant surrendered his passport and was released on bail. He then applied under s. 561A to the High Court praying : (1) that the proceedings based upon the First Information Report lodged by the complainants be quashed, (2) that the order of the High Court directing the appellant to surrender the passport be modified and the appellant's passport be released, and (3) that the restrictions imposed on him not to leave India may be cancelled. The High Court dismissed the application.

Dismissing the appeal to this Court,

HELD : (1) In exercising the inherent jurisdiction under s. 561A, the High Court can quash proceedings if there is no legal evidence or if there is any impediment to the institution or continuance of proceedings; but the High Court may not ordinarily inquire as to whether the evidence is *reliable or not*. Where again, investigation into the circumstances of an alleged cognizable offence is carried on under the provisions of the Code the High Court should not interfere with such investigation, because, it would then be impeding investigation and the jurisdiction of statutory authorities exercising power in accordance with the provisions of the Code. [670 C-E]

R. P. Kapur v. State of Punjab [1960] 3 S.C.R. 388 and *State of West Bengal v. S. N. Basak* [1963] 2 S.C.R. 53, referred to.

(2) Sections 496, 497 and 498, Cr. P.C., are not exhaustive of the powers of the court in regard to terms and conditions of bail particularly when the High Court was dealing with the cases of this type under s. 561A, and the apprehension of the appellant jumping bail could not be brushed aside. [669 H; 670 A]

(3) When the High Court passed orders reducing the sureties and thereafter passed an order directing the appellant to surrender his passport and the appellant complied with the orders and was released on bail, the appellant could not again come up under s. 561A for modifying and revising the orders passed by the High Court. [669 F-G]

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeals Nos. 110 to 113 of 1971.

Appeals by special leave from the judgment and order dated March 22, 1971 of the Allahabad High Court in Criminal Misc. Petitions Nos. 2675 to 2678 of 1970.

B *G. N. Dikshit* and *S. K. Bisaria*, for the appellant (in all the appeals).

R. Bana, for respondent No. 1 (in all the appeals).

O. P. Rana, for respondent No. 2 (in all the appeals).

The Judgment of the Court was delivered by

C **Ray, J.** These four appeals are by special leave against the order dated 22 March, 1971 of the High Court at Allahabad dismissing the applications of the appellant under section 561-A of the Criminal Procedure Code for quashing the proceedings based upon first information report lodged against the appellant by the four respondents.

D The appellant has been living and doing business in the United Kingdom since the year 1963. The appellant is one of the Directors of M/s H. Gupta (London) Limited and Oriental Wool Crafts Limited carrying on business in England. The company is dealing in the business of carpets imported from India.

E Sometime in the month of June, 1970 four complaints were lodged against the appellant. The complainants are residents of Bhadohi in the District of Varanasi. The complainants are manufacturers of carpets. The complainants came in contact with the appellant in the year 1962. The complainants and the appellant had dealings and transactions in carpets. In the year 1965 the appellant withheld payment of several bills representing the price of carpets sent by the complainants to the appellant. In the year 1965 the appellant came to India. The complainants demanded money. The appellant said that he would send them payment from London. The complainants did not receive any money. When the appellant came to India in 1970 the complainants were kept in the dark about his visit to India. Eventually, the complainants came to know about it. The complainants on or about 4 July, 1970 lodged complaints against the appellant.

G The appellant was thereafter arrested for offences under sections 406 and 420 of the Indian Penal Code on the first information report of the complainants.

H The Additional District Magistrate, Gyanpur refused bail. On 13 July, 1970 the appellant applied for bail before the Sessions Judge, Varanasi in Uttar Pradesh. The appellant was to

be enlarged on bail and the sureties were to be two of Rs. 40,000 each in one case, two sureties of Rs. 30,000 each in the second case and two sureties of Rs. 10,000 each in the third case and two sureties of Rs. 15,000 each in the fourth case and in each case there was to be a personal bond of the like amount. The appellant was also asked not to leave India without the permission of the court. The appellant was unable to furnish the sureties. The appellant thereafter applied to the High Court at Allahabad for modification of the order in respect of sureties. The High Court on 21 July, 1970 was pleased to modify the order of the Sessions Judge by reducing the amount of surety to Rs. 10,000/- in each case and a personal bond of the like amount in each case.

The complainants on coming to know of the order of the High Court in the month of July, 1970 made an application under section 498 read with section 561-A of the Criminal Procedure Code that the Additional District Magistrate at Varanasi should be directed to seize the passport of the appellant before enlarging him on bail on the ground that there was an apprehension that the appellant would jump his bail. The High Court at Allahabad on 21 August, 1970 passed orders directing the Additional District Magistrate, Varanasi that there would be no harm if the appellant was further ordered to surrender his passport to the Additional District Magistrate (Judicial), Varanasi. The appellant was thereafter released on bail on 21 September, 1970 after furnishing the surety to the tune of Rs. 10,000/- in each case and after surrendering his passport to the Additional District Magistrate (Judicial), Varanasi.

The appellant on being released on bail moved an application under section 561-A of the Criminal Procedure Code in the High Court at Allahabad and prayed for three orders. These were: first, that the proceedings based upon first information report lodged by the complainants be quashed; secondly, that the order of the High Court of Allahabad dated 21 August, 1970 directing the appellant to surrender the passport be modified and the appellant's passport be released; and thirdly, that the restrictions imposed by the District Magistrate restricting the appellant not to leave India be cancelled. The High Court at Allahabad on 23 March, 1971 dismissed the application of the appellant. The present appeals are against that order of the High Court dated 23 March, 1971 refusing to quash the proceedings and to modify the restrictions imposed on the appellant.

Counsel on behalf of the appellant raised four contentions. First, that the proceedings should be quashed because there was no certificate by the High Commissioner for India in the United

A Kingdom under section 188 of the Criminal Procedure Code that the charges against the appellant ought to be enquired into in India. Secondly, there was no sanction of the Director of Foreign Exchange for prosecution. Thirdly, the report under section 169 of the Criminal Procedure Code of the Investigation Officer was not placed. Fourthly, there was no case against the appellant.

B The case against the appellant is in the course of investigation. Counsel on behalf of the State submitted that investigation was practically complete and the case would commence soon. It is not necessary to express any opinion on the question as to whether certificate or sanction is necessary. If certificate or sanction will be necessary and if there will be no certificate or sanction it will be open to the appellant to canvass that ground at the appropriate stage of trial. The report which the appellant characterises as one under section 169 of the Criminal Procedure Code does not find any mention in the grounds. The affidavit filed by the Supervising Officer of the investigation is that detailed investigation was started and as yet there is no report under section 169 of the Criminal Procedure Code. The appellant is not entitled to papers of the Investigation Officer. It is also not desirable to express any opinion on the merits of the case at this stage.

D The contention of the appellant in the forefront was that the passport of the appellant should be returned so that the appellant could return to England. On behalf of the appellant an affidavit was affirmed by Virendra Kumar Srivastava in the High Court at Allahabad in support of the application for modification of the order for sureties that the appellant was prepared to give an undertaking that he would not leave India before the case was finally decided and he was further prepared to surrender his passport after release on bail. When the High Court at Allahabad passed an order on 21 July, 1970 reducing the sureties and thereafter on 21 August, 1970 passed an order directing the appellant to surrender his passport and the appellant complied with the orders and was released on bail, the appellant could not again come up under section 561-A of the Criminal Procedure Code before the High Court at Allahabad for modifying and revising the orders passed by the High Court.

E On behalf of the appellant it was said that sections 496, 497 and 498 of the Criminal Procedure Code in relation to bail did not confer any power on the court when granting bail to restrict the departure of the appellant from India by requiring the appellant to surrender the passport. Sections 496, 497 and 498 of the Criminal Procedure Code are not exhaustive of powers of the court in regard to terms and conditions of bail particularly when

the High Court under section 561-A of the Criminal Procedure Code deals with cases of this type. The apprehension of the appellant jumping bail could not be brushed aside. If the appellant wanted to retain the passport the court might not have granted the appellant any bail. Again, the reduction of the surety was made in order to enable the appellant to be enlarged on bail. The reduction of surety was also on the consideration that the appellant would not leave India.

The inherent power of the High Court under section 561-A of the Criminal Procedure Code has been considered by this Court in *R. P. Kapur v. The State of Punjab*⁽¹⁾ and *State of West Bengal v. S. N. Basak*.⁽²⁾ In exercising jurisdiction under section 561-A of the Criminal Procedure Code the High Court can quash proceedings if there is no legal evidence or if there is any impediment to the institution or continuance of proceedings but the High Court does not ordinarily enquire as to whether the evidence is 'reliable or not'. Where again, investigation into the circumstances of an alleged cognizable offence is carried on under the provisions of the Criminal Procedure Code the High Court does not interfere with such investigation because it would then be impeding investigation and jurisdiction of statutory authorities to exercise power in accordance with the provisions of the Criminal Procedure Code. The High Court was correct in dismissing the applications under section 561-A of the Criminal Procedure Code. The appeals are therefore dismissed.

Counsel on behalf of the State stated that the cases against the appellant would commence soon. The State should keep that in view particularly because long time has been taken for investigation.

V.P.S.

Appeals dismissed.

(1) [1960] 3 S.C.R. 388.

(2) [1963] 2 S.C.R. 52.