SH. GANESH NARYAN HEDGE

v.

SH. S. BANGARAPPA AND ORS.

APRIL 20, 1995

[B.P. JEEVAN REDDY AND S.B. MAJMUDAR, JJ.]

Code of Criminal Procedure 1973:

Sections 399 (3) & 482—Second Revision Application by the same party—Remedy u/s 399 does not bar a person from invoking the inherent power of High Court—High Court not to act as second revisional court in the garb of exercising inherent powers—High Court not to go into appreciation of evidence while exercising imperent power and specifically—When first revisional court denied interference.

Complaint not to be disallowed to be proceeded with on the ground of delay of 12 years—When complainant not responsible for delay—Moreover when such contention not raised before High Court—Interference of Superior courts at initial or interlocutory stages of criminal trial—Deprecated.

A complaint was filed by appellant against 3 respondents u/s 500 IPC. Charge were framed by Magistrate, recording the reasons thereof.

Revision before the Additional sessions Judge, against the order of the Magistrate, was preferred, which was dismissed holding that framing of the charges by the Magistrate could be interfered with by the revisional court only when it is found that the order of the Magistrate is illegal, capricious or perverse.

High Court was approached u/s 482 CR. P.C. praying for quashing of the charge. Single Judge allowed the petition quashing the charge on merits, against which the present appeal has been filed.

Allowing the appeal, this court

HELD : 1.1. Availing of the remedy of the revision to the Sessions Judge U/s 399 does not bar a person from invoking the power of the High Court u/s 482. [556-C]

A **1.2. The High Court can not act as a second Revisional Court under the grab of exercising inherent powers. While exercising its inherent powers in such a matter it should be conscious of the fact that the Sessions Judge has declined to exercise his power of revision in the matter. The High Court should interfere only where it is satisfied that if the complaint is allowed to be proceeded with, it would amount to abuse of process of court or that the** B **interests of justice otherwise call for quashing of the charges. [556-C, D]**

Mrs. Dhanlaxmi **v.** *R. Prasanna Kumar & Ors.* **AIR (1990) SC4921 and** *State of Bihar* **v.** *Murad Ali Khan and others*, **[1988] 4 SCC 655, referred to.**

C **1.3. In this case High Court has gone beyond the purview of section 482 in quashing the charge as it has not been held that the evidence adduced by the complaint, oral or documentary, if unrebutted, would not have warranted the conviction of the accused within the meaning of section 245 (1), nor has it held that on evidence adduced, the Magistrate could not have reasonably formed an opinion that there is ground for presuming** D **that the accused has committed an offence as contemplated by section 246 (1). [558-B, C]**

1.4. While acting under section 482 and that too after the Sessions Judge has declined to interfere in the matter, the High Court ought not to E **have entered the arena of appreciation of evidence, nor should it have recorded a finding. [559-H, 560-A]**

2.1. As regards the claim that after a period of twelve years, the matter should not be allowed to be proceeded with, the court is of the opinion that complainant is certainly not responsible for this delay. F **Moreover, this contention does not appear to have been raised before the High Court. [560-C]**

2.2. Due to various reasons, criminal trial in our country excel in slow motion and this slow motion becomes slower when politically powerful G **or rich and influential persons figure as accused FIRs are quashed, charges are quashed, interlocutory orders are interfered with and at every step there will be revisions and applications for quashing and writ petitions. In short no progress is ever allowed to be made. [560-D, E]**

It is sad to note that repeated admonitions of this court have not H **deterred superior courts from interfering at initial or interlocutory stages**

of criminal cases. Such interference should be only in exceptional cases where the interests of justice demand it; it cannot be matter of course. [560-F]

Justice Krishna Iyer's **concurring view in Re -** *The Special Court Bill,* **1978 [1979] 1 SCC 380, referred to.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 564 of 1995.

From the Judgment and Order dated 16.6.92 of the Karnataka High Court in Crl. P. No. 1069 of 1991.

D. Krishnan, Rajesh Mahale, P.Mahale and K.K. Gupta for the Appellant.

G.N. Sehagiri Rao, A. Nagabhushanam, P.K. Rao and C.S.S Rao for the Respondents.

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. Leave granted. Heard counsel for both the parties.

The appeal arises from the judgment and order of a learned Single Judge of the Karnataka High Court quashing the charge framed by the learned Magistrate.

A complaint was filed by the appellant against the three respondents herein under Section 500 of the Indian Penal Code. After receiving the evidence of the prosecution as contemplated by Section 244, the learned Magistrate framed the charge against the respondents under Section 500 of the Indian Penal Code. While framing the charge, the learned Magistrate has recorded his reasons therefor. In this order, he referred to the objections raised by the accused and his reasons for rejecting the same. The learned Magistrate observed : "(O)n going through the evidence adduced before court by the complainant at this stage, I am of the considered opinion that there exist grounds to frame charge against A.1 to 3 for the offence punishable U/s. 500 I.P.C." The first respondent preferred a Revision (Criminal Revision Petition No. 104 of 1989) before the First Additional Sessions Judge, Hubli against the order of the learned Magistrate. The learned Sessions Judge dismissed the Revision observing

A that inasmuch as the learned Magistrate has framed the change on a consideration of the evidence adduced by the complainant, oral and documentary, and on being satisfied that there was a *prima facie* case made out against the accused, his order is not liable to be interfered with in Revision. He observed that a Revisional Court can interfere with the order of the trial magistrate framing charges only where it finds that the order B of the trial magistrate is illegal, capricious or perverse. Thereupon the first respondent approached the High Court under Section 482 of the Criminal Procedure Code praying for the quashing of the charge. The learned Single Judge allowed the petition on the following basis :

C "From the discussion made above, it has to be said that the approach of the Courts below in ordering to frame charge against the petitioner and the other two accused for an offence punishable under Section 500 IPC is the resultant of non- application of mind to the material available on record and also resultant of incorrect D exercise of jurisdiction conferred. The Courts below should have borne in mind that a person can be charged only when the allegations alleged against him are established *prima facie* and not otherwise, because in criminal cases the Courts must be very cautious and careful before proceeding to frame charge as unnecessary framing of charge on the one hand may result in affecting E the persons liberty and on the other hand cause continuous and unnecessary harassment, as it has happened in the instant case.

From the allegations made in the complaint and the intention to prosecute the accused by pursuing the complaint the material F placed on record and the information gathered at the trial it is clear that it is a matter of mere prestige for both the parties who according to their own version belong to different political faiths. It is not a genuine case of one making any imputation against the other or the other being defamed or his reputation lowered in the estimation of the public. This prolonged and protracted litigation G and harassment to both the parties would have been ended in the beginning itself if the courts below had taken into consideration the effect of Section 245 Cr. P.C. and its applicability to the necessary material on record keeping in mind the basis of the complaint, the admissibility of the documents in evidence and the H circumstances and context in which the alleged imputations were

made by the petitioners." A

The learned Judge quashed the charge not only with respect to the first respondent-accused, who alone was the petitioner before him, but also with respect to Respondents 2 and 3 (Accused 2 and 3 respectively), who had neither filed a Revision before the Sessions Judge nor had applied to the High Court for quashing the charge. B

The complainant-appellant, Shri Ganesh Narayan Hedge, says that he belongs to a highly reputed and well-known family of North Kanara district whose main occupation is agriculture and sericulture. Some members of the family are running a rice mill and one of the sons of the C complainant is running a chemical factory. The complainant says that he is the founder and President of various co-operative and educational institutions and that he is also the founder-President of Sahakari Shikshan Prasarak Samithi, Siddapur and is connected with certain other educational societies and banks. He says that by sincere and selfless work done in these D institutions he has acquired a high status and position in the society and that though he is the cousin of Shri Ramakrishna Hedge, the former Chief Minister of Karnataka, he is not associated with his political party. According to the complainant, the first respondent-accused is an active politician. During the relevant period, he was the President of a political party called 'Kranthiranga'. The first respondent aspired to become the Chief Minister E of Karnataka but he was frustrated in his efforts by Shri Ramakrishna Hedge who became the Chief Minister. The first respondent was, therefore, waiting for an opportunity to tarnish the image of Shri Ramakrishna Hegde. Shri Ramakrishna Hegde contested to the Legislative Assembly from Kamakpura Constituency. The first respondent set-up his candidate F against Shri Hedge. In the course of the election campaign, the first respondent held a press conference on April 28, 1983 at his residence at Bangalore. Respondents 2 and 3 who are the Editor and Chief Reporter respectively of the newspaper "Samyukta Karnataka", a daily, also attended the press conference. The first respondent made scandalous and false imputations against the complainant during the said press conference and G requested the correspondents to publish the same in their newspapers. The news item as published in "Samyukta Karnataka" daily (in it Hubli edition) reads thus :

"Involvement of Hegde's Brother in Rice smuggling"? H

A "Bangalore - 28, Sri S. Bangarappa the President of Karnataka Krantiranga, has accused to day that Sri Ganesh Hegde the brother of the Chief Minister Sri Ramakrishna Hegde is involving in smuggling of rice to Goa. Talking at a press conference, he said that the authorities are not dared to take action against the mill owner Shri Ganesh Hegde."

B

(Translation from Kannada)

The complainant submitted that the said imputation is false to the knowledge of the first respondent and was made with intention to defame and harm the reputation of the complainant. The allegation of smuggling C of rice levelled against the complainant is absolutely false and that the said false news item has lowered the prestige and reputation of the complainant and his family in the eyes of the public His case is that he is not the bother of Shri Ramakrishna Hegde as made out in the news item but only a cousin.

D The learned counsel for the appellants submitted that the framing of charge by the Magistrate is neither misdirected in law nor can it be said that there was no evidence before him upon which he could have formed an opinion that there is ground for presuming that the accused has committed the offence within the meaning of Section 246(1). The learned Magistrate, it is submitted, considered the oral and documentary evidence, E the decisions cited by both the sides and under a reasoned order rejected the objections raised by the first respondent and framed the charge. The learned Sessions Judge dismissed the Revision filed by the first respondent holding that the learned Magistrate has acted properly and in accordance with law in framing the charge and that there are no grounds for interfering F with his orders. A second Revision does not lie under the Code, and though an application under Section 482 of the Code of Criminal Procedure is not barred, the High Court cannot sit and act as the second Revisional Court while exercising the powers under Section 482. This provision can be invoked only where there is an abuse of process of Court or otherwise to G secure the ends of justice. Leaned counsel complained that the learned Single Judge has examined the matter as if he were an appellant court and quashed the charge on the approach and that he has exceeded his jurisdiction in doing so and in interfering at an interlocutory stage.

Shri Sheshagiri Rao, learned counsel for the first respondent justified H the reasoning and conclusion of the learned Single Judge. He submitted

that the complaint is the result of political vendetta, that it is not a genuine grievance and that the first respondent was not acting out of any extraneous motives in making the statement complained of. Learned counsel submitted that the first respondent is an active politician, that subsequently he has also become the Chief Minister of Karnataka and that he made the said statement under the *bonafide* belief that it is true. He made the said statement, submitted the learned counsel, in good faith and in public interest. The first respondent was not actuated by any motives of personal gain or personal animosity. Learned counsel further submitted that the said publication was in the year 1983, that twelve years have passed by since then and that any interference at this distance of time may not be called for in the interests of justice.

The complaint has been tried, it is stated, according to the warrant procedure, at the request of the first respondent, Section 244(1) provides that "(W)hen, in any warrant-case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution." Section 245(1) says that "(I)f, upon taking all the evidence referred to in section 244, the magistrate considers, *for reason to be recorded*, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him." Section 246(1) then says "(I)f, when such evidence has been taken, or at any previous stage of the case, the magistrate is of opinion that there is ground for presuming that the accused has committee an offence triable under this Chapter, which such magistrate is competent to try, and which in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused."

Section 399 of the Code of Criminal Procedure confers upon the Sessions Judge the power to revise any order made by the Magistrate but sub-section (3) thereof declares at the same time that " (W) here any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceedings by way of revision at the instance of such person shall be entertained by the High Court or any other Court."

A Section 482 of the Code saves the inherent powers of the High Court. It reads :

> "482. Saving of inherent powers of High Court - Nothing in this Code shall be deemed to limit or affect the inherent powers of the
B 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."

While it is true that availing of the remedy of the revision tc the Sessions Judge under Section 399 does not bar a person from invoking the
C power of the High Court under Section 482, it is equally true that the High Court should not act as a second Revisional Court under the garb of exercising inherent powers. While exercising its inherent power in such a matter it must be conscious of the fact that the learned Sessions Judge has declined to exercise his revisory power in the matter. The High Court
D should interfere only where it is satisfied that if the complaint is allowed to be proceeded with, it would amount to abuse of process of Court or that the interests of justice otherwise call for quashing of the charges. A few decision of this Court may usefully be referred at this stage. In *Mrs. Dhanalakshmi* v. *R. Prasanna Kumar & Ors*, AIR (1990) S.C. 494 this Court stated in a case of similar nature :

E

> "Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only
F in cases where the complaint does not disclose any offence or is frivoluous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to be High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis
G of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant the ingredients of the offence/offences are disclosed, and there is no material to show that
H the complaint is *mala fide* frivolous or vexatious, in that event there

would be no justification for interference by the High Court. A

The High Court without proper application of the principles that have been laid down by this Court in *Sharda Prasad Sinha* v. *State of Bihar*, [1977] 2 SCR 357 = AIR (1977) SC 1754, *Trilok Sinha* v. *Satya Deo Tripathi*, (1980) Cri LJ 822, AIR (1979) SC 850 and *Municipal Corpn. of Delhi* v. *Purshotam Das Jhunjunwala*, [1983] 1 SCR 895 = AIR (1983) SC 158 proceeded to analyse the case of the complainant in the light of all the probabilities in order to determine whether a conviction would be sustainable and on such premises arrived at a conclusion that the proceedings are to be quashed against all the respondents. The High Court was clearly in error in assessing the material before it and concluding that the complaint cannot be proceeded with. We find there are specific allegations in the complaint disclosing the ingredients of the offence taken cognizance of. It is for the complainant to substantiate the allegations by evidence at a later stage. In the absence of circumstances to hold *prima facie* that the complaint is frivolous when the complaint does disclose the commission of an offence there is no justification for the High Court to interfere." B C D

To the same effect is the holding in another decision in *State of Bihar* v. *Murad Ali Khan & Ors.*, [1988] 4 S.C.C. 655. This Court said : E

"It is trite that jurisdiction under Section 482, Cr. P.C., which saves the inherent power of the High Court, to make such order as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice, has to be exercised sparingly and with circumspection. In exercising that jurisdiction the High Court should not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not. That is the function of the trial Magistrate when the evidence comes before him. Though it is neither possible nor advisable to lay down any inflexible rules to regulate that jurisdiction, one thing, however, appears clear and it is that when the High Court is called upon to exercise this jurisdiction to quash a proceeding at the stage of the Magistrate taking cognizance of an offence the High Court is guided by the allegations, whether those allegations, set out in the complaint or the charge-sheet, do not in F G H

A law constitute or spell out any offence and that resort to criminal proceedings would, in the circumstances, amount to an abuse of the process of the court or not".

Examined from the above stand point, it would be evident that the learned Single Judge of the High Court has really gone beyond the purview B of Section 482 in quashing the charge. He has not held that the evidence adduced by the complainant, oral and documentary, if unrebutted, would not have warranted the conviction of the accused within meaning of Section 245(1) nor has he held that on the evidence adduced, the learned Magistrate could not have reasonably formed an opinion that there is C ground for presuming that the accused has committed an offence, as contemplated by Section 246 (1). The learned counsel for the respondent has laid great stress upon the observations of the learned Magistrate in Para 26 of his order, which reads : "A.1 has challenged the evidence of all these witnesses generally and more particularly of the evidence of P.W.1 D the complainant. In my opinion, at his stage, the evidentiary value of the documents and creditability of witnesses cannot be considered in view of the settled principle by Supreme Court of India in the decisions cited supra. All the contentions advanced on behalf of accused persons, could be weighed at the time of final disposal of the matter. Therefore I am rather constrained to refrain from examining any of the contentions can- E vassed for the accused or considering the repercussions made of cross examination of witnesses, lest any observations made by me may prejudice either of the parties at the time of trial. Further the evidence referred to in Section 245, relates to evidence before charge. Therefore I do not propose to examine any of the contentions urged for accused No. 1 during F the course of arguments and about the decisions cited at the Bar on behalf of accused persons."

The learned counsel contended that the above observations indicate that the learned Magistrate has not applied his mind to the evidence before him at all and that he has mechanically framed the charge. We do not think G that the learned counsel is right. The said observations were made by the learned Magistrate with reference to the decision of the Supreme Court in *Akbar Dar* v. *State of Jammu and Kashmir*, [1982] SCC (Criminal) 148 referred to in preceding para 21 and should not be read in isolation. A reading of the order does show that the learned Magistrate has considered H the oral and documentary evidence at length and finally expressed his

opinion in paragraph 30 thus : A

> "On going through the evidence adduced before court by the complainant at this stage. I am of the considered opinion that there exist grounds to frame charge against A. 1 to 3 for the offence punishable U/s. 500 I.P.C. In coming to conclusion that charge should be framed against A-1 to 3, I should not be understood that I have expressed any opinion if made by me during the course of discussions will not come in the way of either parties at the final disposal of the case on merits. Therefore, for these reasons, I answer the point in the 'AFFIRMATIVE'." B

C

The learned Sessions Judge who examined the order of the learned Magistrate has also expressed the opinion that since the magistrate has framed the charge on a proper consideration of oral and documentary evidence and on forming the requisite opinion, no interference is called for. As against this, the judgment of the High Court shows that it has entered into the merits of the case and pronounced upon the truth and correctness of the complaint and the defence, as would be evident from the following observations : D

In Para 23 the learned Judge states that the oral evidence should have been considered alongwith the documentary evidence and that if that had been done, the learned magistrate, would have came to the conclusion that the imputation made by the accused is "neither intentional nor it amounted in lowering the reputation of the complainant in the estimation of general public and the context in which such a statement was made. " In Para 24 the learned Judge states that the courts below has not considered the evidence of the witnesses properly and that it has merely picked out those portions from evidence which are against the accused and relied upon them for framing the charge. In Para 25 the learned Judge observed that the documents and statements of the witnesses were not property taken into consideration by the courts below and that the reasons assigned by the learned Magistrate for framing the charge are not convincing in nature. Then in Para 26, the learned Judge says that for the reasons given by him, the courts below must be held to have acted without applying their mind to the relevant material. In Para 27, learned Judge records a finding that the complaint was more a matter of mere prestige for both the parties who belong to different political parties and that it is not a genuine proceeding. In our opinion, while acting under Section 482 and that too E F G H

A after the learned Sessions Judge had declined to interfere in the matter, the High Court ought not to have entered the arena of appreciation of evidence nor should it have recorded a finding that the complaint was the result of political differences or that it was more a matter of prestige than a genuine proceeding. The last-mentioned conclusion is drawn from the averments in the complaint, from the fact that the complainant is pursuing
B the complaint and from the *ipse dixit* of the accused; we are unable to appreciate this reasoning.

With respect to the contention of the learned counsel for the respondents that after a period of twelve years, the matter should not be allowed to be proceeded with we must say that the complainant is certainly not
C responsible for this delay. The learned counsel did not even made such a suggestion. Moreover, this contention does not appear to have been raised before the High Court. (The judgment of the High Court is dated 16.6.92.) We do not know who is responsible for this delay. As observed by Krishna Iyer, J. in *in Re. : The Special Courts Bill. 1978* [1979] 1 S.C.C. 380 at page
D 442: "(I)t is common knowledge that currently in our country criminal courts excel in slow-motion. The procedure is dilatory, the dockets are heavy, even the service of process is delayed and still more *exasperating, there are appeals upon appeals and revisions and supervisory jurisdictions, baffling and baulking speedy termination of prosecutions.* .... ". The slow-motion becomes much slower-motion when politically powerful or rich and
E influential persons figure as accused. F.I.Rs. are quashed. Charges are quashed. Interlocutory orders are interfered with. At every step, there will be revisions and applications for quashing and writ petitions. In short, no progress is ever allowed to be made. And if ever the case reaches the stage or trial after all these interruptions, the time would have taken its own toll : the witnesses are won over; evidence disappears; the prosecution loses
F interest - the result is an all too familiar one. We are sad to say that repeated admonitions of this Court have not deterred superior courts from interfering at initial or interlocutory stages or criminal cases. Such interference should be only in exceptional cases where the interests of justice demand it; it cannot be a matter of course. In the circumstances, we cannot
G acceded to the said contention.

For the above reasons, the appeal is allowed and the judgment of the High Court is set aside. The case shall now proceed according to law and as expeditiously as possible in the circumstances of the case.

D.K.T. Appeal allowed.