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STATE OF KERALA AND ORS. ETC.

v.

O.C. KUTTAN AND ORS. ETC.

FEBRUARY 17, 1999

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[G.B. PATTANAIK AND M.B. SHAH, JJ.]

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Constitution of India—Article 226—Quashing of FIR and criminal proceedings—Indian Penal Code 1860, ss. 366A, 372, 376 and 344 r/w s. 34—Allegations of rape and of being forced to lead immoral life—High Court quashing criminal proceedings against accused persons who had approached it—Whether sifting the materials and evidence at that stage of the proceedings warranted and whether High Court's conclusions regarding age of victim and that she had willingly submitted to sexual activities was justified—Held, this is not a case where the court should have scuttled investigation by quashing

D *FIR, particularly where criminal case had been registered under several provisions of the IPC and under Immoral Traffic (Prevention) Act—High Court exceeded its jurisdiction in arriving at its findings—Held further, it is not possible and not necessary to comment on the character of the lady at this stage.*

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On July 23, 1996, on the basis of a statement of a woman giving a vivid account of how she was exploited, and sexually harassed by a large number of accused persons under threat, coercion, force and allurements, a case was registered under ss. 366 A, 372, 376 and 344 r/w 34 IPC. In the course of the investigation, the victim girl was examined on three occasions. Five accused persons approached the Kerala High Court seeking quashing of the allegations as against them. A Division Bench of the High Court, while setting out the narrative of rape and the events till her arrest by the police, quashed the criminal proceedings against those who had approached the court. On a comparison of the three statements of the victim girl, and based on conjectures, the High Court concluded that she was above 16 years of age when she went to Ernakulam and indulged in immoral activities, and that she had willingly submitted herself to sexual activities.

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In appeal before this court, it was argued for the State of Kerala and the Kerala Women's Commission that in view of the graphic statements

of the lady herself, the High Court was in error in preventing investigation against the accused, who were influential people. It was also contended that the conclusion regarding the age of the victim girl by sifting the materials and evidence at this stage was wholly unwarranted. Further, the allegations amounted not only to the commission of offence of rape but to offences under the Immoral Traffic (Prevention) Act (ITPA) too and the High Court had not considered whether, *prima facie*, the allegations would constitute offences other than the criminal cases registered. Quashing proceedings at the stage of FIR in a case of an offence which is having a cancerous growth and is against the interests of justice cannot, it was contended, be an abuse of process of court as had been held by the High Court. It was contended for the accused that the allegations did not make out any offence against them. Further, the complainant had added names during the course of being examined on the second and third occasion and it was an afterthought to subject the accused to harassment. Her statements also did indicate that there was no force, no coercion and no fear of life, it was urged, and the allegations do not constitute the offence of rape.

Allowing the appeal, this Court

HELD : 1.1. The High Court exceeded its jurisdiction in quashing the FIR and the investigations to be made pursuant to the FIR. When allegations in the FIR do not disclose *prima facie* commission of a cognisable offence, the High Court would be justified in interfering with the investigation and quashing the same. [703-A; 701-B]

Sanchaita Investment's case [1982] 1 SCC 561, referred to.

1.2. The power of quashing investigation should, however, be exercised with utmost care and a High Court should be loathe to interfere at the threshold to thwart the prosecution. It is a power that should be sparingly and cautiously exercised. [701-H; 702-A]

State of Haryana v. Bhajan Lal, [1992] Supp. 1 SCC 355; *State of U.P. v. O.P. Sharma*, [1996] 7 SCC 705 and *Rashmi Kumar v. Mahesh Kumar Bhada*, [1997] 2 SCC 397, relied on.

1.3. The instant case cannot be held to be a case where the court should have scuttled investigation by quashing the FIR, particularly when the criminal case had been registered under several provisions of the IPC

A as well as the ITPA. [702-F]

2. The High Court exceeded its jurisdiction to record a finding that the lady exercised her discretion to have sex with those whom she liked or got money and she willingly submitted herself to most of them who came to her for sex. [702-G].

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3. The uncharitable comments of the High Court against the woman who had given the FIR do not find approval of this Court. It is not possible and it was not necessary to make any comment on the character of the lady at this stage. [702-F]

C

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 188-192 of 1999 Etc.

From the Judgment and Order dated 4.11.97 of the Kerala High Court in O.P. No. 4941, 2448, 7532, 7546, 7639 of 1997.

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Raju Ramachandran, Ms. Indira Jaisingh, U.R. Lalit, T.L.V. Iyer, G. Prakash, Ms. Beena Prakash, Ms. Vinita Sinha, S.R. Bhat, T. Ravikumar, George Mecherif, E.M.S. Anam, S. Prasad, Rakesh Garg, (S. Mitter, Santosh Gupta,) for M/s. Mitter and Mitter Co., Fazlin Anam, Ranjit Kumar and M.T. George for the appearing parties.

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The Judgment of the Court delivered by

PATTANAİK, J. Leave granted in both the matters.

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These two appeals one by State of Kerala and another by the State Women's Commission as well as the alleged victim lady are directed against one and the same order of the High Court of Kerala. By the impugned Judgment and Order Dated 4th November, 1997 the Division Bench of Kerala High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India has quashed the criminal proceedings as against five of the accused persons namely Shri O.C.Kuttan, Shri G. Mohanan, Shri S.Suresh Kaimal, Shri Tony Antony and Shri K.C. Peter, on coming to a conclusion that the uncontroverted allegations made in the F.I.R. and other statements do not constitute the offence of rape.

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H On 23.7.96, Seena gave a vivid account as to how she was being exploited and sexually harassed by large number of accused persons under

threat, coercion, force, allurement and on the basis of the said statement, a case was registered as Crime No. 5/96 of Vanitha Police Station, Ernakulam. The case was registered under Sections 366A, 372, 376 and 344 read with Section 34 I.P.C. The Police started investigating into the said allegations and in the course of investigation the victim girl was examined on 24.8.96 and on 25.8.96. These respondents filed writ petitions in the Kerala High Court praying therein that the FIR and the Criminal Proceedings arising out of the said allegations should be quashed as against them since the allegations do not make out any offence so far as they are concerned. When those writ petitions were listed before the learned Single Judge, the learned Single Judge was of the opinion that the matter should be heard by a Division Bench to decide the question whether criminal proceedings could be quashed in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India and that is how the matter was heard by the Division Bench. By the impugned Judgment, the Division Bench though indicated how the lady has unfolded her pathetic story as a victim of rape and narrated the events of her life right from the time when she went to school till she was arrested by the Police, but on comparison of the three statements of the victim girl and on entering into an arena of conjecture and improbability came to the conclusion that the lady was more than 16 years of age when she came to Ernakulam and indulged into the activities of leading immoral life and further she was not put to force of death or hurt or her consent was obtained by putting her in fear of death or hurt and on the other hand it is she, who exercised her discretion to have sex with those persons whom she liked or got money and willingly submitted herself to the sexual activities and, therefore this is a fit case where the High Court would be justified in quashing the criminal proceedings as against those who have approached the court.

Mr. Ramachandran, learned Senior Counsel appearing for the State of Kerala and Ms. Indira Jaisingh, appearing for the Kerala Women's Commission, vehemently argued that in view of the graphic statements of the lady herself, the High Court committed serious error in preventing investigation against the accused respondents, who happened to be very influential people of the society. The learned counsel also urged that the conclusion of the High Court that the lady was more than 16 years of age by shifting the materials and evidence on record at this stage was wholly unwarranted. It was further urged that the allegations made by the lady not only amounts to commission of offence of rape alone but also the offence

A under Immoral Traffic Act and the High Court never applied its mind to find out whether the allegations taken at their face value would constitute other offences for which the criminal case had been registered. According to the learned counsel for the appellants in the case in hand to quash the proceedings at the stage of lodging of FIR in case of an offence which is having a cancerous growth in the society is against the interest of justice and cannot be held to be an abuse of process of court as concluded by the High Court.

Mr. UR Lalit, appearing for accused Kuttan and Mohanan, Mr. Ranjit Kumar and Mr. Anam, appearing for other accused respondents however contended with force that if the statements of the alleged victim lady do not make out any offence then the High Court would be fully justified in quashing the FIR so far as those alleged accused persons against whom the allegation do not make out the offence as in such a case allowing the investigation to continue would be an abuse of the process of court. According to Mr. Lalit, a bare look at the statements made by Seena would make it explicitly clear that these respondents had not even been named in the earliest statement dated 23rd of July, 1996 on the basis of which the case was registered but in course of investigation, she has been examined on 24.8.96 and 25.8.96 wherein she has added the names of several persons including the present respondents which would suggest that the additions of names of persons are nothing but an after-thought made after due deliberations and several people have been unnecessarily added and have been subjected to harassment. Mr. Lalit also further urged that the statements of the lady would further indicate that there was no force, no coercion, no fear of life was exercised by any of these accused persons even if the allegations that they had sexual intercourse with the lady is believed and she being found to be more than 16 years of age when she came to Ernakulam, the High Court was fully justified in holding that the allegations do not constitute the offence of rape and, therefore, was well within its powers to quash the proceedings so far as these respondents are concerned. According to Mr. Lalit the impugned order of the High Court is a fair and just order and has been passed by the High Court to prevent the abuse of process of court, and therefore, this court should not interfere with the same in exercise of its powers under Article.136 of the Constitution of India. It may be stated at this stage that Shri O.C. Kuttan was the Assistant Commissioner of Excise and Shri G. Mohanan was the Managing Director of Kerala State Beverages Corporation, whereas Shri S.Suresh

Kaimal was the Assistant Collector of Customs, Trivandrum Airport and Shri Tony Antony was a businessman and Shri K. C. Peter was an Advocate and at the relevant point of time was Additional Director General of Prosecution.

At the outset there cannot be any dispute with the proposition that when allegations in the FIR do not disclose *prima facie* commission of a cognizable offence, then the High Court would be justified in interfering with the investigation and quashing the same as has been held by this Court in *Sanchaita Investment's* case [1982] 1 SCC 561. In the case of *State of Haryana and Others v. Bhajan Lal and Others*, [1992] Supp. 1 SCC 335, this court considered the question as to when the High Court can quash a criminal proceeding in exercise of its powers under Section 482 of the Code of Criminal Procedure or under Article 226 of the Constitution of India and had indicated some instances by way of illustrations, though on facts it was held that the High Court was not justified in quashing the first information report. This Court held that such powers could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. But as an illustration several circumstances were enumerated. Having said so, the court gave a note of caution to the effect that the power of quashing the criminal proceedings should be exercised very sparingly with circumspection and that too in the rarest of rare cases, that the court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. It is too well settled that the first information report is only an initiation to move the machinery and to investigate into a cognizable offence and, therefore, while exercising the power and deciding whether the investigation itself should be quashed, utmost care should be taken by the court and at that stage it is not possible for the court to shift the materials or to weigh the materials and then come to the conclusion one way or the other.

In the case of *State of UP v. O.P. Sharma*, [1996] 7 SCC 705, a three Judge Bench of this Court indicated that the High Court should be loath

A to interfere at the threshold to thwart the prosecution exercising its inherent power under Section 482 or under Articles 226 and 227 of the Constitution of India, as the case may be and allow the law to take its own course. The same view was reiterated by yet another three Judges Bench of this Court in the case of *Rashmi Kumar v. Mahesh Kumar Bhada*, [1997] 2 SCC 397, where this court sounded a word of caution and stated that

B such power should be sparingly and cautiously exercised only when the court is of the opinion that otherwise there will be gross miscarriage of justice. The court had also observed that social stability and order is required to be regulated by proceeding against the offender as it is an offence against the society as a whole. Bearing in mind the parameters laid

C down in the aforesaid judgments and on a thorough scrutiny of the statement of Seena dated 23rd of July, 1986, which was treated as an FIR and on the basis of which criminal case was registered and her subsequent statements dated 24.8.96 and 25.8.96, we have no hesitation to come to the conclusion that the High Court committed gross error in embarking upon

D an inquiry by shifting of evidence and coming to a conclusion with regard to the age of the lady on the date of alleged sexual intercourse, she had with the accused persons and also in recording a finding that no offence of rape can be said to have been committed on the allegations made as she was never forced to have sex but on the other hand she willingly had sex

E with those who paid money. We do not think it appropriate to express any opinion on the materials on record as that would embarrass the investigation as well as the accused persons, but suffice it to say that this cannot be held to be a case where the court should have scuttled investigation by quashing the FIR, particularly when the criminal case had been registered

F under several provisions of the Penal Code as well as under Immoral Traffic Act. We also do not approve of the uncharitable comments made by the High Court in paragraph (12) of the Judgment against the woman who had given the FIR. It is not possible and it was not necessary to make any comment on the character of the lady at this stage. We also have no hesitation to come to the conclusion that the High Court exceeded its

G jurisdiction to record a finding that the lady exercised her discretion to have sex with those whom she liked or got money and she willingly submitted herself to most of them who came to her for sex. We refrain from making any further observations in the case as that may affect the investigation or the accused persons but we have no hesitation to come to

H the conclusion after going through the statements of the victim lady that

the High Court certainly exceeded its jurisdiction in quashing the FIR and the investigations to be made pursuant to the same so far as respondents are concerned. We, accordingly set aside the impugned order of the High Court and direct the Investigating Agency to proceed with the investigation and conclude the same as expeditiously as possible in accordance with law. These appeals are accordingly allowed.

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U.R.

Appeals allowed.