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LAKHWANT SINGH

v.

JASBIR SINGH AND ORS.

(Criminal Appeal No. 281 of 2003)

SEPTEMBER 16, 2008

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[DR. ARIJIT PASYAT AND G.S. SINGHVI, JJ.]

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Code of Criminal Procedure, 1973 – s. 482 – Inherent powers of High Court – Exercise of – Parameters laid down – Discussed – On facts, investigation was not complete and that stage it was not permissible for High Court to look into materials – High Court quashed FIR by non-reasoned order – It did not keep in view the parameters laid down for exercise of power u/s 482 – Thus, order of High Court set aside.

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FIR was registered against the respondent for the alleged commission of theft. It was stated that the respondents while executing the order in their favour, illegally took the possession of the complainant's land in execution of warrant of possession. Respondents filed an application u/s 482 Cr.P.C. for quashing the FIR. High Court held that FIR could not be registered on basis of the said allegations; and that the said aspect could be examined if objections were filed before the concerned Court that warrant officer/ bailiff acted beyond the warrant of possession, and allowed the application. Hence the present appeal.

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Appellant referring to the annexure contented that the Single Judge without even analyzing the factual and legal aspects, by an abrupt conclusion should not have quashed the proceedings; that the challan had already been filed in the Court, and the Judicial Magistrate had committed the case to the Sessions Judge; and that while considering the application filed in terms of Section 438 cr.P.C., the Additional Sessions Judge, passed a detailed order highlighting the role played by respondents.

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Allowing the appeal, the Court

HELD: The investigation was not complete and at that stage it was impermissible for the High Court to look into materials, the acceptability of which is essentially a matter for trial. While exercising jurisdiction under Section 482 Cr.P.C, it is not permissible for the Court to act as if it was a trial court. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about the existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. The Court should not act on annexures to the petition under section 482 Cr.P C., which cannot be termed as evidence without being tested and proved. The non-reasoned order of the High Court does not reveal that the parameters relating to exercise of power under Section 482 Cr.P.C. were kept in view. Thus, the order of the High Court is directed to be set aside. [Paras 10 and 12] [553-D-F; 554-A-B]

R.P. Kapur v. State of Punjab AIR 1960 SC 866; State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335; The Janata Dal etc. v. H.S. Chowdhary and Ors., etc. AIR 1993 SC 892; Dr. Raghubir Saran v. State of Bihar and Anr. AIR 1964 SC 1; Mrs. Dhanalakshmi v. R. Prasanna Kumar and Ors. AIR 1990 SC 494; State of Bihar and another v. P. P. Sharma, I.A.S. and another 1992 Suppl (1) SCC 222; Rupan Deol Bajaj (Mrs.) and Anr. v. Kanwar Pal Singh Gill and another 1995 (6) SCC 194; State of Kerala and Ors. v. O.C. Kuttan and Ors. 1999 (2) SCC 651; State of U.P. v. O. P. Sharma 1996 (7) SCC 705; Rashmi Kumar (Smt.) v. Mahesh Kumar Bhada 1997 (2) SCC 397; Satvinder Kaur v. State (Govt. of NCT of Delhi) and Anr. 1999 (8) SCC 728; Rajesh Bajaj v. State NCT of Delhi and Ors. AIR 1999 SC 1216; State of Karnataka v M. Devendrappa and another 2002 (3) SCC 89; Jehan Singh v. Delhi Admn.

- A 1974 (4) SCC 522; *Chand Dhawan v. Jawahar Lal* 1992 (3) SCC 317; *State of Orissa v Saroj Kumar Sahoo* 2005 (13) SCC 540; *R.P. Kapur v. State of Punjab* AIR 1960 SC 866 – relied on.

Case Law Reference

B	AIR 1960 SC 866	Relied on.	5
	1992 Supp (1) SCC 335	Relied on.	6
	AIR 1993 SC 892	Relied on.	7
	AIR 1964 SC 1	Relied on.	7
C	AIR 1990 SC 494	Relied on.	7
	1992 Suppl (1) SCC 222	Relied on.	7
	1995 (6) SCC 194	Relied on.	7
	1999 (2) SCC 651	Relied on.	7
D	1996 (7) SCC 705	Relied on.	7
	1997 (2) SCC 397	Relied on.	7
	1999 (8) SCC 728	Relied on.	7
	AIR 1999 SC 1216	Relied on.	7
E	2002 (3) SCC 89	Relied on.	8
	1974 (4) SCC 522	Relied on.	9
	1992 (3) SCC 317	Relied on.	10
F	2005 (13) SCC 540	Relied on.	11

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 281 of 2003

G From the Final Judgment and Order dated 19.7.2002 of the High Court of Punjab and Haryana at Chandigarh in Criminal Misc. No. 40022-M of 1999 (O & M)

Ravindra Bana for the Appellant.

H Manju Bhagat, Monohar Singh Bakshi, Ehzaz Zafar, Vineet Bhagat (for Debasis Misra) and Kuldip Singh for the Respondents.

The Judgment of the Court was delivered by

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Dr. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a learned Single Judge of the Punjab and Haryana High Court allowing the application filed under Section 482 of the Code of Criminal Procedure, 1973 (in short the 'Cr.P.C.'). Respondents had filed an application praying for quashing the First Information Report (in short the 'FIR') registered against them for alleged commission of theft on 13.7.1999. Statement in the FIR was that while executing the order in their favour possession of land of the complainant was illegally taken in execution of warrant of possession. The High Court accepted the prayer holding that the aforesaid aspect of the matter can be examined if any objections are filed before the concerned Court that warrant officer/bailiff acted beyond the warrant of possession, and this could not give rise to registration of the crime and, therefore, the matter is before us.

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2. Learned counsel for the appellant had referred to document appearing at Annexure R/6 and submitted that without even analyzing the factual and legal aspects, by an abrupt conclusion the learned Single Judge should not have quashed the proceedings. With reference to the objections filed before the High Court it was pointed out that the challan had already been filed in the Court, and learned Judicial Magistrate, 1st Class had committed the case to the court of Sessions Judge, Amritsar. Certain other factual aspects have also been referred to. It was further pointed out that while considering the application filed in terms of Section 438 Cr.P.C., learned Additional Sessions Judge, Amritsar had passed a detailed order highlighting the role played by respondents 1 to 5.

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3. Learned counsel for respondents 1 to 5 supported the judgment of the trial Court.

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4. Exercise of power under Section 482 Cr.P.C. in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enact-

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- A ment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the Section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle *quando lex aliquid alicui concedit, conceūitur et id sine quo res ipsa esse non potest* (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the Section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the Section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice.
- G In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it
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is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

5. In *R.P. Kapur v. State of Punjab* (AIR 1960 SC 866), this Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings.

- (i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;
- (ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;
- (iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

6. In dealing with the last case, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process no doubt should not be an instrument of oppression or needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the Section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its

A sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in *State of Haryana v. Bhajan Lal* (1992 Supp (1) SCC 335) A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases. The illustrative categories indicated by this Court are as follows:

- C (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- D (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- E (3) Where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- F (4) Where the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a Police Officer without an order of a Magistrate as contemplated under S. 155(2) of the Code.
- G (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just
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conclusion that there is sufficient ground for proceeding against the accused. A

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party. B

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge." C

7. As noted above, the powers possessed by the High Court under Section 482 Cr.P.C. are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. (See : *The Janata Dal etc. v. H.S. Chowdhary and others, etc.* (AIR 1993 SC 892). *Dr. Raghubir Saran v. State of Bihar and another* (AIR 1964 SC 1)). It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are D
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A to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 Cr.P.C. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in Court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceeding. (See : *Mrs. Dhanalakshmi v. R. Prasanna Kumar and others* (AIR 1990 SC 494), *State of Bihar and another v. P. P. Sharma, I.A.S. and another* (1992 Suppl (1) SCC 222), *Rupan Deol Bajaj (Mrs.) and another v. Kanwar Pal Singh Gill and another* (1995 (6) SCC 194), *State of Kerala and others v. O.C. Kuttan and others* (1999 (2) SCC 651), *State of U.P. v. O. P. Sharma* (1996 (7) SCC 705), *Rashmi Kumar (Smt.) v. Mahesh Kumar Bhada* (1997 (2) SCC 397), *Satvinder Kaur v. State (Govt. of NCT of Delhi) and another* (1999 (8) SCC 728), *Rajesh Bajaj v. State NCT of Delhi and others* AIR 1999 SC 1216).

H 8. These aspects were highlighted in *State of Karnataka v. M. Devendrappa and another* (2002 (3) SCC 89).

9. In *Jehan Singh v. Delhi Admn.* (1974 (4) SCC 522) while considering a case under Section 561-A of the Code of Criminal Procedure, 1898 (in short "the Old Code") corresponding to Section 482 CrPC, it was observed as follows: (AIR p.1146)

"Where at the date of filing the petition under Section 561-A, no charge-sheet or a complaint has been laid down in court and the matter is only at the stage of investigation by police, the court cannot, in exercise of its inherent jurisdiction under Section 561-A, interfere with the statutory powers of the police to investigate into the alleged offence, and quash the proceedings. Even assuming that the allegations in the FIR are correct and constitute an offence so as to remove the legal bar to institute proceedings in court, the court cannot at that stage appraise the evidence collected by the police in their investigation. Any petition under Section 561-A at such a stage is, therefore, premature and incompetent." (SCC p. 526, paras 16-18)

10. It is to be noted that the investigation was not complete and at that stage it was impermissible for the High Court to look into materials, the acceptability of which is essentially a matter for trial. While exercising jurisdiction under Section 482 Cr.P.C, it is not permissible for the Court to act as if it was a trial court. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about the existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. In *Chand Dhawan v. Jawahar Lal* (1992 (3) SCC 317), it was observed that when the materials relied upon by a party are required to be proved, no inference can be drawn on the basis of those materials to conclude the complaint to be unacceptable. The Court should not act on annexures to the petitions under Section 482 CrPC, which cannot be termed as evidence without being tested and proved.

A 11. These aspects are highlighted in *State of Orissa v. Saroj Kumar Sahoo* (2005 (13) SCC 540).

B 12. Practically non-reasoned order of the High Court does not reveal that the parameters relating to exercise of power under Section 482 Cr.P.C. were kept in view. The inevitable conclusion is that order of the High Court deserves to be set aside. We direct accordingly.

13. The appeal is allowed.

N.J.

Appeal allowed.