

STATE OF ANDHRA PRADESH
v.
BAJJOORI KANTHAI AH AND ANR.
(Criminal Appeal No. 1637 of 2008)

OCTOBER 20, 2008

[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]

Code of Criminal Procedure, 1973 – s. 482 – Inherent powers of High Court Exercise of – Parameters laid down – Discussed – On facts, FIR alleging offence of manufacturing illicit liquor – Quashing of, by High Court finding that there was no material to show that seized articles were intended to be used for commission of offence – Held: Not justified – It cannot be said that FIR did not disclose commission of offence – There was either statements of witnesses or seizure of black jaggery and olum materials being used for manufacturing illicit distilled liquor which cannot be said to be without relevance – Acceptability of the materials to fasten culpability on accused is a matter of trial – Thus, order of High Court set aside.

The Prohibition and Excise officers registered an FIR against the accused alleging that he was either transporting or storing black jaggery/molasses for manufacturing illicit distilled liquor or was abetting the offence of manufacturing illicit liquor, punishable under Andhra Pradesh Excise Act, 1968 and Andhra Pradesh Prohibition Act, 1995. Accused filed application u/s. 482 Cr.P.C. for quashing the FIR. High Court held that there was no material to show that the seized articles were intended to be used for manufacturing of illicit distilled liquor and quashed the FIR. Hence the present appeals.

Allowing the appeals, the Court

HELD: 1.1 In all these cases there was either state-

A ments of witnesses or seizure of black jaggery and olum
materials being used for manufacturing illicit distilled li-
quor which factors cannot be said to be without relevance.
Whether the material already in existence or to be col-
lected during investigation would be sufficient for hold-
B ing the concerned accused persons guilty has to be con-
sidered at the time of trial. At the time of framing the charge
it can be decided whether prima facie case has been
made out showing commission of an offence and involve-
ment of the charged persons. At that stage also evidence
C cannot be gone into meticulously. It is immaterial whether
the case is based on direct or circumstantial evidence.
Charge can be framed, if there are materials showing possi-
bility about the commission of the crime as against cer-
tainty. That being so, the interference at the threshold with
D the F.I.R. is to be in very exceptional circumstances. [Para
9] [850-A-D]

1.2 The acceptability of the materials to fasten culpa-
bility on the accused persons is a matter of trial. These
are not the cases where it can be said that the FIR did not
E disclose commission of an offence. Therefore, the High
Court was not justified in quashing the FIR. Keeping in
view the principles of law as enunciated herein, the ac-
tion of the High Court in quashing the FIR in each case
cannot be maintained and are set aside. [Paras 10 and
F 11] [850-E-F]

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; G *Mrs. Dhanalakshmi v. R. Prasanna Kumar and Ors.* AIR 1990 SC 494; *State of Bihar and Anr. v. P. P. Sharma, I.A.S. & Anr.* 1992 Suppl (1) SCC 222; *Rupan Deol Bajaj (Mrs.) & Anr. v. Kanwar Pal Singh Gill and Anr.* 1995 (6) SCC 194; *State of Kerala and Ors. v. O.C. Kuttan and Ors.* 1999 (2) SCC 651; H *State of U.P. v. O. P. Sharma* 1996 (7) SCC 705; *Rashmi*

Kumar (Smt.) v. Mahesh Kumar Bhada 1997 (2) SCC 397; A
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 Anr. 2002 (3) SCC 89 – relied on.

CASE LAW REFERENCE B

AIR 1960 SC 866	Relied on.	Para 6	
1992 Supp (1) SCC 335	Relied on.	Para 6	
AIR 1993 SC 892	Relied on.	Para 8	
AIR 1964 SC 1	Relied on.	Para 8	C
AIR 1990 SC 494	Relied on.	Para 8	
1992 Suppl (1) SCC 222	Relied on.	Para 8	
1995 (6) SCC 194	Relied on.	Para 8	D
1999 (2) SCC 651	Relied on.	Para 8	
1996 (7) SCC 705	Relied on.	Para 8	
1997 (2) SCC 397	Relied on.	Para 8	
1999 (8) SCC 728	Relied on.	Para 8	E
AIR 1999 SC 1216	Relied on.	Para 8	
2002 (3) SCC 89	Relied on.	Para 8	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1637 of 2008 F

From the final Judgment and Order dated 14.2.2006 of
the High Court of Judicature, Andhra Pradesh at Hyderabad in
Crl. Petition No. 690 of 2006

WITH G

Criminal Appeal Nos. 1638, 1639, 1640, 1641, 1642, 1643
and 1644 of 2008

D. Bharathi Reddy for the Appellant. H

A Gouri Karuna Das, Anu Gupta, Bhakti Pasrija and Rani Jethmalani for the Respondents.

The Judgment of the Court was delivered by

B **DR. ARIJIT PASAYAT, J.** 1. Leave granted in all these cases.

C 2. By the impugned judgments the High Court of Andhra Pradesh has quashed the FIR filed by Prohibition and Excise officers alleging commission of offences punishable under Andhra Pradesh Excise Act, 1968 (in short the 'Act') and the D Andhra Pradesh Prohibition Act, 1995 (in short the 'Prohibition Act'). In all the cases the allegation was that the concerned accused was either transporting or storing black jaggery/molasses for the purpose of manufacturing illicit distilled liquor or was E an abettor so far as the offence of manufacturing illicit liquor is concerned. On being moved by application under Section 482 of the Code of Criminal Procedure, 1973 (in short the 'Code') by the concerned accused for quashing the FIR, the High Court accepted the plea holding that there was no material to show that the seized articles were intended to be used for manufacturing of illicit distilled liquor. Accordingly, the FIR in each case was quashed.

F 3. In support of the appeals, learned counsel appearing for the State of Andhra Pradesh submitted that the High Court's approach is clearly erroneous. These are not cases where there was total absence of material to show the commission of a crime. Whether there was adequate material already in existence or which could have been collected during investigation and their relevance is essentially a matter of trial. The High Court was not, therefore, justified in quashing the FIR. The exercise of G power under Section 482 of the Code is clearly indefensible.

4. There is no appearance on behalf of the respondents in spite of service of notice.

H 5. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The Sec-

tion does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment 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 aliunde concedit, conceditur 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. In exercises of the powers court would be justified to quash any proceeding if it finds that initiation or 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 of-

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A fence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it 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.

B 6. 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:

C (i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

D (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.

E 7. In dealing with the last category, 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.

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At the same time the Section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its 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:

- (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.
- (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.
- (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.
- (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.
- (5) Where the allegations made in the FIR or complaint

A are so absurd and inherently improbable on the basis
of which no prudent person can ever reach a just
conclusion that there is sufficient ground for
proceeding against the accused.

B (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
C for the grievance of the aggrieved party.

D (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."

8. As noted above, the powers possessed by the High
Court under Section 482 of the Code are very wide and the
very plenitude of the power requires great caution in its exer-
E cise. 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
F 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 is-
sues involved, whether factual or legal, are of magnitude and
cannot be seen in their true perspective without sufficient mate-
rial. Of course, no hard and fast rule can be laid down in regard
G 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 probabili-
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ties in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are 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 of the Code. 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/F.I.R. 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 or disclosed in the F.I.R. that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/F.I.R. 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

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A *others* AIR 1999 SC 1216), *State of Karnataka v. M. Devendrapa and another* (2002 (3) SCC 89).

B 9. In all these cases there was either statements of witnesses or seizure of black jaggery and olum materials being used for manufacturing illicit distilled liquor which factors cannot be said to be without relevance. Whether the material already in existence or to be collected during investigation would be sufficient for holding the concerned accused persons guilty has to be considered at the time of trial. At the time of framing the charge it can be decided whether prima facie case has been made, out showing commission of an offence and involvement of the charged persons. At that stage also evidence cannot be gone into meticulously. It is immaterial whether the case is based on direct or circumstantial evidence. Charge can be framed, if there are materials showing possibility about the commission of the crime as against certainty. That being so, the interference at the threshold with the F.I.R. is to be in very exceptional circumstances as held in R.P. Kapoor and Bhajan Lal cases (*supra*).

E 10. Ultimately, the acceptability of the materials to fasten culpability on the accused persons is a matter of trial. These are not the cases where it can be said that the FIR did not disclose commission of an offence. Therefore, the High Court was not justified in quashing the FIR in the concerned cases.

F 11. Keeping in view the principles of law as enunciated above, the action of the High Court in quashing the FIR in each case cannot be maintained and are set aside.

G 12. Learned counsel for the State submitted that there shall be early investigation in the matter and submission of Report under Section 173 of the Code shall be done without delay and in any event, not later than the end of February, 2009. We make it clear that we have not expressed any opinion on the merits of the case.

H 13. All the appeals are allowed, as indicated above.

H N.J.

Appeal allowed.