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STATE OF A.P.

v.

ARAVAPALLY VENKANNA & ANR.
(Criminal Appeal No. 732 of 2009)

B

APRIL 15, 2009

[DR. ARIJIT PASAYAT, LOKESHWAR SINGH PANTA
AND P. SATHASIVAM, JJ.]

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CODE OF CRIMINAL PROCEDURE, 1973

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Section 482 – Order of High Court quashing an FIR for offence punishable under A.P. Prohibition Act – Held: This is not a case where FIR did not disclose commission of an offence – Order of High Court quashing FIR cannot be sustained and is set aside – Principles regarding exercise of power u/s 482 – Explained.

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The State Government filed the instant appeal challenging the judgment of the High Court whereby it quashed an FIR of offences punishable u/s 7(a) r/w s. 8(e) of the Andhra Pradesh Prohibition Act, 1995 and s. 109 I.P.C.

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Allowing the appeal, the Court

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HELD:1.1. Exercise of power u/s 482 of the Code of Criminal Procedure, 1973, 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 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. [Para 5] [1073-G-H; 1074-A]

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1.2. While exercising powers u/s 482 CrPC, 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. [Para 5] [1074-D-E]

1.3. In the proceedings instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only when the complaint does not disclose any offence or is frivolous, vexatious or oppressive. 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/FIR 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. [Para 8] [1077-H; 1078-B-C]

1.4. 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. [Para 8] [1078-D]

1.5. Keeping in view the principles of law as enunciated in the decisions of this Court, the action of

A the High Court in quashing the FIR cannot be maintained. This is not a case 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. [Para 8] [1078-E]

B 1.6. Whether the material already in existence or to be collected during investigation would be sufficient for holding the accused concerned 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. Ultimately, the acceptability of the materials to fasten culpability on the accused persons is a matter of trial. [Para 9 and 10] [1078-F-H; 1078-A; 1079-B]

F *R.P. Kapoor vs. State of Punjab* AIR 1960 SC 866; and *State of Haryana Vs. Bhajan Lal* 1992 Supp.(1) SCC 335, relied on.

Case Law Reference:

	AIR 1960 SC 866	relied on	para 6
G	1992 Supp.(1) SCC 335	relied on	para 7

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H From the Judgment & Order dated 22.11.2002 of the High Court of Judicature of Andhra Pradesh at Hyderabad in CrI

Petition No. 4205/2002.

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D. Bharathi Reddy for the Appellants.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

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2. Challenge in this appeal is to the order passed by learned Single Judge of the Andhra Pradesh High Court allowing the prayer made by the appellant to quash the FIR in Crime No. 433/2002-2003 of Prohibition and Excise Station, Mahabubabad, Warangal District registered under Section 7 (A) read with Section 8(e) of A.P. Prohibition Act, 1995 read with Section 109 of the Indian Penal Code, 1860 (in short the 'IPC'). The Petition was filed under Section 482 of the Code of Criminal Procedure, 1973 (in short the 'Code').

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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 no 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 power under Section 482 of the Code is clearly indefensible.

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4. There is no appearance on behalf of the respondent-accused.

5. Exercise of power under Section 482 of the Code 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 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

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A 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

B 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

C provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle *quando lex a liquid aliquot 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

D 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*

E 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

F 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 exercise of these 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.

G 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 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.

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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. A

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

(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; C

(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. C

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. 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 D
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A 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:

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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 Section 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 conclusion that there is sufficient ground for proceeding against the accused.

H "(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under

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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.

(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 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. 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 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

A 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
B 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
C 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
D 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
E the basis for quashing the proceeding.

8. Keeping in view the principles of law as enunciated
above, the action of the High Court in quashing the FIR cannot
be maintained so far as Criminal Appeal arising out of
SLP(Crl.) NO. 677 OF 2004 is concerned.

F 9. 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
G 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
H there are materials showing possibility about the commission

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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's* case supra. A

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. B

11. The appeal is allowed.

R.P.

Appeal allowed. C