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SUBRATA DAS

v.

STATE OF JHARKHAND & ANR.  
(Criminal Appeal No. 1153 of 2004)

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OCTOBER 22, 2010

**[MARKANDEY KATJU AND T.S. THAKUR, JJ.]**

*Code of Criminal Procedure, 1973 – s. 482 – Complaint under provisions of IPC and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act – Initially, Magistrate did not find prima facie case against the accused – Later, on the case being remanded by the revisional court, he examined afresh the witness who had been were already examined and held that prima facie case was made out against the accused – Revisional court upholding the order of Magistrate – Petition for quashing the proceedings, dismissed by High Court – On appeal, held : The High Court rightly did not quash the proceedings – The scope of power u/s. 482 is limited and can be exercised by the High Court sparingly – On facts, prima facie case was made out against the accused – The mistake, by the Magistrate in examining afresh the witnesses already examined, would not vitiate the proceedings – Penal Code, 1860 – ss. 341, 323, 506 and 384 – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 – ss. 3(1) and 2(vii).*

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**Respondent No.2 filed a complaint against the appellant, alleging commission of offences under IPC and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The Judicial Magistrate held that no case was made out. In revision, the Sessions Judge remanded the matter to the Magistrate for reviewing the same afresh. The order of remand passed by the Sessions Judge was upheld by the High Court holding the direction as a part of the further inquiry. The**

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Magistrate recorded afresh the depositions of the witnesses already examined before him and concluded that a prima facie case was made out. In revision, Sessions Judge upheld the finding of the Magistrate. The appellant preferred a petition u/s. 482 Cr.P.C., which was dismissed by the High Court. Therefore, the instant appeal was filed.

Dismissing the appeal, the Court

HELD : 1.1 There is no reason to interfere with the impugned order. The power vested in the High Court under Section 482 Cr.P.C. can be invoked for quashing an on-going investigation, complaint or other proceedings only in cases where either there is legal bar to the continuance of the proceedings such as the absence of a sanction wherever required or where averments made in the complaint or first information report even if accepted on their face value do not constitute an offence or where there is no legal evidence to support the charge made against the accused. It is also fairly settled that the powers vested in the High Court under Section 482 Cr.P.C. have to be exercised sparingly and that the court cannot be called upon to appreciate the available evidence or material with a view to find out whether the charge leveled against the accused stands proved. [Para 5] [373-D-G]

*Arun Shanker Shukla v. State of U.P. and Ors.* AIR 1999 SC 2554; *State of Punjab v. Kasturi Lal and Ors.* 2004 Cr.L.J. 3866; *State of Karnataka v. M. Devendrappa and Anr.* (2002) 3 SCC 89; *Central Bureau of Investigation v. K.M. Sharan* 2008 (4) SCC 471; *State of Haryana and Ors. v. Bhajan Lal and Ors.* 1992 Suppl. 1 SCC 335; *R.P. Kapur v. State of Punjab* (1960) 3 SCR 388 – Referred to.

2.1 A plain reading of the complaint filed by the

A complainant in the instant case makes out a case against the accused. The depositions of the three witnesses examined by the complainant in support of his complaint also support the allegations made in the complaint. The Magistrate was, therefore, justified in taking cognizance against the appellant and the co-accused. The revisional court of Additional Sessions Judge, was also correct in holding that a case for issue of process has been made out. Such being the position, the High Court committed no error in declining to interfere u/s. 482 of Cr.P.C. [Para 7] [374-B-D]

2.2 The earlier directions by the Session Court to remand back the case to the Magistrate to hold a further enquiry, did not necessarily oblige the Magistrate to record any further evidence in the case. The nature of the inquiry was in the discretion of the Magistrate which may or may not have included recording of further evidence on behalf of the complainant. The Magistrate could without recording any further evidence in the matter reappraise the averments made in the complaint and the material already on record to determine whether a *prima facie* case was made out against the accused persons. In as much as the Magistrate in the instant case summoned the witnesses and examined them afresh, he may have gone beyond what was legally necessary to do, but that is no reason to hold that the recording of evidence by the Magistrate as a part of the further enquiry directed by the High Court would vitiate the proceedings before him or the conclusion drawn on the basis of any such enquiry. So long as the Magistrate was satisfied that a *prima facie* case had been made out, he was competent to issue summons to the accused. [Para 9] [374-G-H; 375-A-C]

*Gurdial Singh v. Kartar Singh and Ors.* 1980 CrI. L.J. 955 – referred to.

**Case Law Reference:**

<b>AIR (1999) SC 2554</b>	<b>Referred to</b>	<b>Para 6</b>	<b>A</b>
<b>(2004) CrI.L.J. 3866</b>	<b>Referred to</b>	<b>Para 6</b>	
<b>(2002) 3 SCC 89</b>	<b>Referred to</b>	<b>Para 6</b>	<b>B</b>
<b>(2008) 4 SCC 471</b>	<b>Referred to</b>	<b>Para 6</b>	
<b>(1992) Suppl. 1 SCC 335</b>	<b>Referred to</b>	<b>Para 6</b>	
<b>(1960) 3 SCR 388</b>	<b>Referred to</b>	<b>Para 6</b>	
<b>(1980) CrI. L.J. 955</b>	<b>Referred to</b>	<b>Para 8</b>	<b>C</b>

**CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1153 of 2004.**

From the Judgment & Order dated 12.12.2003 of the High Court of Jharkhand at Ranchi in Cr. M.P. No. 386 of 2003.

Rakesh Dwivedi, M.K. Dua for the Appellant.

Gopal Prasad for the Respondents.

The Judgment of the Court was delivered by

**T.S. THAKUR, J.** 1. This appeal by special leave arises out of an order passed by the High Court of Jharkhand at Ranchi whereby a petition under Section 482 Cr.P.C. filed by the appellant has been dismissed and an order dated 20th March, 2003 passed in Criminal Revision No.229 of 2002 by the Additional Sessions Judge, Dhanbad upheld. The High Court has taken the view that since two Courts below had concurrently held that a prima facie case under Sections 341, 323 and 506 IPC and Sections 3(i)(x) and 2(vii) of the Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 had been made out against the petitioner (appellant herein) it was not a fit case in which the proceedings before the Magistrate could be quashed. The controversy arises in the following backdrop:

A 2. A complaint was filed by the complainant-respondent  
 No.2 herein before the Chief Judicial Magistrate, Dhanbad  
 against the appellant and one Shri D.B. Raman, Manager of  
 TISCO Jamadoba Colliery, district Dhanbad alleging  
 commission of offences punishable under Sections 341, 323,  
 B 506 and 384 IPC and Sections 3(1) & (2) (vii) of the Scheduled  
 Castes and Schedule Tribes (Prevention of Atrocities) Act,  
 1989. Statements of the complainant and three other witnesses,  
 Anil Bhagti, Ram Prasad and Krishna Mandal were recorded  
 by the Court in support of the complaint. The Chief Judicial  
 C Magistrate, however, came to the conclusion that none of the  
 allegations made against the accused were proved to be  
 correct to call for action on the basis thereof. The complaint was  
 accordingly dismissed.

D 3. Aggrieved by the dismissal of his case, the complainant  
 filed a revision before the 5th Additional Sessions Judge,  
 Dhanbad who examined the matter at length including the  
 evidence on record and came to the conclusion that a prima  
 facie case had indeed been made out by the complainant  
 against the accused. The order passed by the Chief Judicial  
 E Magistrate was accordingly set aside and the matter remanded  
 back to the Chief Judicial Magistrate, Dhanbad for "reviewing  
 the same afresh" after going into the details of evidence on  
 record and the relevant provisions of law. A revision was then  
 F filed by the accused including the appellant herein before the  
 High Court of Jharkhand at Ranchi, in which it was, inter alia,  
 contended that since the Chief Judicial Magistrate had no  
 power to review his own orders the direction issued by the 5th  
 Additional Sessions Judge, Dhanbad, was legally erroneous.  
 The High Court, however, clarified that the directions issued by  
 G the 5th Additional Sessions Judge was a direction for a further  
 enquiry to be conducted by the Chief Judicial Magistrate under  
 Section 398 Cr.P.C.

H 4. When the matter went back to the Chief Judicial  
 Magistrate he recorded the depositions of the complainant as

also the witnesses afresh and came to the conclusion that a prima facie case under the provisions referred to above has been made out against the accused persons. Summons were accordingly directed to be issued to the accused persons. Aggrieved whereof the appellant filed a revision petition before the Additional Sessions Judge which failed and was dismissed, inter alia, holding that the material on record before the Court below did make out a prima facie case against the accused persons and that there was no legal infirmity in the order directing issue of summons to the accused persons. The appellant preferred a petition under Section 482 of Cr.P.C. before the High Court of Jharkhand, Ranchi which was dismissed by the High Court by the order impugned in this appeal.

5. We have heard learned counsel for the parties, but find no reason to interfere with the order under challenge. It is fairly well-settled by a long line of decisions rendered by this Court that the power vested in the High Court under Section 482 Cr.P.C. can be invoked for quashing an on-going investigation, complaint or other proceedings only in cases where either there is legal bar to the continuance of the bar proceedings such as the absence of a sanction wherever required or where averments made in the complaint or first information report even if accepted on their face value do not constitute an offence or where there is no legal evidence to support the charge made against the accused. It is also fairly settled that the powers vested in the High Court under Section 482 Cr.P.C. have to be exercised sparingly and that the Court cannot be called upon to appreciate the available evidence or material with a view to find out whether the charge leveled against the accused stands proved.

6. See *Arun Shanker Shukla v. State of U.P. & Ors.* AIR 1999 SC 2554, *State of Punjab v. Kasturi Lal & Ors.* 2004 Cri.L.J. 3866, *State of Karnataka v. M. Devendrappa and Anr.* (2002) 3 SCC 89 and *Central Bureau of Investigation v. K.M.*

- A *Sharan* 2008 (4) SCC 471, *State of Haryana & Ors. v. Bhajan Lal & Ors.*, 1992 Suppl. 1 SCC 335 and *R.P. Kapur v. State of Punjab* (1960) 3 SCR 388.

B 7. A plain reading of the complaint filed by the complainant in the instant case makes out a case against the accused. Not only that the depositions of the three witnesses examined by the complainant in support of his complaint also support the allegations made in the complaint. The Magistrate was, therefore, justified in taking cognizance against the appellant and the co-accused. The Revisional Court of Additional Sessions Judge, Dhanbad, was also correct in holding that a case for issue of process has been made out. Such being the position the High Court committed no error in declining to interfere under Section 482 of Cr.P.C. nor is there any reason for us much less a compelling one to take a view different from the one taken by the High Court.

E 8. Learned counsel for the appellant submitted that the Chief Judicial Magistrate had committed an error in recalling the witnesses and examining them afresh after the matter was remanded back to him for further enquiry. It was contended that the direction for a further enquiry could not be taken to mean that the Magistrate had to record afresh the depositions of the witnesses already examined before him. In as much as the Magistrate had done so in the present case he committed a mistake that was sufficient to vitiate the order passed by him. Support was drawn by the learned counsel from a Single Bench's decision of the High Court of Punjab & Haryana in *Gurdial Singh v. Kartar Singh and Ors.* 1980 Cri. L.J. 955.

G 9. The matter as noticed by us earlier had been remanded back to the Chief Judicial Magistrate to hold a further enquiry. That direction did not necessarily oblige the Magistrate to record any further evidence in the case. The nature of the inquiry was in the discretion of the Magistrate which may or may not have included recording of further evidence on behalf of the complainant. The Magistrate could without recording any further

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evidence in the matter reappraise the averments made in the complaint and the material already on record to determine whether a prima facie case was made out against the accused persons. In as much as the Magistrate in the instant case summoned the witnesses and examined them afresh, he may have gone beyond what was legally necessary to do but that is no reason to hold that the recording of evidence by the Magistrate as a part of the further enquiry directed by the High Court would vitiate the proceedings before him or the conclusion drawn on the basis of any such enquiry. So long as the Magistrate was satisfied that a prima facie case had been made out, he was competent to issue summons to the accused. All told, the alleged error sought to be pointed out by the appellant is not of a kind that would persuade us to interfere with the proceedings at this stage. In the result this appeal fails and is hereby dismissed.

K.K.T.

Appeal dismissed.