

[2015] 1 S.C.R. 1069

SONU GUPTA

v.

DEEPAK GUPTA & ORS.

(Criminal Appeal Nos. 285-287 of 2015)

FEBRUARY 11, 2015.

[ANIL R. DAVE, KURIAN JOSEPH AND
SHIVA KIRTI SINGH, JJ.]

Code of Criminal Procedure, 1973: s.190 – Matrimonial dispute – Complaint of dowry harassment by appellant-wife – Subsequently withdrawn and settlement between the couple – In the instant complaint, allegation of wife that earlier letter of complaint which was withdrawn by her was tampered and a photocopy of such undated complaint was got registered by respondents-husband and in-laws with the help of some police officials and an FIR filed at their instance portraying that it was filed by the appellant – The accusation of the appellant was that the said FIR was neither filed by her nor signed by her and it facilitated her husband and his relations to obtain anticipatory bail in the dowry case filed by her – CID investigation in favour of appellant – Summoning orders – High Court set aside summoning orders and remitted the matter to the Magistrate requiring the appellant to produce alleged documents which could prove forgery – Held: Magistrate committed no error in summoning the accused persons – At the stage of cognizance and summoning, the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence, or to find out whether prima facie case was made out for summoning the accused persons – At this stage, the Magistrate is not required to consider the defence version or materials or arguments nor he is required to evaluate the merits of the materials or evidence of the appellant, because the Magistrate must not undertake the exercise to find out at this stage whether the

A *materials would lead to conviction or not – Summoning order restored.*

Allowing the appeal, the Court

B **HELD: The cognizance is taken of the offence and not the offender. At the stage of framing of charge an individual accused may seek discharge if he or she can show that the materials are absolutely insufficient for framing of charge against that particular accused. But such exercise is required only at a later stage and not at**

C **the stage of taking cognizance and summoning the accused on the basis of prima facie case. Even at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not the requirement and a prayer for discharge can be allowed only if the court finds**

D **that the materials are wholly insufficient for the purpose of trial. The order of the Magistrate suffers from no illegality. The specific case of the appellant that FIR was registered on an undated photocopy of a petition attributed to the appellant but not bearing her original**

E **signature could not have been rejected by the Magistrate at the present stage especially in view of the report of investigation by the CID which was also called for and there being no dispute that the FIR was registered only on the basis of a photocopy on which the signature was**

F **not in original and, therefore, the High Court grossly erred in exercise of its jurisdiction by directing the appellant/ complainant to lead further evidence and produce the original documents to show forgery. The High Court fell into error of evaluating the merits of the defence case and other submissions advanced on behalf of the accused**

G **which were not appropriate for consideration at the stage of taking cognizance and issuing summons. [Paras 8, 10, 11] [1076-D-F; 1078-A-C; 1077-G-H]**

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State of Haryana & Ors. v. Bhajan Lal & Ors. 1992 Suppl. (1) SCC 335: 1990 (3) Suppl. SCR 259 – relied on. A

Thermax Ltd. & Ors. v. K.M. Johny & Ors. (2011) 13 SCC 412: 2011 (14) SCR 154; *M.N. Ojha & Ors. v. Alok Kumar Srivastav & Anr.* (2009) 9 SCC 682:2009 (13) SCR 444; *State of Karnataka v. Muniswamy & Ors.* (1977) 2 SCC 699: 1977 (3) SCR 113 – Distinguished. B

Bhim Lal Shah v. Bisa Singh & Ors. 17 CWN 290; *State of Orissa & Anr. v. Saroj Kumar Sahoo* (2005) 13 SCC 540 : 2005 (5) Suppl. SCR 548; *Riyasat Ali v. State of U.P.* 1992 Crl.L.J. 1217; *Nupur Talwar v. Central Bureau of Investigation & Anr.* (2012) 11 SCC 465 : 2012 (6) SCR 723; *Amit Kapoor v. Ramesh Chander & Anr.* (2012) 9 SCC 460 : 2012 (7) SCR 988; *Asmathunnisa vs. State of Andhra Pradesh & Anr.* (2011) 11 SCC 259 : 2011 (3) SCR 1116; *MEDCHL Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. & Ors.* (2000) 3 SCC 269 : 2000 (1) SCR 1169; *State of Uttar Pradesh v. Paras Nath Singh* (2009) 6 SCC 372 : 2009 (8) SCR 85; *B. Saha & Ors. v. M.S. Kochar* (1979) 4 SCC 177 : 1980 (1) SCR 111; *Matajog Dobey v. H.C. Bhari* AIR 1956 SC 44; *P.K. Pradhan v. State of Sikkim* (2001) 6 SCC 704 : 2001 (3) SCR 1119; *Pepsi Foods Ltd. & Anr. v. Special Judicial Magistrate & Ors.* (1998) 5 SCC 749: 1997 (5) Suppl. SCR 12 – referred to. C D E

Case Law Reference: F

17 CWN 290	referred to	Para 9	
2005 (5) Suppl. SCR 548	referred to	Para 9	
1992 Crl.L.J. 1217	referred to	Para 9	G
2012 (6) SCR 723	referred to	Para 9	
2012 (7) SCR 988	referred to	Para 9	
2011 (3) SCR 1116	referred to	Para 9	H

A	2000 (1) SCR 1169	referred to	Para 9
	2009 (8) SCR 85	referred to	Para 9
	1980 (1) SCR 111	referred to	Para 9
B	AIR 1956 SC 44	referred to	Para 9
	2001 (3) SCR 1119	referred to	Para 9
	1997 (5) Suppl. SCR 12	referred to	Para 9
	1990 (3) Suppl. SCR 259	relied on	Para 12
C	2011 (14) SCR 154	Distinguished	Para 12
	2009 (13) SCR 444	Distinguished	Para 13
	1977 (3) SCR 113	Distinguished	Para 13
D	CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 285-287 of 2015.		

From the Judgment and Order dated 07.09.2012 of the High Court of Chhattisgarh at Bilaspur in Criminal Misc. Petition No. 45 of 2012, Criminal Revision Nos. 45, 152 and 153 of 2012.

Aman Lekhi, Vivek Sarin, Harish Pandey, Mayank Upadhyay, Manish Kumar for the Appellant.

D. N. Goburdhan, Rajesh Ranjan, Atul Jha, Sandeep Jha, Dharmendra Kumar Sinha, Chandan Ramamurthi for the Respondents.

The Judgment of the Court was delivered by

SHIVA KIRTI SINGH, J. 1. Leave granted.

2. The parties have been heard in detail and they have also filed written submissions. Appellant is wife of respondent no.1 and is complainant in Criminal Complaint No.1213/2011 before

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Court of Judicial Magistrate, First Class, Raipur. The respondents are accused in this Complaint Case which was filed on 07.12.2010 for alleged offences under Section 464, 468 and 471 of the Indian Penal Code (IPC).

3. The appellant and respondent no.1 are undergoing a protracted matrimonial dispute. It is the case of appellant as well as respondent no.1 that they were married in February 1997. A girl child was born to the appellant in May 1998 and in 2001 the appellant gave informations on various dates to several police authorities regarding alleged torture and harassment inflicted on her by respondent nos.1 to 8 for dowry as well as for giving birth to a girl child. It is appellant's case that in April 2001 itself there was pressure by the common relatives and friends leading to appellant withdrawing her allegations against respondent no.1 who in turn withdrew Divorce Petition No.496/2000 and the same was dismissed as withdrawn by order of Additional District Judge, Delhi dated 30th April 2001. The differences between the spouses got settled amicably in April-May 2001. The appellant gave birth to another girl child in August 2002 much to the dislike of accused persons.

4. The substance of the accusation in the instant complaint case is that anticipating legal action by the appellant against renewed mental torture and harassment by the respondent no.1 and his other relations named as accused, as a stratagem and outcome of a conspiracy, one of her earlier letters of complaint to some police officials which had been withdrawn by the appellant in April-May 2001, was changed and tampered as per convenience and a photocopy of such undated complaint making out a weak case against the respondents which was bound to fail, was got registered at the instance of the accused persons themselves with the help of some police officials as Criminal Case (FIR No.73/2002) on 06.10.2002 in the Mahila Thana, Raipur by the Town Inspector of this Thana under pressure of accused no.9, Additional Director General of

A Police, PHQ, Raipur. According to the complaint petition, the appellant informed the concerned court that the FIR No.73/2002 was neither filed by her nor signed by her and this FIR facilitated her husband and his relations who were accused to obtain anticipatory bail not only in FIR No.73/2002 but also in the case
B genuinely filed by the appellant against accused nos.1 to 8 under Sections 498A and 406, IPC in Women's Cell, Kirti Nagar, Delhi registered as Complaint No.372/2004 on 15.06.2004. The appellant was also surprised to receive in July
C 2003 a notice of Divorce Petition filed by respondent no.1 in a Delhi court on 19.5.2003. The appellant approached various authorities and tried to get an investigation into her allegations that FIR No.73/2002 was fraudulently registered to benefit the
D accused nos.1 to 8 and the appellant had no role in registering the same. Ultimately, even after a CID investigation in favour of appellant's case, when no action was taken against the
E culprits and no copy of the CID report was made available to the appellant, she filed a Writ Petition No.1488/2005 before the High Court of Chhattisgarh at Bilaspur seeking the record of investigation report of CID and registration of a criminal case
F against the accused as well as investigation by CBI. In terms of directions of the High Court issued while disposing of the writ petition on 24.06.2010, the appellant was provided with copy of the CID investigation report and was also permitted to inspect the entire connected record. Thereafter appellant could find that the Station House Officer of Mahila Thana, Raipur as well as accused no.9, Additional Director General of Police, PHQ, Raipur also had played a role in fraudulent registration of FIR No.73/2002 and hence she filed the instant criminal complaint before the Court of Judicial Magistrate, First Class, Raipur on 07.12.2010.

G 5. The learned Judicial Magistrate recorded the statement of the appellant and also called for record of CID investigation in the matter of FIR No.73/2002 for the purpose of perusal and evaluation. On receipt of the record, the learned Judicial
H Magistrate passed a speaking order on 02.05.2011 whereby

he issued summons against accused nos.1 to 9 after finding a prima facie case on the basis of complaint petition, statement of complainant (appellant) as well as records of CID investigation on which the complainant had placed reliance. Accused nos.1 to 8 preferred one set of criminal revision and accused no.9 preferred another criminal revision before the Sessions Court at Raipur. By two separate orders passed on same date, i.e., 30.11.2011, the Sessions Court upheld the summoning order in respect of accused nos.1 to 5 but set it aside in respect of accused nos.6 to 8 and accused no.9. Against these two orders the appellant preferred criminal revision petitions whereas accused nos.1 to 5 also preferred a Criminal Miscellaneous Petition bearing No.45/2012 before the High Court. The High Court, by common judgment and order dated 07.09.2012 which is under appeal, dismissed both the criminal revision petitions preferred by the appellant against grant of relief to accused nos.6 to 9 and allowed criminal miscellaneous petition of accused nos.1 to 5 by setting aside the summoning order of the Magistrate and directing the appellant to appear before the Court of Judicial Magistrate for adducing further evidence, if any, to support her allegation in the complaint petition. The High Court thus remitted back the matter with various observations requiring the appellant to produce alleged documents which could prove forgery and also to send the same to expert for examination of the document and signature of the complainant/appellant.

6. Considering the stage at which the criminal complaint is pending and the nature of proposed order, this Court would not like to express any definite opinion on the merits of the allegations made in the complaint petition or upon the defence taken by the accused persons before the courts below or in this Court lest it prejudices one or the other party in future.

7. Having considered the details of allegations made in the complaint petition, the statement of the complainant on solemn affirmation as well as materials on which the appellant

A placed reliance which were called for by the learned Magistrate, the learned Magistrate, in our considered opinion, committed no error in summoning the accused persons. At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence, or, in other words, to find out whether prima facie case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor he is required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not.

8. It is also well settled that cognizance is taken of the offence and not the offender. Hence at the stage of framing of charge an individual accused may seek discharge if he or she can show that the materials are absolutely insufficient for framing of charge against that particular accused. But such exercise is required only at a later stage, as indicated above and not at the stage of taking cognizance and summoning the accused on the basis of prima facie case. Even at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not the requirement and a prayer for discharge can be allowed only if the court finds that the materials are wholly insufficient for the purpose of trial. It is also a settled proposition of law that even when there are materials raising strong suspicion against an accused, the court will be justified in rejecting a prayer for discharge and in granting an opportunity to the prosecution to bring on record the entire evidence in accordance with law so that case of both the sides may be considered appropriately on conclusion of trial.

9. Learned senior advocate for the appellant Mr. Aman Lekhi has relied upon a catena of judgments such as :-

(i) Bhim Lal Shah vs. Bisa Singh & Ors. [17 CWN 290];

SONU GUPTA v. DEEPAK GUPTA & ORS. 1077
[SHIVA KIRTI SINGH, J.]

- (ii) State of Orissa & Anr. vs. Saroj Kumar Sahoo A
[(2005) 13 SCC 540];
- (iii) Riyasat Ali vs. State of U.P. [1992 Cri.L.J. 1217];
- (iv) Nupur Talwar vs. Central Bureau of Investigation & B
Anr. [(2012) 11 SCC 465];
- (v) Amit Kapoor vs. Ramesh Chander & Anr. [(2012)
9 SCC 460];
- (vi) Asmathunnisa vs. State of Andhra Pradesh & Anr. C
[(2011) 11 SCC 259];
- (vii) MEDCHL Chemicals & Pharma (P) Ltd. vs.
Biological E. Ltd. & Ors. [(2000) 3 SCC 269];
- (viii) State of Uttar Pradesh vs. Paras Nath Singh D
[(2009) 6 SCC 372];
- (ix) B. Saha & Ors. vs. M.S. Kochar [(1979) 4 SCC
177];
- (x) Matajog Dobey vs. H.C. Bhari [AIR 1956 SC 44]; E
- (xi) P.K. Pradhan vs. State of Sikkim [(2001) 6 SCC
704].

These need no discussion because settled propositions F
of law reiterated therein have already been noticed earlier.

10. In the present case, on going through the order of the
learned Magistrate, we are satisfied that the same suffers from
no illegality. The specific case of the appellant that FIR was G
registered on an undated photocopy of a petition attributed to
the appellant but not bearing her original signature could not
have been rejected by the learned Magistrate at the present
stage especially in view of the report of investigation by the CID
which was also called for and there being no dispute that the
FIR No.73/2002 was registered only on the basis of a H

- A photocopy on which the signature is not in original and hence in our considered view the Hon'ble High Court grossly erred in exercise of its jurisdiction by directing the appellant/complainant to lead further evidence and produce the original documents to show forgery. If the FIR is admittedly on the basis of only a photocopy of a document allegedly brought into existence by the accused persons, the High Court erred in directing the appellant to produce the original and get the signatures compared.

C 11. In our considered view, the High Court fell into error of evaluating the merits of the defence case and other submissions advanced on behalf of the accused which were not appropriate for consideration at the stage of taking cognizance and issuing summons.

D 12. Learned advocate for the accused persons, Mr. D.N. Goburdhan has placed reliance upon judgment in the case of *Pepsi Foods Ltd. & Anr. v. Special Judicial Magistrate & Ors.* (1998) 5 SCC 749 to highlight that summoning of an accused is a serious matter and, therefore, the order of the Magistrate must reflect that he has applied his mind to the facts of the case and the relevant law, as highlighted in paragraph 28 of the Report. In that case emphasis was laid upon power available with the High Court either under Articles 226 and 227 of the Constitution or under Section 482 of the Cr.P.C. to quash a criminal proceeding even at initial stage to prevent the abuse of process of law by the inferior courts. But this Court cautioned that since the powers conferred on the High Court under aforesaid provisions have no limits, hence more/due care and caution is required while invoking these powers. In paragraph 29 it was emphasized that the accused can approach the High Court "to have the proceeding quashed against him when the complaint does not make out any case against him". The facts in the present case are otherwise and required the High Court to exercise more caution in view of clear allegations in the complaint petition. The High Court erred in evaluating the merit

of evidence for interfering with a summoning order. Learned A
counsel also placed reliance upon judgments in the case of
State of Haryana & Ors. v. Bhajan Lal & Ors. 1992 Supp. (1)
SCC 335 and also in the case of *Thermax Ltd. & Ors. v. K.M.*
Johny & Ors. (2011) 13 SCC 412 in support of the proposition B
that power to quash criminal prosecution is justified where a
criminal proceeding is instituted with malafide or ulterior
motives. In the case of *Bhajan Lal* (supra) this Court did
indicate in para 102, seven kinds of cases where court may
exercise power to quash criminal prosecution but in respect of
the 7th category relating to malafide, this Court used the C
expression – “manifestly attended with malafide” and further
explained in paragraphs 103 and 104 that the power of
quashing should be exercised very sparingly and with
circumspection and that too in the rarest of rare cases.
Paragraphs 103 and 104 are reproduced hereunder : D

“103. We also give a note of caution to the effect that the
power of quashing a criminal proceeding should be
exercised very sparingly and with circumspection and that
too in the rarest of rare cases; that the court will not be
justified in embarking upon an enquiry as to the reliability E
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.

104. It may be true, as repeatedly pointed out by Mr. F
Parasaran, that in a given situation, false and vexatious
charges of corruption and venality may be maliciously
attributed against any person holding a high office and
enjoying a respectable status thereby sullyng his
character, injuring his reputation and exposing him to social G
ridicule with a view to spite him on account of some
personal rancour, predilections and past prejudices of the
complainant. In such a piquant situation, the question is
what would be the remedy that would redress the grievance H

A of the verily affected party? The answer would be that the
 person who dishonestly makes such false allegations is
 liable to be proceeded against under the relevant
 provisions of the Indian Penal Code – namely under
 Section 182 or 211 or 500 besides becoming liable to be
 B sued for damages.”

The facts in the case of *Thermax Ltd.* (supra) were quite
 different and there was a clear situation showing that the
 complainant was trying to circumvent period of limitation for
 moving the Civil Court, by filing a delayed criminal case.

C 13. On behalf of accused persons reliance has also been
 placed upon judgment in the case of *M.N. Ojha & Ors. v. Alok
 Kumar Srivastav & Anr.* (2009) 9 SCC 682. In that case a
 complaint filed against the appellants who were bank officials
 D was quashed because the Court found that it was a counter-
 blast to action taken by them in their official capacity for
 realizing the loan amount due from the complainant. On facts
 of that case, it was easy to hold that the complaint was clearly
 E an abuse of judicial process and it was also found that
 averments and allegations in complaint did not disclose
 commission of any offence by appellants. The Magistrate had
 failed to apply his mind to the case of the appellants and the
 High Court had erred in not even adverting to the basic facts.
 The factual situation in the present case is quite otherwise.
 F Reliance was also placed on behalf of respondents upon
 judgment in the case of *State of Karnataka v. Muniswamy &
 Ors.* (1977) 2 SCC 699. In that case, the accused persons
 pleaded for discharge before the Sessions Court which was
 not accepted but the High Court quashed the proceedings on
 G the ground that there was no material on the record on the basis
 of which any tribunal could reasonably come to the conclusion
 that the accused were in any manner connected with the incident
 leading to the prosecution. This Court agreed with the views
 of the High Court on the basis of peculiar facts of that case
 showing lack of any data or material which could create a
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reasonable likelihood of conviction for any offence in connection with attempted murder of the complainant. That judgment also is of no help to the respondents herein in the light of allegations made in the complaint, the statement of the complainant on solemn affirmation and the CID Report of investigation on which the complainant placed reliance and which was perused by the learned Magistrate.

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14. These appeals are therefore allowed, the judgment and order under appeal passed by the High Court is set aside. We also set aside the orders passed by the learned Sessions Court dated 30.11.2011 whereby summoning order was set aside in respect of accused nos.6 to 8 and accused no.9. In other words, the order of summoning passed by learned Magistrate dated 02.05.2011 is restored. Before parting with the order we make it clear that any observations in this order shall not prejudice the case of either of the parties before the court below and the criminal complaint case of the appellant must proceed on its own merits strictly in accordance with law.

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15. Although we have set aside the order granting relief to accused nos.6 to 9 by the Sessions Court, in the interest of justice, we direct that in the facts of the case accused nos.6 to 9 shall be granted benefit of bail by the learned Magistrate if they appear within 10 weeks and apply for same. The Magistrate shall of course be at liberty to set reasonable conditions for such grant.

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