

Hazari Lal Gupta

Vs

Rameshwar Prasad and Another, etc.

Criminal Appeals Nos. 110 to 113 of 1971

(A.N. Ray, D.G. Palekar JJ)

02.12.1971

JUDGMENT

RAY, J. -

1. These four appeals are by special leave against the order, dated March 22, 1971, of the High Court at Allahabad dismissing the applications of the appellant under Section 561-A of the Criminal Procedure Code for quashing the proceedings based upon first information report lodged against the appellant by the four respondents.
2. The appellant has been living and doing business in the United Kingdom since the year 1963. The appellant is one of the Directors of Messrs. H. Gupta (London) Limited and Oriental Wool Craft Limited carrying on business in England. The Company is dealing in the business of carpets imported from India.
3. Sometime in the month of June, 1970 four complaints were lodged against the appellant. The complainants are residents of Bhadohi in the District of Varanasi. The complainants are manufacturers of carpets. The complainants came in contact with the appellant in the year 1962. The complainants and the appellant had dealings and transactions in carpets. In the year 1965 the appellant withheld payment of several bills representing the price of carpets sent by the complainants to the appellant. In the year 1965 the appellant came to India. The complainants demanded money. The appellant said that he would send them payment from London. The complainants did not receive any money. When the appellant came to India in 1970 the complainants were kept in the dark about his visit to India. Eventually, the complainants came to know about it. The complainants on or about July 4, 1970, lodged complaints against the appellant.
4. The appellant was therefore arrested for offences under Section 406 and 420 of the Indian Penal Code on the first information report of the complainants.
5. The Additional District Magistrate, Gyanpur, refused bail. On July 13, 1970, the appellant applied for bail before the Sessions Judge, Varanasi in Uttar Pradesh. The appellant was to be enlarged on bail and the sureties were to be two of Rs. 40,000 each in one case, two sureties of Rs. 30,000 each in the second case and two sureties of Rs. 10,000 each in the third case and two sureties of Rs. 15,000 each in the fourth case and in each case there was to be a personal bond of the like amount. The appellant was also asked not to leave India without the permission of the Court. The appellant was unable to furnish the sureties. The appellant thereafter applied to the High Court at Allahabad for modification of the order in respect of sureties. The High Court on July 21, 1970, was pleased to modify the order of the Sessions Judge by reducing the amount of surety to Rs. 10,000 in

each case and a personal bond of the like amount in each case.

6. The complainants on coming to know of the order of the High Court in the month of July, 1970 made an application under Section 498, read with Section 561-A of the Criminal Procedure Code that the Additional District Magistrate at Varanasi should be directed to seize the passport of the appellant before enlarging him on bail on the ground that there was an apprehension that the appellant would jump his bail. The High Court at Allahabad on August 21, 1970, passed orders directing the Additional District Magistrate, Varanasi that there would be no harm if the appellant was further ordered to surrender his passport to the Additional District Magistrate (Judicial), Varanasi. The appellant was thereafter released on bail on September 21, 1970, after furnishing the surety to the tune of Rs. 10,000 in each case and after surrendering his passport to the Additional District Magistrate (Judicial), Varanasi.

7. The appellant on being released on bail moved an application under Section 561-A of the Criminal Procedure Code in the High Court at Allahabad and prayed for three orders. These were : first, that the proceedings based upon first information report lodged by the complainants be quashed; secondly, that the order of the High Court of Allahabad, dated August 2, 1970, directing the appellants to surrender the passport be modified and the appellant's passport be released; and thirdly, that the restrictions imposed by the District Magistrate restricting the appellant not to leave India be cancelled. The High Court at Allahabad on March 23, 1971, dismissed the application of the appellant. The present appeals are against that order of the High Court, dated March 23, 1971, refusing to quash the proceedings and to modify the restrictions imposed on the appellant.

8. Counsel on behalf of the appellant raised four contentions. First, that the proceedings should be quashed because there was no certificate by the High Commissioner for India in the United Kingdom under Section 188 of the Criminal Procedure Code that the charges against the appellant ought to be enquired into in India. Secondly, there was no sanction of the Director of Foreign Exchange for prosecution. Thirdly, the report under Section 169 of the Criminal Procedure Code of the Investigating Officer was not placed. Fourthly, there was no case against the appellant.

9. The case against the appellant is in the course of investigation. Counsel on behalf of the State submitted that investigation was practically complete and the case would commence soon. It is not necessary to express any opinion on the question as to whether certificate or sanction is necessary. If certificate of sanction will be necessary and if there will be no certificate or sanction it will be open to the appellant to canvass that ground at the appropriate stage of trial. The report which the appellant characterises as one under Section 169 of the Criminal Procedure Code does not find any mention in the grounds. The affidavit filed by the Supervising Officer of the investigation is that detailed investigation was started and as yet there is no report under Section 169 of the Criminal Procedure Code. The appellant is not entitled to papers of the Investigating Officer. It is also not desirable to express any opinion on the merits of the case at this stage.

10. The contention of the appellant in the forefront was that the passport of the appellant should be returned so that the appellant could return to England. On behalf of the appellant an affidavit was affirmed by Virendra Kumar Srivastava in the High Court at Allahabad in support of the application for modification of the order for sureties that the appellant was prepared to give an undertaking that he would not leave India before the case was finally decided and he was further prepared to surrender his passport after release on bail. When the High Court at Allahabad passed an order on July 21, 1970, reducing the sureties and thereafter on August 21, 1970, passed an order directing the appellant to surrender his passport and the appellant complied with the orders and was released on

bail, the appellant could not again come up under Section 561-A of the Criminal Procedure Code before the High Court at Allahabad for modifying and revising the orders passed by the High Court.

11. On behalf of the appellant it was said that Sections 496, 497 and 498 of the Criminal Procedure Code in relation to bail did not confer any power on the Court when granting bail to restrict the departure of the appellant from India by requiring the appellant to surrender the passport. Sections 496, 497 and 498 of the Criminal Procedure Code are not exhaustive of powers of the Court in regard to terms and conditions of bail particularly when the High Court under Section 516-A of the Criminal Procedure Code deals with cases of the type. The apprehension of the appellant jumping bail could not be brushed aside. If the appellant wanted to retain the passport the Court might not have granted the appellant any bail. Again, the reduction of the surety was made in order to enable the appellant to be enlarged on bail. The reduction of surety was also on the consideration that the appellant would not leave India.

12. The inherent power of the High Court under Section 561-A of the Criminal Procedure Code has been considered by this Court in *R. P. Kapur v. The State of Punjab*, [(1960) 3 SCR 388] and *State of West Bengal v. S. N. Basak*. [(1963) 2 SCR 52 : AIR 1963 SC 447 : (1963) 2 SCJ 428]. In exercising jurisdiction under Section 561-A of the Criminal Procedure Code the High Court can quash proceedings if there is no legal evidence or if there is any impediment to the institution or continuance of proceedings but the High Court does not ordinarily enquire as to whether the evidence is 'reliable or not'. Where again, investigation into the circumstances of an alleged cognizable offence is carried on under the provisions of the Criminal Procedure Code the High Court does not interfere with such investigation because it would then be the impeding investigation and jurisdiction of statutory authorities to exercise power in accordance with the provisions of the Criminal Procedure Code. The High Court was correct in dismissing the applications under Section 561-A of the Criminal Procedure Code. The appeals are therefore dismissed.

13. Counsel on behalf of the State stated that the cases against the appellant would commence soon. The State should keep that in view particularly because long time has been taken for investigation.

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