

Mushtaq Ahmad

Vs

Mohd. Habibur Rehman Faizi and Others

Criminal Appeal No. 122 of 1996

(S. P. Bharucha, M. K. Mukherjee JJ)

31.01.1996

JUDGMENT

1. Leave granted. Heard the counsel appearing for the parties.
2. The appellant herein filed a complaint before the Chief Judicial Magistrate, Mau alleging commission of offences under Section 406, 409, 420 and 467, I. P. C. by the respondent Nos, 1 to 4 ('respondents' for short). The learned Magistrate took cognizance upon the complaint and then recorded the statement of the appellant under Section 200, Cr. P.C. On being satisfied from the complaint, the documents filed there with and the statement of the appellant that the above offences were made out against the respondents he issued process against them. Aggrieved thereby the respondents filed a petition under Section 482, Cr. P.C. for quashing the complaint and the proceeding arising therefrom which was allowed by the High Court with a finding that the complaint was false, frivolous and vexatious and a direction upon the appellant to pay Rs. 5,000/- to the respondents as costs. Hence this appeal.
3. Having perused the impugned judgment in the light of the complaint and its accompaniments we are constrained to say, that the High Court exceeded its jurisdiction under Section 482, Cr. P.C. in passing the impugned judgment and order. It is rather unfortunate that though the High Court referred to the decision in State of Haryana v. Bhajan Lal, 1992 Supp(1) SCC 335: (1992 AIR SCW 237), wherein this Court has enumerated by way of illustration the categories of cases in which power to quash complaint or FIR can be exercised, it did not keep in mind-much less adhered to-the following note of caution given therein (para 109 of AIR) :-

"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 or genuineness or other wise 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".
4. In the complaint the appellant averred that the was a teacher of Madrasa Faiz-e-Am since the year 1974 and at the material time the respondents were the Manger, Principal, Teacher and Member of the Manating Committee of the school respectively. In the year 1985 the went on leave to get higher education in Saudi Arbaia and after coming back from there in 1988 he went to join th School he found that his salaries and dearness allowance for the above period had been drawn by them from

the Government funds and, by forging his signatures, purported payments thereof to him were shown. According to the complaint, the respondents had thereby committed breach of trust of Government money. In support of the above allegations made in the complaint copies of the salary statements of the relevant periods were produced. In spite of the fact that the complaint and the documents annexed thereto clearly made out a, prima facie, case for cheating, breach of trust and forgery, the High Court proceeded to consider the version of the respondents given out in their petition filed under Section 482, Cr. P.C. vis-vis that of the appellant and entered into the debatable area of deciding which of the version was true,- a course wholly impermissible in view of the above quoted observations in the case of Bhajan Lal (1992 AIR SCW 237) (supra).

5. For the foregoing reason, we allow this appeal, set aside the impugned order of the High Court and direct the Magistrate to proceed with the complaint in accordance with law. Appeal allowed.