SUPREME COURT OF INDIA

Sunita Jain

Vs.

Pawan Kumar Jain & Ors.

Crl.A.No.174 of 2008

(C.K.Thakker and D.K.Jain,JJ.)

25.01.2008

JUDGMENT

C.K.Thakker, J.

Arising Out of Special Leave Petition (Crl.)No. 1362 of 2004

1. Leave granted.

2. The present appeal is filed against the judgment and order dated October 30, 2003 in Miscellaneous Criminal Case No. 1442 of 1999 passed by the High Court of Judicature at Jabalpur. By the said order, the High Court allowed the application filed by the respondents-accused under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) and quashed criminal proceedings initiated by the appellant.

3. To appreciate the controversy raised in the present appeal, few relevant facts may be noted.

4. The appellant herein is the wife of Pawan Kumar Jain-respondent No.1. Respondent Nos. 2 and 3, namely, Poolchand Jain and Smt. Sarojbai Jain are parents of respondent No.1 and father-in-law and mother-in-law respectively of the appellant. It is the case of the appellant that she married to respondent No.1 on July 8, 1989. After the marriage, she remained with her husband for few days at Jabalpur and during that period, her husband and in-laws harassed her as her father had not given sufficient amount of dowry. They taunted the appellant saying that had the respondent No.1 married to any other lady, they would have received dowry amount of Rs.8-10 lakhs. On September 5, 1990, the appellant gave birth to twins. According to the appellant, the greed of the respondents for dowry was so much that in 1991, the first respondent went to the extent of getting quality of gold ornaments given by her father tested by a Goldsmith which were found to be of good quality. It is also the case of the appellant that on December 14, 1991, marriage of the appellants younger sister was solemnized at Sagar and respondent No.1 and his father had come to attend it. At that time also, the respondents demanded car, colour TV and more gold. When the demand was not

met with, the first respondent attacked the appellant and caused injury to her. In March, 1992, the 1st respondent took the appellant with him and kept her with his parents at Jabalpur. Even after giving assurance that she will not be ill-treated, she was physically and mentally tortured for dowry. The appellant informed her father that her husband and in- laws were demanding dowry from her and her husband assaulted her and her children had been taken away and they were not allowed to see the mother (appellant).

5. The appellant stated that Harish Chandra and Daya Chandra Jain, who were known to her father, learnt about the miserable condition of the appellant and both of them informed the father of the appellant in September, 1993 about the plight of the appellant at her in-laws. One Ram Ratan Jain, who was also knowing the appellant, persuaded the respondents to behave properly but in vain. In May, 1995, again the appellant was assaulted and severely beaten. She was also compelled to sign a document purported to be a compromise deed between the appellant and the 1st respondent. The appellant lodged a complaint in Police Station Civil Lines, Raipur on May 10, 1998 which was registered as Crime No. 738 of 1998. Respondent No.1 was called at the Police Station and he executed a writing that he would not ill treat the appellant. The 1st respondent also gave assurance that he will not use any writing against the appellant said to have been signed by her.

6. In July, 1995, the 1st respondent was transferred from Raipur to Raigarh and in spite of the request by the appellant, she was not taken by her husband along with him. On March 8, 1996, the 1st respondent sent a notice through advocate to father of the appellant stating that he had filed a divorce petition. He further stated that he was ready to pay maintenance to the appellant. On 17th March, 1996, the appellants father brought the appellant to Sagar. The appellant had to go with her father as the 1st respondent did not take her with him and had also issued notice for divorce. On March 20, 1996, the appellant lodged First Information Report (FIR) in Women Police Station which was registered as Crime No. 6 of 1996 giving details about physical and mental torture and dowry demands by respondent No.1 and his family members. According to the appellant, on July 10, 1996, non-bailable warrants were issued. In the High Court, however, the 1st respondent made a statement through his advocate that parties had decided to live together and had settled the dispute amicably. On that statement being made, bail was granted to respondent No.1 and his parents. On September 28, 1996, challan was filed against the respondents for offences punishable under Sections 498A, 506, 406 read with Section 34 of Indian Penal Code (IPC) and also under Sections 3 and 4 of Dowry Prohibition Act, 1961. On January 30, 1997, charges were framed against respondent Nos. 1 to 3 (husband, father-in-law and mother-in-law) and also against brother and sister of respondent No.1. All the accused challenged the action of framing of charge against them in the High Court by filing a Revision Petition. The High Court vide its order dated October 22, 1997, partly allowed the revision and quashed charges against brother and sister of respondent No.1. The High Court, however, held that so far as other respondents were concerned, charges could not be quashed and dismissed the petition. Being aggrieved by the said order, the respondents approached this Court by filing Special Leave Petition but even this Court dismissed the SLP on February 23, 1998. The respondents then once again filed a petition in the High Court by invoking Section 482 of the Code on February 23, 1999. The appellant filed her reply to the said petition. The High Court vide the

impugned order, allowed the petition holding that there was abuse of process of law by the appellant in initiating criminal proceedings. The proceedings were, therefore, quashed. The said order is challenged in the present appeal.

7. Notice was issued by this Court on April 5, 2004. Several adjournments were taken by the parties so that the matter can amicably be settled. The matter, however, could not be settled and was ordered to be posted for final hearing.

8. We have heard learned counsel for the parties.

9. The learned counsel for the appellant submitted that grave and serious error has been committed by the High Court in quashing the proceedings. He submitted that once the proceedings had been initiated in accordance with law and the Court was satisfied that prima facie case was made out, charge was framed and the said action was upheld by the High Court as well as by this Court, it was not open to the High Court to quash the proceedings on the ground that there was abuse of process of Court. Such an order could not have been made by the High Court in the light of the order passed by this Court.

10. It was also submitted that the High Court has virtually reviewed its earlier order. There is no power of review in a Court exercising criminal jurisdiction under the Code and such order is illegal and without jurisdiction. A grievance was also made that once this Court upheld framing of charge against respondent Nos. 1 to 3, the High Court could not have held that the proceedings were initiated mala fide or there was abuse of process of Court. Such order, in the teeth of order passed by this Court, was totally illegal, unwarranted and must be set aside.

11. The learned counsel for respondent Nos. 1 to 3 supported the order of the High Court. He submitted that considering the totality of facts and circumstances, the High Court passed the impugned order which is strictly in consonance with law. It was urged that taking into account, overall conduct of the appellant and actions taken by her against the 1st respondent-husband and his family members in the light of subsequent facts which were brought to the notice of the Court, the Court was satisfied that it was in the interest of justice to quash the proceedings. Such an action cannot be said to be illegal or improper. It was also stated that two children were born in 1990 but she had never taken interest nor even seen them after 1990. Both the children are with the respondents and they are very happy. According to the respondents, there was no demand of dowry either by respondent No.1 or by his family members and a totally false and concocted complaint was filed against them and the Court was convinced that the action had been taken by the appellant to harass the respondents and the proceedings were liable to be quashed. Finally, it was submitted that this Court may not exercise equitable jurisdiction under Article 136 of the Constitution in favour of the appellant.

12. Having given anxious consideration to the rival submissions of the parties, in our view, the High Court was wrong in quashing the proceedings. From the facts noted hereinabove, it is clear that a complaint was lodged by the petitioner against respondent Nos. 1 to 3 as also against other accused for offences punishable under Sections

498A, 342 and 406, IPC and Sections 3 and 4 of Dowry Prohibition Act. The trial Court satisfied that prima facie case was made out and accordingly charges were framed against respondent Nos. 1 to 3 as well as against other accused. In a petition challenging that action, the High Court partly allowed the petition vide its order dated October 22, 1997 and quashed charges against brother-in-law and sister-in-law of the appellant herein but upheld the order of framing of charge against the remaining respondents i.e. respondent Nos. 1 to 3. Respondent Nos. 1 to 3 challenged the order of the High Court by approaching this Court. It was registered as Special Leave Petition (Crl.) No. 509 of 1998. On December 23, 1998, this Court dismissed the special leave petition by passing the following order:

> "We are not inclined to interfere with the order of the High Court dated 22.10.1997 framing charges against the petitioner. The SLP (Crl.) No. 509/98 is dismissed. So far as order dated 28.11.97 is concerned refusing to transfer the proceedings, issue notice. Pending proceedings before the C.J.M. Sagar, is stayed".

13. It is thus, clear that all the Courts including this Court were of the view that there was prima facie case for framing of charge against the respondents herein. It appears that thereafter the parties tried for amicable settlement of the matter again. The Court was also informed that the parties had almost settled the matter and negotiations were going on with regard to amount to be paid to the wife. The respondent No.1-husband offered Rs.7.50 lakhs towards full and final settlement. According to the respondents, the petitioner-wife insisted for more amount. The efforts of settlement thus failed. It has also come on record that appellant-wife filed a suit against the husband for compensation of Rs.20 lakhs in the Court of First Addl. Judge, Sagar. to was allowed by the High Court and it was held that Sagar Court had no territorial jurisdiction to entertain the suit. After the order passed by this Court in August, 1998, respondent Nos. 1 to 3 again moved the High Court under Section 482 of the Code for quashing of criminal proceedings. The High Court in the impugned order noted that earlier the respondents had approached the Court against framing of charge and the said action was not interfered with even by the Supreme Court. But observing that a Court of law cannot be expected to remain a silent spectator and cannot be made a tool of gratifying personal vengeance of any party, it held that the case in hand was a fit one to exercise inherent power under Section 482 and accordingly the proceedings were ordered to be quashed. The Court, for coming to the said conclusion, relied upon certain decisions of this Court.

14. *In Madhu Limaye v. State of Maharashtra*[1], an interlocutory order was passed by a Court subordinate to the High Court against which Revision Petition was filed. It was contended that sub-section (2) of Section 397 barred exercise of revisional powers in relation to any interlocutory order passed in an appeal, inquiry, trial or in any other proceeding. Since the order was interlocutory in nature, revision petition was not maintainable. This Court held that even where an order cannot be challenged in revision, inherent powers under Section 482 of the Code could be exercised by the High Court in appropriate cases.

15. This Court stated:

> "On a plain reading of Section 482, however, it would follow that nothing in the Code, which would include sub-section(2)of Section 397 also, shall be deemed to limit or affect the inherent powers of the High Court. But, if we were to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers. In such a situation, what is-the harmonious way out? In our opinion, a happy solution of this problem would be to say that the bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained inSection 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly."

16. The High Court also referred to *G.V. Rao v. L.H.V. Prasad & Ors*[2]. wherein this Court considered the object underlying marriage as sacred ceremony and to end the dispute amicably between the parties by pondering over differences and misunderstandings. It was observed that the parties should not litigate by instituting criminal cases which would take long time and in that process, lose their youngdays in chasing their cases in different Courts. The Court, therefore, observed that such matters should be settled immediately.

17. In *B.S.Joshi & Ors. v. State of Haryana & Anr*[3] , proceedings for offences punishable under Sections 498A and 406, IPC were quashed. It was observed that Section 320 of the Code relating to compounding of offenceswould not limit the power of the High Court underSection 482 of the Code and if the High Court is satisfied that the proceedings were initiated mala fide and there is abuse of process of law, they can be quashed. Referring to earlier judgments, the Court held that there are special features in matrimonial matters and it is the duty of the Court to encourage genuine settlement of matrimonial disputes.

18. Discussing the underlying object of inserting Chapter XXA (Section 498A) in the Indian Penal Code, the Court stated: There is no doubt that the object of introducing Chapter XX-A containingSection 498-A in the Indian Penal Code was to prevent torture to a woman by her husband or by relatives of her husband. Section 498-A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hypertechnical view would be counterproductive and would act against interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the

proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XX-A of the Indian Penal Code.

19. In spite of best efforts by the learned counsel for the respondents, we are unable to persuade ourselves to hold that after the order passed by this Court dismissing Special Leave Petition upholding framing of charge against respondent Nos. 1 to 3, the High Court could have exercised power under Section 482 of the Code quashing criminal proceedings initiated by the appellant. The High Court observed that even after dismissal of SLP by this Court, it was open for the Court to consider the prayer of the accused to quash prosecution in exercise of inherent powers because the extraordinary jurisdiction under Section 482 of the Code may be exercised at any stage.

20. To us, the learned counsel for the appellant is right that in substance and in reality, the High Court has exercised power of review not conferred by the Code on a Criminal Court. Section 362of the Code does not empower a Criminal Court to alter its judgment. It reads thus:

> "362. Court not to alter judgment:- Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."
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> (emphasis supplied)

21. The section makes it clear that a Court cannot alter or review its judgment or final order after it is signed except to correct clerical or arithmetical error. The scheme of the Code, in our judgment, is clear that as a general rule, as soon as the judgment is pronounced or order is made by a Court, it becomes functus officio (ceases to have control over the case) and has no power to review, override, alter or interfere with it.

22. No doubt, the section starts with the words Save as otherwise provided by this Code. Thus, ifthe Code provides for alteration, such power can be exercised. For instance, sub-section (2) ofSection 127. But in absence of express power, alteration or modification of judgment or order is not permissible.

23. It is also well settled that power of review is not an inherent power and must be conferred on a Court by a specific or express provision to that effect. [*Vide Patel Narshi Thakershi & Ors. v. Shri Pradyumansinghji Arjunsinghji*[4],] No power of review has been conferred by the Code on a Criminal Court and it cannot review an order passed or judgment pronounced.

24. In *Hari Singh Mann v. Harbhajan Singh Bajwa & Ors.*[4], this Court held that a High Court has no jurisdiction to alter or review its own judgment or order except to the extent of correcting any clerical or arithmetical error. It deprecated the practice of filing Criminal Miscellaneous Petitions after disposal of main matters and issuance of fresh directions in such petitions.

25. The Court said; Section 362 of the Code mandates that no court, when it has signed its judgment or final order disposing of a case shall alter or review the same except to correct a clerical or an arithmetical error. The section is based on an acknowledged principle of law that once a matter is finally disposed of by a court, the said court in the absence of a specific statutory provision becomes functus officio and disentitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by a court of competent jurisdiction in a manner prescribed by law. The court becomes functus officio the moment the official order disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or an arithmetical error.

26. In the case on hand, charges were framed against respondent Nos. 1 to 3 and the said order was affirmed by the High Court and by this Court. It is no doubt true that thereafter there was a talk of settlement between the parties which could not be materialised. It is also true that the appellant filed a suit for compensation of Rs.20 lakhs against the husband and in-laws. In our considered opinion, however, that would not confer jurisdiction on the High Court to quash criminal proceedings when the action of framing of charge against the respondents had been upheld by this Court. The order impugned in the present appeal is thus clearly illegal, improper, contrary to law and deserves to be set aside.

27. The learned counsel for the appellant contended that virtually the High Court sat over the decision of this Court and exercised appellate power by upsetting the order of the Court of framing charge against the respondents. The counsel, in this connection, referred to *Jharia s/o Mania v. State of Rajasthan & Anr*[5]., In that case, the accused was convicted by a Sessions Court for an offence punishable under Section 302 read with Section 34, IPC. The order of conviction and sentence was confirmed by the High Court as well as by this Court. Thereafter, a substantive petition under Article 32 of the Constitution was instituted by the accused for issuance of a Writ of Mandamus directing the State to forbear from giving effect to the judgment of all Courts including this Court. A declaration was also sought that the conviction was illegal and his detention in jail was without the authority of law and violative of Fundamental Rights.

28. Dismissing the petition, this Court observed:

> "We fail to appreciate the propriety of asking for a declaration in these proceedings under Article 32 that conviction of the petitioner by the High Court for an offence punishable under Section 302 read with Section 34 of the Indian Penal Code is illegal, particularly when this court has declined to grant special leave under Article 136. Nor can the petitioner be heard to say that his detention in jail amounts to deprivation of the fundamental right to life and liberty without following the procedure established by law in violation of Article 21 read with Articles 14 and 19. When a special leave petition is assigned to the learned Judges sitting in a Bench, they constitute the Supreme Court and there is a finality to their judgment which cannot be upset in these proceedings under Article 32. Obviously, the Supreme Court cannot issue a writ,

direction or order to itself in respect of any judicial proceedings and the learned Judges constituting the Bench are not amenable to the writ jurisdiction of this court."

29. Even if we may not go to the extent that the High Court ventured to sit over the order passed by this Court in quashing the proceedings, in our considered opinion, on the facts and in the circumstances of the case, the High Court was not justified in invoking Section 482 of the Code and in quashing prosecution against the respondents.

30. Moreover, it is well-settled that inherent power under Section 482 of the Code must be exercised in rarest of rare cases. Before more than four decades in the leading case of *R.P. Kapur v. State of Punjab*[6], this Court stated:

> "It is well-established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the Court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where th ere is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction

under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Courts inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained. (emphasis supplied)"

31. Yet, in another important decision in *State of Haryana v. Bhajan Lal*[6], the Court referred to a number of leading decisions on the point and laid down the following principles for exercising power of quashing criminal proceedings. (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.

"(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.

(3) Where the uncontroverted allegations made in the FIR 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.

(4) Where, the allegations in the FIR 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.

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

32. Speaking for the Court, Pandian, J. stated:

"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 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."

33. We are in respectful agreement with the above observations. On the facts and in the circumstances of the case, in our judgment, the High Court was clearly in error in exercising power under Section 482 of the Code and in quashing criminal proceedings. The said order, hence, deserves to be set aside. The matter will now be decided in accordance with law by an appropriate Court.

34. Before parting with the matter, we may clarify that we have not entered into merits of the matter or allegations and counter allegations by the parties and we may not be understood to have expressed any opinion one way or the other. All observations made by us hereinabove have been made only for the limited purpose of deciding the issue before us. As and when the matter will come before the Court, it will be considered on its own merits without being inhibited or influenced by the observations made by the High Court or by us in the present order.

35. The appeal is accordingly disposed of.

Judgment Referred.

[1]*(1977) 4 SCC 0551*
[2]*(2000) 3 SCC 0693*
[3]*(2003) 4 SCC 0675*
[4]*(2001) 1 SCC 0169*
[5]*(1983) 4 SCC 0007*
[6]*(1960) 3 SCR 0388*
[7]*(1992) Supp 1 SCC 0355*