SUPREME COURT OF INDIA

Eicher Tractors Ltd.

Vs.

Harihar Singh

Crl.A.No.1755 of 2008

(Arijit Pasayat and C.K. Thakker JJ.)

07.11.2008

JUDGMENT

Dr. Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the order of a learned Single Judge of Allahabad High Court dismissing the petition under Section 482 of the *Code of Criminal Procedure, 1973* (in short the `Code'). By the said petition appellants had prayed for quashing the proceedings initiated on the basis of complaint filed by respondent No.1 and the order of learned Civil Judge, Junior Division/Judicial Magistrate, R. S. Ghat, Barabanki, dated 8th February, 2005 taking cognizance of offences punishable under Sections 420, 468 and 471 of the *Indian Penal Code, 1860* (in short the `IPC') and issuance of summons to the appellants. The learned magistrate recorded statements of the complainant under Section 200 of Code as well as of the witness under Section 202 of the Code and thereafter issued summons to the appellants to start proceedings. The appellants took the stand that the proceedings were nothing but an abuse of the process of Court. It was pointed out that the summons issued were never served and bailable warrant of arrest and subsequently non-bailable warrant has been issued and even proceedings under Section 82 of the Code have been initiated. The High Court accepted that without service of summons the issuance of bailable as well as non-bailable warrant was uncalled for. It was also directed that the proceedings initiated under Section 82 of the Code was to be stayed and on the appellants appearing before the concerned court the proceedings shall continue. The application was accordingly disposed of.

3. Learned counsel for the appellant submitted that the background facts clearly show that the proceedings were initiated with a view to harass the appellants and as a counterblast to the proceedings initiated by the appellants. The order is supported by learned counsel for the respondent No.1.

4. In order to appreciate the stand taken by the appellant it is necessary to take note of the factual position, the same is as follows: On 1.4.1994 the Respondent no.1 approached the

Petitioner no.1 for dealership, and a Letter of Intent appointment of dealer was issued to the Respondent.

> "On March 2000 the tenure of dealership of the Respondent no.1 was ended as the same was not doing business, incurring heavy debts to the appellant no.1.
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> On January, 2001 the Respondent no.1 issued cheque bearing no 628701 dated 30.12.2000 for Rs.50,00,000/-(Fifty Lacs) discharging his liability towards the debt incurred against the appellant No.1. On January, 2001 the Respondent presented the cheque bearing No. 628701 to his bank for withdrawal.
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> On 23.01.2001 the bank returned the cheque with an endorsement on the return memo i.e. refer to the drawer.
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> On 05.02.2001 the appellant issued a Legal Notice under Section 138 Negotiable Instrument Act, 1882 (in short the `NI Act') On January 2001, the appellant filed a complaint u/s 138/442 read with Section 141 of the NI Act before the Court of judicial Magistrate-I, Faridabad.
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> On 12.04.2001, the Trial Court after considering the Complaint and the pre-summoning evidence took cognizance and issued summons against the Respondent. The Respondent no.1 appeared and subsequently was released on bail.
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> On 04.10.2002 the Respondent No.1 filed a private complaint under section 200 Cr.P.C. before the Civil Judge, (J.D.)/District Barabanki alleging that the officials of Petitioner no.1 herein had stolen the cheques bearing No. 0628701 'to 0628704, It was further mentioned by him that in the complaint that in the year 1998 he had informed the Bank of Baroda, Barabanki that he has lost the aforesaid cheques and also reported to the same to the SHO, Barabanki. He further alleged that the appellants herein forged the cheques bearing No. 0628701 and presented the same in the bank at Faridabad, and thereby alleged that they had committed an offence under Sections 468 471 IPC.
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> On 08.02.2005 the complaint bearing No. 1343 of 2004 filed by the Respondent No.1 herein came up for hearing before the Civil Judge, (J.D.)/ Judicial Magistrate, R.S. Ghat, Uttar Pradesh, and the Learned Magistrate vide its order dated 08.02.2005 took cognizance of the matter and issued summons to the Appellants.
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> In January 2007, to their utter shock and surprise, the appellants came to know that the Learned Civil Judge, (J.D.)/Judicial Magistrate, R.S.Ghat, Barabanki, Uttar Pradesh had issued non-bailable warrant and had also initiated proceedings under Section 82 Cr.P.C. against them in the complaint case No. 1343 of 2004 filed by the Respondent herein."

5. Exercise of power under Section 482 of the Code in a case of this nature is an exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

6. In *R.P. Kapur v. State of Punjab*[1] this Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings:

> "(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction; (ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;
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> (iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge. (AIR para 6)"

7. In dealing with the last case, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with

the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt, should not be an instrument of oppression or needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in *State of Haryana v. Bhajan Lal*[2]. A note of caution was, however, added that the power should be exercised sparingly and that too in the rarest of the rare cases. The illustrative categories indicated by this Court are as follows: (SCC pp. 378-79, para 102)

> "(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.
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> (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.
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> (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.
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> (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.
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> (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.
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> (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (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 Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7)Where a criminal proceeding is manifestly attended with mala fides 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."

8. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In proceedings instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceedings.

9. These aspects were also highlighted in *State of Karnataka v. M. Devendrappa*[3].

10. The case at hand squarely falls within the parameters indicated in category (7) of Bhajan Lal's case (supra). The factual scenario as noted above clearly shows that the proceedings were initiated as a counterblast to the proceedings initiated by the appellants. Continuance of such proceedings will be nothing but an abuse of the process of law. Proceedings are accordingly quashed.

11. Appeal is allowed.

[1]*AIR 1960 SC 866*
[2]*1992 Supp.1 SCC 335*
[3]*2002(3) SCC 89*