

# SUPREME COURT OF INDIA

Manoj Narain Agrawal

Vs.

Shashi Agrawal

CrI.A.No.725 of 2009MANOJ

(S.B. Sinha and Cyriac Joseph JJ)

15.04.2009

## JUDGEMENT

**S.B. SINHA, J.**

1. Leave granted.
2. These three appeals involving common questions of fact and law were taken up for hearing together and are being disposed of by this common judgment.
3. The parties hereto are related to each other.

Indisputably in relation to an incident which took place on or about 4.11.1999, two First Information Reports were lodged; one on 4.11.1999 and the other on the next day, i.e., 5.11.1999. The first FIR was lodged by Meenaxi Agrawal, (for short, "Meenaxi") inter alia, alleging that Manoj Narain Agrawal (for short, "Manoj") along with forty others raided their farm house and attacked Shashi Agrawal (for short, "Shashi") and Meenaxi (Appellant Nos.1 and 2 in Criminal Appeals arising out of Special Leave Petition (Criminal) No.6061-6062 of 2008) as also staff members thereof as a result whereof one R.K. Yadav, an employee suffered grievous injuries. FIR No.960/99 in relation to the said purported incident was lodged under Sections 147, 148, 149, 452, 323, 427, and 506, of the Indian Penal Code (for short, "the IPC") at the Kichha Police Station. The accused were allegedly arrested on the spot by the local police.

Another FIR was, however, lodged by Manoj (Appellant in Criminal Appeal arising out of Special Leave Petition (Criminal) No.5419 of 2008) alleging that D.S. Sirohi, Manager of Parag Farm, Kichha uttered filthy language over his mobile calling names to mother, sister and also threatened to kill him and when he reached there, some guards of the Farm, namely, Hans Pal, Munna Lal, Dharmender, etc. opened fire at him indiscriminately in order to kill him on the order of D.S. Sirohi, Manager of Farm, R.K. Yadav and Meenaxi. One pellet hit him near his heart. It was also stated that he was mercilessly beaten up by some of the employees of Meenaxi. The second complaint was registered as FIR No.960A/99. The FIR lodged by Manoj contained two principal allegations, viz., (a) overt acts on the part of the accused as a result whereof he suffered grievous injuries; and (b) forgery of some documents on the basis whereof some orders had been obtained by them in getting their names mutated in the revenue record.

4. On the basis of the said FIRs, investigations were carried out.

Upon completion thereof, a charge sheet was filed in relation to the case arising out of FIR No.960/99 lodged by Meenaxi against Manoj and 39 others under Sections 147, 148, 149, 452, 323, 427, 506 and 307 of the IPC; but a final report dated 29.11.1999 was filed in respect of FIR No.960A/99, stating that no case was made out against Shashi and Meenaxi.

5. However, on or about 1.12.1999, Manoj had filed a writ petition being Writ Petition No. 7230 of 1999 in the High Court of Allahabad praying for a fair investigation and also for appointment of another investigating officer in the Crime No. 960A/99. By reason of an order dated 1.12.1999, the High Court disposed of the said Writ Petition directing the DIG (Kumaun Region) Udham Singh Nagar, Nainital to ensure fair and impartial investigation with respect to the Crime Case No.

960A/99 by another agency. In view of the said order, the final report dated 29.11.1999 was sent to the office of Circle Officer (Deputy Superintendent of Police) on 3.12.1999. The Deputy Superintendent of Police sought for the opinion of the Senior Public Prosecutor on or about 13.12.1999. It was opined that as a part of the allegation has not been investigated into, a further investigation would be required. On apprehending their arrest, Shashi and Meenaxi filed a Writ Petition No.

310 of 2000 before the High Court of Allahabad praying for stay of their arrest in Crime No. 960A/99.

6. On or about 3.4.2000, an application was moved by Shashi before the Chief Secretary UP and DG, UP Police praying the investigation to be conducted by CBCID. As no action was taken thereupon, another Writ Petition No. 1747 of 2000 was filed by Shashi before the Allahabad High Court with a prayer that the investigation in Crime Case No. 960A/99 be directed to be carried out by CBCID.

Indisputably, a direction was issued by the State of U.P that Crime No. 960A/99 be investigated by CBCID pursuant where to the investigation was taken over by CBCID. On or about 11.5.2000, the investigation in Crime Case No. 960A/99 was transferred from CBCID to local police by the State of U.P. Shashi thereafter filed a Writ Petition No. 2996 of 2000 in the High Court with a prayer for direction to set aside the order dated 11.5.2000 passed by the State of U.P. Manoj also filed a Writ Petition No. 3848 of 2000 questioning the order dated 6.4.2000 whereby the investigation was transferred by the State Government from local police to CBCID. On or about 4.7.2000, the High Court passed an interim order in Writ Petition No. 2996 of 2006 staying the arrest of the petitioners. All the connected matters with Writ Petition No. 310 of 2000 were disposed of by the High Court on or about 13.9.2000 directing the investigating agency to carry out the investigation fairly and honestly and not to take any coercive steps against the parties.

7. A Special Leave Petition (Criminal) Nos.4054-4057 of 2000 was filed by Meenaxi & anr. before this Court questioning the order dated 13.9.2000 passed in Writ Petition No. 310 of 2000 and other connected matters. This court by reason of an order dated 7.9.2001 passed in the said Special Leave Petition quashed the order directing investigation by the local police and directed the CBCID to conclude the investigation and to submit its report. However, the protection afforded by the High Court to Meenaxi was directed to be continued. Local police was directed to handover all the materials to CBCID.

8. In the meanwhile, trial against Manoj began. By a judgment and order dated 24.7.2003, passed by the learned Additional District &

Sessions Judge, Udham Singh Nagar, he was convicted under Section 324 of the IPC. However, other accused were acquitted.

9. An appeal was preferred thereagainst which is pending before the High Court. The sentence passed against Manoj has also been suspended and he has been granted bail. On or about 2.5.2006, a charge sheet was filed against Shashi and Meenaxi under Sections 147, 148, 149, 307, 504 and 506 of the IPC. Shashi was said to have been named therein for the first time. By an order dated 14.6.2006, cognizance of the said offence was taken by the Judicial Magistrate, Rudrapur and summons were said to have been issued against them.

10. A Criminal Miscellaneous Application No. 620 of 2006 was filed before the High court of Uttarakhand at Nainital under Section 482 of the Code of Criminal Procedure for quashing of the said criminal proceedings. By reason of an order dated 22.7.2008, the High Court dismissed the said application, stating:

"1. After hearing the detailed arguments of the learned Senior Counsel appearing for the petitioners as well as learned Senior Counsel appearing for the respondent no.2 and Mr. G.S.

Sandhu, learned Government Advocate appearing for respondent No.1 and upon perusal of various documents in this case as well as the counter affidavit and the supplementary counter affidavit filed by the respondent No.2, I feel totally disinclined to interfere in this matter while exercising this Court's jurisdiction under Section 482 of Cr. P. C. The petition accordingly is liable to be dismissed.

2. Both the petitioners are ladies. Petitioner No.1 is stated to be quite unwell and she is also an old lady aged about 80 years. Both the petitioners being ladies, particularly Petitioner No.1 being an old lady, I am convinced that both of them deserve some protection from this court even though I have declined to interfere in the trial in exercise of this court's jurisdiction under Sec. 482 of Cr.P.C.

3. Therefore, even while dismissing the petition, I direct the learned Trial Court as under:- `(1) To dispose of the bail applications of both the petitioners on the same day these are filed. Having gone through the papers of this case, I am quite convinced that valid grounds exist for granting bail to the petitioners.

(2) It is upto petitioner No.1 to make an application for exemption from personal appearance in the trial court in terms of Section 205 of Cr. P.C. if such an application is made by the petitioner no.1 even without appearing in the Trial Court on any date hereafter, the learned Trial Court is directed to consider this application and pass appropriate orders thereupon. While disposing of the said application, the learned Trial Court shall be influenced by the fact that the petitioner no.1 is old lady and she is keeping quite unwell. After granting exemption from personal appearance, of course, the learned Trial Court, at the same time, shall ensure that the petitioner no.1 is made to appear personally in the Trial Court if in the opinion of the learned Trial Court, for reasons to be recorded in writing, her presence for a particular purpose and on a particular occasion is essential.'

4. Before parting with the case, I do wish to observe and direct that the Trial Court shall take all possible steps to ensure very-very expeditious trial. No unnecessary adjournment on any date shall be granted during the trial."

11. The third respondent herein, i.e., Inspector of CBCID moved an application before the Chief Judicial Magistrate, Udham Singh Nagar on the same day with a prayer that he may be permitted to investigate the matter further with regard to the embezzlement of the alleged amount of

Rs.13,50,000/- from Sehkari Vikas Ganna Samiti, Kichha by Meenaxi, Madhvi, Manisha and Shashi by making forged signature of Manoj.

12. A Criminal Appeal arising out Special Leave Petition (Criminal) No. 5419 of 2008 has been filed by Manoj against the said order dated 22.7.2008 in this Court.

13. By an order dated 31.7.2008, the learned Magistrate, Rudrapur permitted the third respondent to investigate into the matter further against Shashi and Meenaxi.

14. A Criminal Miscellaneous Application No. 518 of 2008 was thereafter filed under Section 482 of the Code of Criminal Procedure against the said order dated 31.7.2008 before the High Court of Uttaranchal at Nainital, which by reason of an order dated 11.8.2008 was dismissed, observing:

"After hearing the detailed arguments of Mr.

Suri, I feel convinced that in this matter relating to and arising out of Section 173 (8) Cr. P.C., the impugned order passed by the learned court below based upon the applications of prosecution, cannot be faulted on any ground. I need not say more because of the pendency of the litigation, lest any observations made by me adversely or otherwise may prejudice or influence the outcome of the trial court or litigation.

I am convinced that no interference in the exercise of this Court' jurisdiction under Section 482 Cr. P.C. is warranted with regard to the impugned order. Petition, is accordingly, dismissed.

Mr. Suri, at this stage, submits that he has apprehensions that the petitioners might be denied bail because of the aforesaid supervening and intervening development of circumstances. To allay of Mr. Suri's aforesaid apprehension, I just have to refer to this Court's order dated 22nd July, 2008 passed in Criminal Misc. Applications No. 620 of 2006."

15. Against the said order dated 22.7.2008 and order dated 11.8.2008, Criminal Appeals arising out of Special Leave Petition (Criminal) No.

10 6061-62 of 2008 and Criminal Appeals arising out of Special Leave Petition (Criminal) Nos.6136-37 have been filed.

16. Mr. Ranjit Kumar, learned Senior Counsel appearing on behalf of Manoj and Mr. Dinesh Dwivedi, learned Senior Counsel appearing on behalf of the State of Uttarakhand would contend:

i. The High Court committed a serious error in passing the impugned judgments insofar as it failed to take into consideration that in the applications filed by Shashi and Meenaxi, no prayer for grant of bail having been made, the High Court could not have issued such a direction.

ii. The jurisdiction to exempt the accused from personal appearance before the Court being within the domain of the learned Magistrate, the directions issued by the High Court must be held to be wholly illegal.

17. Mr. Sushil Kumar, learned Senior Counsel appearing on behalf of Shashi and Meenaxi, on the other hand, urged:

i. As the investigations have been carried out for fairly a long time, a new case is sought to be made

out which is impermissible in law.

ii. The investigation having started in the year 2001 and the final report having been filed on 2.5.2006, it is improbable that the investigation has not been fully conducted by CBCID.

iii. The prayer contained in the application dated 22.7.2008 must be held to be wholly illegal as no investigation has been sought to be carried out for commission of offence under Section 409 of the IPC although initially allegations for commission of offence under Section 307 of the IPC have been made.

iv. When a final report was filed, the learned Magistrate had three options, namely, (1) to accept the said final report; or (2) direct further investigation upon rejecting the same; or (3) take cognizance of the offence alleged.

Neither of the said course of action having been resorted to, the impugned judgment cannot be sustained.

v. In the Writ Petitions filed by Shashi and another, the State did not file any counter affidavit. It was the duty of the State to point out that a final report had already been filed and as such transfer of investigation to CBCID could not have been directed at that stage.

12 vi. Having regard to the provisions contained in Section 169 of the Code of Criminal Procedure, Final report submitted by the Investigating Officer could not have been sent to the public prosecutor for his opinion.

18. The learned counsel also drew our attention to a statement made by Manoj in his examination under Section 313 of the Code of Criminal Procedure which would go to show that he raised a plea therein that he was not present at the place of occurrence.

19. The parties as noticed hereinbefore are related to each other.

Manoj is the son of Shashi. Meenaxi is his sister. It is evident that disputes relate to a farm house. Allegations and counter allegations have been made. Both sides lodged FIRs. Whereas the FIR lodged by Manoj is concerned, only charge sheet had been filed in the case charged against him, he has since been convicted. As correctness of the said conviction is pending before the High Court and the sentence of Manoj has been suspended, it is neither desirable nor permissible in law to make any observation thereupon. The facts of the matter, as noticed hereinbefore, clearly show that the investigation in the connected matter being Crime No. 960A of 1999 run from one extreme end to the other. Final reports were prepared twice. However, the Deputy Superintendent of Police, CBCID on the second final report so prepared sought to obtain the legal opinion of the public prosecutor. Such a course adopted may be irregular but it is not denied or disputed that a vital aspect of the matter of the investigation had not been carried out. It is not the case of the appellants, i.e., Shashi and Meenaxi that the opinion given by the public prosecutor was incorrect. We have noticed hereinbefore that even otherwise the learned Magistrate has granted such permission.

20. In *Kamlapati Trivedi vs. State of West Bengal* [(1980) 2 SCC 91], this Court held:

"50. Section 169 and 170 do not talk of the submission of any report by the police to the Magistrate, although they do state what the police has to do short of such submission when it finds at the conclusion of the investigation (1) that there is not sufficient evidence or reasonable ground of

suspicion to justify the forwarding of the accused to a Magistrate (Section 169) or (2) that there is sufficient evidence or reasonable ground as aforesaid (Section 170). In either case the final report of the police is to be submitted to the Magistrate under Sub-section (1) of Section 173. Sub-section (3) of that section further provides that in the case of a report by the police that the accused has been released on his bond (which is the situation envisaged by Section 169), the Magistrate shall make "such order for the discharge of such bond or otherwise as he thinks fit". Now what are the courses open to the Magistrate in such a situation? He may, as held by this Court in *Abhinandan Jha and Ors.*

v. *Dinesh Mishra* [1967] 3 SCR 668.

(1) agree with the report of the police and file the proceedings, or (2) not agree with the police report and (a) order further investigation, or (b) hold that the evidence is sufficient to justify the forwarding of the accused to the Magistrate and take cognizance of the offence complained of."

21. It is, however, not the case of *Shashi* that the learned Magistrate had accepted the report. Even in such a case, the learned Magistrate was bound to give notice to the complainant who could have objected thereto.

A protest petition was also maintainable.

In this case, this Court had directed CBCID to complete the investigation. It was, thus, obligatory on its part to complete the investigation and submit an appropriate report to the court.

22. In *Ram Lal Narang vs. State (Delhi Administration)* [(1979) 2 SCC 322], this court held:

".....The criticism that a further investigation by the police would trench upon the proceedings before the Court is really not of very great substance, since whatever the police may do, the final discretion in regard to further action is with the Magistrate. That the final word is with the Magistrate is sufficient safeguard against any excessive use or abuse of the power of the police to make further investigation. We should not, however, be understood to say that the police should ignore the pendency of a proceeding before a Court and investigate every fresh fact that comes to light as if no cognizance had been taken by the Court of any offence. We think that in the interests of the independence of the magistracy and the judiciary, in the interests of the purity of the administration of criminal justice and in the interests of the comity of the various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the police should inform the Court and seek formal permission to make further investigation when fresh facts come to light.

21 ....In our view, notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under Section 173 of the 1898 Code, the right of the police to further investigate was not exhausted and the police could exercise such right as often as necessary when fresh information came to light.

Where the police desired to make a further investigation, the police could express their regard and respect for the Court by seeking its formal permission to make further investigation.

22. As in the present case, occasions may arise when a second investigation started independently of the first may disclose a wide range of offences including those covered by the first investigation. Where the report of the second investigation is submitted to a Magistrate other than the Magistrate

who has already taken cognizance of the first case, it is up to the prosecuting agency or the accused concerned to take necessary action by moving the appropriate superior Court to have the two cases tried together. The Magistrates themselves may take action suo motu."

{See also State of Andhra Pradesh vs. A.S. Peter [(2008) 2 SCC 383]},

23. In Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj [(1999) 5 SCC 740], this Court held:

"10. Power of the police to conduct further investigation, after laying final report, is recognised under Section 173(8) of the CrPC.

Even after the court took cognizance of any offence on the strength of the police report first submitted, it is open to the police to conduct further investigation. This has been so stated by this Court in Ram Lal Narang v. State (Delhi Admn.). The only rider provided by the aforesaid decision is that it would be desirable that the police should inform the court and seek formal permission to make further investigation."

24. It is, therefore, too late in the day to raise a contention as has been done by Mr. Sushil Kumar that in Writ Petition No. 7230 of 1999, that the State should have disclosed that a final report had been filed in regard to the complaint made by him, for more than one reason; firstly, the same has become academic; secondly, whereas final report had been filed on 29.11.1999, the Writ Petition was filed on that date itself. What would have been the effect of the said final report that no case has been made out, again is a matter of no significance, as even the High Court while exercising its jurisdiction under Section 482 of the Code of Criminal Procedure did not find so.

25. The jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure is limited.

In Arun Shankar Shukla vs. State of U.P. and ors. [(1999) 6 SCC 146], it was held:

"2. It appears that unfortunately the High Court by exercising its inherent jurisdiction under Section 482 of the Criminal Procedure Code (for short "the Code") has prevented the flow of justice on the alleged contention of the convicted accused that it was polluted by so called misconduct of the judicial officer. It is true that under Section 482 of the Code, the High Court has inherent powers to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of process of any Court or otherwise to secure the ends of justice. But the expressions "abuse of the process of law" or "to secure the ends of justice" do not confer unlimited jurisdiction on the High Court and the alleged abuse of the process of law or the ends of justice could only be secured in accordance with law including procedural law and not otherwise. Further, inherent powers are in the nature of extraordinary powers to be used sparingly for achieving the object mentioned in Section 482 of the Code in cases where there is no express provision empowering the High Court to achieve the said object. It is well nigh settled that inherent power is not to be invoked in respect of any matter covered by specific provisions of the Code or if its exercise would infringe any specific provision of the Code. In the present case, the High Court overlooked the procedural law which empowered the convicted accused to prefer statutory appeal against conviction of the offence. High Court has intervened at an uncalled for stage and soft-pedaled the course of justice at a very crucial stage of the trial."

In Hamida vs. Rashid alias Rasheed & ors. [(2008) 1 SCC 474], this Court held:

"7. It is well established principle that inherent power conferred on the High Courts under Section 482 Cr.P.C. has to be exercised sparingly with circumspection and in rare cases and that too to correct patent illegalities or when some miscarriage of justice is done. The content and scope of power under Section 482 Cr.P.C.

were examined in considerable detail in *Madhu Limaye v. State of Maharashtra* [(1977) 4 SCC 551] and it was held as under:

The following principles may be stated in relation to the exercise of the inherent power of the High Court - (1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;

(2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;

(3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code."

26. It is not necessary for us to deal with the large volume of cases as to the jurisdiction of the High Court to quash the criminal proceedings in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, as the principles in respect thereof are well known.

The jurisdiction of the High Court is limited. It can interfere with an order of summoning an accused by the learned Magistrate inter alia in the event if a finding is arrived at that the accused were being prosecuted mala fide and/or even if the allegations contained in the FIR are given face value and taken to be correct in their entirety, no case has been made out for taking cognizance of the offence.

27. We may only notice that in *State of Haryana & Ors. vs. Bhajan Lal & ors.* [1992 Suppl. (1) SCC 335], it has, inter alia, been held:

"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."

28. In *Ruchi Agarwal vs. Amit Kumar Agrawal & ors.* [(2005) 3 SCC 299], this Court took into consideration subsequent events for the purpose of exercising its jurisdiction under Section 482 of the Code of Criminal Procedure, stating:

"9. In view of the above said subsequent events and the conduct of the appellant, it would be an abuse of the process of the court if the criminal proceedings from which this appeal arises is allowed to continue. Therefore, we are of the considered opinion to do complete justice, we should while dismissing this appeal also quash proceedings arising from the Criminal Case No.Cr.No.224/2003 registered in Police Station, Bilaspur, (Distt.Rampur) filed under Sections 498A, 323 and 506 IPC and under Sections 3 and 4 of the Dowry Prohibition Act against the respondents herein."

29. Contention of Mr. Sushil Kumar is that while filing a charge sheet, the Investigating Officer did not follow the directions given by this Court in its order dated 7.9.2001 whereby and whereunder the Investigating Agency was directed to consider the report dated 29.11.1999 submitted by Mr. Naresh Pal. It is again not a matter to take which requires serious consideration at this stage. It does not appear that any such contention was raised before the High Court, the effect thereof must be considered by the courts at an appropriate stage. It is also difficult for us to arrive at a positive decision that the FIR lodged by Manoj was only retaliatory in nature as he had not suffered any bullet injury. It is a matter of trial.

Submission of Mr. Sushil Kumar that the order passed by the Judicial Magistrate, Rudrapur on the final report filed in FIR No. 960A of 1999 has not been brought on record is not very significant as the appellants also could have filed a certified copy of the said order if the said final report had been accepted. When the charge sheet was filed, the learned Magistrate, of course, should have been informed that further investigation was to be carried out but it is now well known that a further investigation can be directed to be made in terms of Section 173(8) of the Code of Criminal Procedure even after an order taking cognizance has been passed. Mr. Sushil Kumar may be right in his contention that even after disposal of the matter an application was filed for carrying out further investigation after a period of seven and a half years, but the question as to whether the learned Magistrate should have passed the said order dated 31.7.2008 or not had not been considered by the High Court.

Therefore, we request the High Court to consider the matter afresh.

30. We, therefore, set aside the orders passed by the High Court in its order dated 11.8.2008 opining that the same was beyond its jurisdiction under Section 482 of the Code of Criminal Procedure. It is, however, made clear that all contentions of the parties shall remain open. It is furthermore made clear that the parties hereto may approach the High Court in Criminal Miscellaneous Application No. 518 of 2008.

Allegations of mala fide made against the State may also be gone into.

The High Court can pass any such interim order as it may think and proper. For a period of four weeks, however, the interim order passed by this Court shall continue.

31. So far as the Criminal Appeals arising out of Special Leave Petition (Criminal) No. 6061-6062 of 2008 and Special Leave Petition (Criminal) No. 6136-37 are concerned, there cannot be any doubt whatsoever that the jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure is limited. It is ordinarily for the learned Magistrate to consider as to whether a case for grant of bail has been made out or not, the High Court, therefore, may not be correct in observing, "I am quite convinced that valid grounds exist for granting bail to the petitioners." Similarly, the High Court should not have, for all intent and purport, issued the direction for grant of exemption from personal appearance. Such a matter undoubtedly shall be left for the consideration before the learned Magistrate. We are sure that the Magistrate would exercise his jurisdiction in a fair and judicious manner. The impugned directions are set aside and the matters are remitted to the High court for consideration of the application filed before it by the parties afresh on merit.

32. The appeals are disposed of to the aforementioned extent.