

SUPREME COURT OF INDIA

Kailashi Bai

Vs.

Aarti Arya

CrI.A.No.861 of 2009

(Dr. Arijit Pasayat and Asok Kumar Ganguly JJ.)

27.04.2009

JUDGMENT

Dr.Arijit Pasayat,J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by the learned Single Judge of Madhya Pradesh High Court allowing the petition filed in terms of Section 482 of the Code of Criminal Procedure, 1973 (in short 'the Code'). Background facts, in nutshell, are as follows:

“The present respondent No.1 was married to Mukesh Arya (hereinafter referred to as 'deceased') in the year 2003. According to the prosecution, the deceased was working as Civil Judge and was posted at the relevant time at Itarsi. Respondent No.1's in laws did not approve of the marriage as the respondent No.1 belonged to an upper caste while the deceased belonged to the Scheduled Caste. A child was born to them. The deceased consumed some poisonous substance and lost his life on 18/3/2007.”

3. It was the case of the prosecution that during enquiry it surfaced that the respondent No.1 accused used to harass the deceased and subject to mental cruelty as she belonged to higher caste and she did not like association of deceased with his parents and relatives. This was stated to be the ground of suicide and the accused abetted the suicide. Charge sheet was filed in Court of Magistrate. An application under Section 482 of the Code was filed questioning the order passed by learned Magistrate.

4. The High Court took note of the fact that the present appellant's statement on a fair reading did not disclose any offence. The High Court noted even at the time of marriage, the parties knew caste of the deceased and the accused and therefore the question of that being a factor for harassing the deceased. Leading to his suicide cannot be believed. It was also found that there was no material to show that the accused wanted the deceased to stay separately from his parents. Accordingly, the proceedings were quashed.

5. It was held that ingredients of Section 306 were not established. Learned counsel for the appellant submitted that the parameters of exercise of power under Sec.482 of the Code was not kept in mind by the High Court. In any event, it was not a matter which was to be dealt with in trial. Learned counsel for the respondent No.1 supported the judgment.

6. Exercise of power under Section 482 of the Code in a case of this nature is the 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.

7. 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 course of administration of justice on the principle "quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae 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 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.

8. 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 its face value and accepted in their entirety do not constitute the offence alleged; (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.”

9. 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 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.

10. 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 rarest of rare cases. The illustrative categories indicated by this Court are as follows:

“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.

(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 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 Act concerned, 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.”

11. 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 proceeding at any stage. (See: *Janata Dal v. H. S. Chowdhary*³, and *Raghubir Saran (Dr.) v. State of Bihar*⁴. 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 a proceeding 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 court which decides the fate of the

accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. (See: *Dhanalakshmi v. R. Prasanna Kumar*⁵, *State of Bihar v. P. P. Sharma*⁶, *Rupan Deol Bajaj v. Kanwar Pal Singh Gill*⁷, *State of Kerala v. O. C. Kuttan*⁸, *State of U.P. v. O. P. Sharma*⁹, *Rashmi Kumar v. Mahesh Kumar Bhada*¹⁰, *Satvinder Kaur v. State (Govt. of NCT of Delhi)*¹¹ and *Rajesh Bajaj v. State NCT of Delhi*¹².)

12. The above position was recently highlighted in *State of Karnataka M. Devendrappa and Another*¹³.

13. Section 306 deals with abetment of suicide and Section 107 deals with abetment of a thing. They read as follows:

“306. Abetment of suicide- If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

107. Abetment of a thing- A person abets the doing of a thing, who:-

First- Instigates any person to do that thing; or Secondly- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly- Intentionally aids, by any act or illegal omission the doing of that thing.

Explanation 1- A person who, by willful misrepresentation or by willful concealment of a material fact which he is bound to disclose voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2:- Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.”

14. There is no doubt that exercise of jurisdiction under Section 482 of the Code has to be done only in exceptional cases and where there is prima facie material trial was to be held. But on the peculiar facts of the case highlighted above, we are of the view that the High Court was right in exercising its jurisdiction under Sec.482 of the Code. Therefore, no interference is called for in this appeal which is accordingly dismissed.

¹(AIR 1960 SC 866)

²(1992 Supp (1) 335)

³(1992 (4) SCC 305)

⁴(AIR 1964 SC 1)

⁵(1990 Supp SCC 686)

⁶(AIR 1996 SC 309)

⁷(1995 (6) SCC 194)

⁸(AIR 1999 SC 1044)

⁹(1996 (7) SCC 705)

¹⁰(1997 (2) SCC 397)

¹¹(AIR 1996 SC 2983)

¹²(1999 (3) SCC 259)

¹³(2002 (3) SCC 89)