**SUPREME COURT OF INDIA**

Manoj Mahavir Prasad Khaitan

Vs.

Ram Gopal Poddar

Crl.A.No.1973 of 2010

(V.S. Sirpurkar and Cyriac Joseph JJ.)

08.10.2010

**JUDGEMENT**

**V.S.Sirpurkar, J.**

1. Leave granted.

2. This judgment will also dispose of the Transfer Petition being T.P. (Crl.) No. 259/2008 filed on behalf of Smt. Rekha Kailash Poddar who is the daughter-in-law of Ram Gopal Poddar, respondent No. 1 herein.

3. The facts are very peculiar. Smt. Rekha Poddar who is the daughter-in-law of the respondent No. 1 herein, is also the sister of the appellant herein.

> "After the marriage allegedly she was harassed by her in-laws for dowry. She, therefore, proceeded to file a complaint for the offences punishable under Sections 498A, 406 of the Indian Penal Code (IPC) read with 2 Section 4 of the Dowry Prohibition Act against Ram Gopal Poddar, respondent No. 1 herein, who is her father-in-law. The respondent No. 1 was arrested for those offences on 15.7.2004 and was released on bail on the next day i.e. 16.7.2004. In pursuance of this complaint, the police officers from Nerul Police Station and also from Rajasthan had gone to the matrimonial home at Mumbai for investigation, with whom the present appellant was also present. The police conducted a raid at the matrimonial house on 14.7.2004 when the appellant herein was also present. They probably wanted to seize the passport of the sister of the appellant."

4. On 17.7.2004, a written complaint came to be filed in Nerul Police Station alleging that the appellant had stolen some gold ornaments during that raid. However, the police did not take the cognizance of that complaint. A criminal complaint, therefore, came to be filed after about six months i.e. on 17.3.2005 in the Court of 1st Class Judicial Magistrate at Vashi for the offence punishable under Section 379 IPC against the appellant alone. The cognizance

was taken of this 3 complaint on 2.4.2005 for the offence punishable under Section 379 IPC and process came to be issued.

5. The appellant, therefore, challenged the order issuing process by way of a Criminal Revision Application dated 5.7.2006 before the Sessions Judge at Thane. This Criminal Revision Application, however, was withdrawn on 7.5.2007, though the withdrawal application was opposed by the complainant-respondent.

> "According to the appellant, this was done without his knowledge or consent and he had not put his signatures on the withdrawal application. By order dated 7.5.2007, the Sessions Judge permitted withdrawal."

6. The appellant, therefore, moved Bombay High Court by way of a petition under Section 482 of the Criminal Procedure Code (Cr.P.C.), challenging the whole proceedings. He also proceeded to file a complaint against his lawyers in the Bar Council of Maharashtra for misconduct. The High Court, however, dismissed his petition holding that the only remedy left for the appellant was to again go before the Sessions Judge and get the matter restored. It is this judgment of the High Court which is sought to be challenged before us by way of the present appeal.
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7. Indisputably, there was a background against the complaint filed involving the present appellant and that was the prosecution by the daughter-in-law of respondent No. 1 herein who was also the sister of the appellant herein. There can be no dispute that in the complaint there were allegations made of the theft of two gold bangles (Patli) weighing about 60 grams. We have also seen the verification statement recorded by Ram Gopal Poddar, respondent No. 1, wherein he has stated that it was the accused (appellant herein) who accompanied ASI Shri Gupta and Hawaldar Jaiprakash Singh from Nerul Police Station. It is admitted that these police officers and the appellant/accused had come to the house of Ram Gopal Poddar, respondent No. 1 in connection with the criminal prosecution instituted by the daughter-in-law of Ram Gopal Poddar, respondent No. 1, who was the sister of the accused/appellant. It is then stated that the accused/appellant forced ASI Shri Gupta to take search of cupboards for seizing the passport of Smt. Rekha Poddar, daughter-in-law of respondent No. 1. The appellant asked respondent No. 1 for key of cupboard and opened the cupboard and in the absence of Ram Gopal Poddar, respondent No. 1, "they" stole two gold bangles weighing 60 grams. Therefore, 5 it was obvious that the criminal complaint was in retaliation of the criminal prosecution which was being faced by the respondent No. 1 herein. It was on the basis of the complaint and the verification statement of the complainant/respondent No. 1 alone that the Judicial Magistrate, Vashi took cognizance and issued summons.

8. It is undoubtedly true that the appellant herein challenged it by way of a criminal revision before the Sessions Judge, Thane and very significantly, the said revision came to be withdrawn. There does not appear to be any reason for such sudden and inexplicable withdrawal. We have seen the reply to the revision filed by Ram Gopal Poddar, respondent

No. 1. From there, it becomes apparent that the same role is ascribed and it is admitted therein that the passport was seized by the police officer. It is also suggested that thereafter, the appellant/accused locked the cupboard and handed over the keys to the respondent No.1 who kept the same in his pocket and thereafter, he was arrested and taken to Rajasthan. It is then suggested that key alongwith other things were handed over to the lawyer of the respondent No. 1. On this 6 basis, it is suggested that it was the appellant/accused alone who had stolen the gold bangles, which fact probably came to the notice of the respondent No. 1 only after coming back to Bombay.

9. The only material on the basis of which the Magistrate issued the summons was the complaint and the verification statement. Beyond the allegations which we have already mentioned, there are no other allegations. We feel on the face of it the allegations were absurd and without any basis. It is absurd to think that the appellant herein who was present with the police party (2 in No.) would venture to pocket the bangles in their presence. Further, admittedly, after locking the locker, the keys were handed over to the respondent No. 1. Neither is it known nor has it been made clear as to when the respondent No. 1 opened the locker again to find that the two gold bangles were stolen. Be that as it may, the very look of the complaint is enough to convince one about the absurdity of the allegations. When the complaint is seen on the backdrop of the prosecution of the respondent No. 1 for offences under Section 498 IPC and the allied offences, the absurdity becomes all the more prominent. Again 7 there is no complaint against the two accompanying police officers. They have not been made accused in the complaint. There can be no doubt, therefore, that the complaint wholly lacks the bona fides and it was obviously with the indirect motive for hounding the appellant who was none else but the brother of the daughter-in-law of respondent No. 1 who had started the criminal proceedings.

10. The learned Counsel for the appellant is, therefore, right in contending that the complaint had to be quashed, firstly, because it was absurd and secondly, because the complainant/respondent No. 1 wholly lack the bona fides in filing such complaint which was absurd. The learned Counsel for the respondent No. 1 vehemently argued that at this stage, what was to be seen was only the contents of the complaint and if there appeared the basic contentions indicating committing of crime by the appellant/accused, then the Courts would not interfere with the same and leave the parties to lead evidence during the ensuing trial, relying on the oft-quoted *Ors.*[1]. There can be no dispute 8 about the law laid down in that case. However, where on the face of it the absurd charges are levelled and there is a whole lack of the bona fides of the complainant/respondent No.1, in our opinion, there would be no fetter in using the powers under Section 482 Cr.P.C.

11. It was pointed out that the criminal revision against the issuance of summons was withdrawn. We were, therefore, taken to the High Court's judgment, where the High Court has found itself to be powerless in view of the withdrawal of the criminal revision and had advised the parties to go back to the revisional Court and get it restored. We do not think that the High Court was justified in advising the appellant to go back to the Sessions Judge and to

get the criminal revision revived without going into the question whether such revision could have been revived in law or not. We observe that the High Court was not powerless.

> "The High Court itself was exercising its jurisdiction under Section 482 Cr.P.C., where the High Court could pass any order in the interests of justice. This power was available only to the High Court in contradistinction to the Sessions Judge who was only 9 entertaining the revision application of the appellant under Section 397 Cr.P.C. The High Court should have, therefore, applied its mind to the fact situation. It should have been realized that the complaint was wholly covered under the 7th circumstance in the case of State which is as under:- "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."
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> It was also covered under 3rd circumstance in the (cited supra), which suggests:- "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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> We reiterate that when the criminal Court looks into the complaint, it has to do so with the open mind.
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> True it is that that is not the stage for finding out the truth or otherwise in the allegations; but where the allegations themselves are so absurd that no reasonable man would accept the same, the High Court could not have thrown its arms in the air and expressed 10 its inability to do anything in the matter. Section 482 Cr.P.C. is a guarantee against injustice. The High Court is invested with the tremendous powers thereunder to pass any order in the interest of justice.
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> Therefore, this would have been a proper case for the High Court to look into the allegations with the openness and then to decide whether to pass any order in the interests of justice. In our opinion, this was a case where the High Court ought to have used its powers under Section 482 Cr.P.C."

12. In view of the fact, we ordinarily would have sent the matter back to the High Court, but there is no point now in remanding the matter back to the High Court in view of the pendency of this matter for last six years. In that view, we allow this appeal, set aside the order of the High Court and quash the criminal proceedings started by the respondent No. 1 vide criminal case No. 194 of 2005.

13. In view of this order, it will not be necessary to pass any order in the transfer petition which seeks the 11 transfer of the very complaint which we have quashed herein.

[1] *[1992 Supp. (1) SCC 335]*