

SUPREME COURT OF INDIA

Tilaknagar Industries Ltd.& Ors.

State of A.P. & Anr.

Crl.A.No.2002 of 2011

(Asok Kumar Ganguly and Gyan Sudha Misra,JJ.)

19.10.2011

JUDGMENT

Asok Kumar Ganguly,J.,

SLP(Crl).No. 6917 of 2011

1. Leave granted.

2. We have heard learned counsel for the parties. This appeal has been filed by the appellants - Tilak Nagar Industries Ltd., which is a Company incorporated under the Companies Act, and by its Chairman and Senior Vice President of the Company under Section 482 of the Code of Criminal Procedure (hereinafter referred to as the "Code") praying for quashing of the proceedings in connection with Criminal Case No. 252 of 2010 dated 22.06.2010 registered at Chikkadpally Police Station, Hyderabad.

3. The High Court, by a detailed order, dismissed the appellants' case for quashing, inter alia, on the ground that the complaint disclosed prima facie case. The said order of the High Court has been impugned by the appellants before us on various grounds.

4. When the matter was taken up at the previous stage and after we heard learned counsel for the parties and having regard to the stand taken by the parties, we asked the learned counsel for the appellant - Company to issue a publication in respect of respondent no.2 - the complainant clarifying therein that the expression "Judas" used against respondent no.2, was wrongly published and the same is withdrawn by the appellant Company.

5. Mr. Sidharth Luthra, learned senior counsel appearing for the appellant - Company upon instruction, has stated before us that his client is prepared to issue similar insertion in a prominent newspaper along with photo of respondent no.2 stating therein that expression "Judas" was used in connection with respondent no.2 inadvertently.

6. However, Mr. Nagendra Rai, learned senior counsel for the respondent no.2 did not accept the said proposal. We have therefore heard the matter on merits.

7. On merits, Mr. Luthra further submitted that the complaint has been filed by respondent no.2 by way of a counter blast having regard to the material facts on record. Mr. Luthra tried to take us to various other complaints filed against respondent no.2 by the appellant company as also the civil suit which was filed against him by the Company. While exercising our jurisdiction in connection with quashing of a complaint, we do not feel that we should directly go into all these factual assertions and counter assertions between the parties. However, while advancing the contention that this complaint has been filed by respondent no.2 so that the appellant may withdraw cases against him, Mr. Luthra further submits to the effect that the offences alleged against the appellant company by respondent no.2 are relatable to Sections 504, 500, 503 and 34 IPC and submits that offence under Section 503 is punishable under Section 506 IPC.

8. Mr. Luthra, the learned senior counsel for the appellants - Company further submitted that accepting the allegations on their face value, no cognizable case is made out against the appellants. In support of his contention, Mr. Luthra referred to the well known decision of this Court in the case of State of Haryana & Ors. vs. Bhajan Lal & Ors. reported in 1992 Supp.(1) SCC 335 and has drawn the attention of this Court to paragraph 102 and sub paras 2,4 and 7 thereof at page nos. 378 and 379 of the report.

9. By referring to those paragraphs, Mr. Luthra submits where the First Information Report and the accompanying materials do not disclose the commission of any cognizable offence justifying an investigation by police officer under Section 156(1) of the Code, no investigation of the case can be carried on without the order of the Magistrate in view of the mandate of Section 155 (2)of the Code.

10. We set out from Bhajan Lal those sub paragraphs herein below:

102. xxx xxx xxx

(1) xxx xxx xxx

(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) xxx xxx xxx

(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) xxx xxx xxx

(6) xxx xxx xxx

(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".

Learned counsel for the appellant relying on those paragraphs submitted that the order passed by the Magistrate on 21.6.2010 on the complaint in this case which does not disclose commission of a cognizable offence is not legally sustainable order. The order reads thus:

"21.06.2010 This complaint is forwarded to Chikadpally Police Station for Investigation and report under Section 156(3) Cr.P.C.

Sd/-

Shri B. Rajashekar.

Ld. IXth ACMM"

11. Mr. Rai learned senior counsel appearing on behalf of respondent no.2 submitted that in a case like this, this Court is not called upon to go into all the factual allegations levelled against his client by the appellant. Mr. Rai further submitted labelling of the complaint or the FIR is not decisive. As the respondent No.2 has made a complaint, it is open to the Magistrate to take cognizance under Section 190 of the Code and direct investigation. After considering the rival submissions, we are of the view that the contentions of Mr. Luthra are correct in view of Section 155(2) of the Code as explained in Bhajan Lal. We are of the opinion that the statutory safeguard which is given under Section 155 (2) of the Code must be strictly followed, since they are conceived in public interest and as a guarantee against frivolous and vexatious investigation. The order of the Magistrate dated 21.06.2010 does not disclose that he has taken cognizance. However power under Section 156(3) can be exercised by the Magistrate even before he takes cognizance provided the complaint discloses the commission of cognizable offence. Since in the instant case the complaint does not do so, the order of Magistrate stated above cannot be sustained in law and is accordingly quashed.

We do not make any observation on the merits of the allegations made in the complaint. However, we make it clear that the complaint which has been filed against respondent no.2 may be treated in accordance with law. With these directions, this appeal is disposed of.