

# SUPREME COURT OF INDIA

Ahmad Ali Quraishi

Vs.

State of Uttar Pradesh

CrI.A.No.138 of 2020

(Ashok Bhushan and M.R.Shah,JJ.,)

30.01.2020

## JUDGMENT

**Ashok Bhushan,J.,**

SLP(CrI.) No.3974 of 2018

1. This appeal has been filed challenging the order of the High Court dated 21 .02 .2018 by which the application under Section 482 CrPC filed by the appellants accused to quash the proceedings of Complaint Case No.1 of 2017 has been rejected. Aggrieved by the order of the High Court, this appeal has been filed.

2. Brief facts of the case necessary to be noted to decide this appeal are: -

(i) The appellants accused and the respondent No.2 complainant belongs to same family and are neighbours. The father of the accused Anwarul Haq has filed O.S.No.744/2015 against the complainant in the court of Civil judge (Junior Division) with regard to partition of properties which suit is still pending. Suit between the parties led to several altercations among the parties.

(ii) On 19.07.2016, a quarrel took between the parties. The police went on the spot of incident on 19.07.2016 itself and initiated proceedings under Section 151,107 and 116 Cr.P.C. Proceedings were drawn under Cr.P.C. against both the parties to maintain peace at the spot.

(iii) On 29.08.2016, an application under Section 156(3) Cr.P.C. was filed by the complainant Sajjad Quraishi against the accused Ahmad Ali Quraishi, and Liyakar Ali Quraishi as well as their father Anwarul Haq and their three other brothers referring to incident dated 19.07.2016 at about 06:00 PM. Allegation in the complaint was that two daughters of complainant Firdaus Bano and Gulishta Bano had gone to public hand pump outside the house of the complainant for fetching water at that time Ahmad Ali and Liyakar Ali accused indulge in indecent gestures

towards them and started pressing their breasts. The daughter Firdaus Bano sustained nail injuries. The girls were also beaten. On alarm being raised the complainant, his wife and others reached the spot and intervened.

(iv) It was further alleged that on the same day, Anwarul Haq, the accused and their brothers with common intentions forcibly entered the house of complainant and hurld filthy abuses and starting beating the daughters inside the house. Application further alleged that applicant gave information about the incident but neither application was taken nor medical got conducted. Application was also sent through Registered Post to Superintendent of Police, Jaunpur, D.G.P., Lucknow and National Human Right Commission, New Delhi. In the application, offence alleged against accused were under Section 323, 354, 504, 506, 452 IPC and Section 4 of POSCO Act.

(v) On the application, Misc. Case No.14 of 2016 was registered. The learned Additional District/Sessions Judge (POSCO Act) considered the application of complainant and by order dated 14.10.2016 rejected the application holding that there are no sufficient grounds to register the case against the appellants. Learned Sessions Judge also noticed that according to report of the Police Station proceeding under Sections 151, 107 and 116 Cr.P.C. has been initiated in respect of the said incident.

(vi) Complainant filed a Criminal Revision in the High court. The High Court vide its judgment dated 22.11.2016 did not interfere with the order rejecting the application, however, it observed that applicant has an alternative remedy by way of filing an appropriate application before the concerned Court as per provisions of Code of Criminal Procedure.

(vii) The application having already sent to the National Human Rights Commission, On the instruction of National Human Rights Commission, the Superintendent of Police directed the complaint to be enquired by letter dated 07.11.2016 addressed to the C.O.(City), Jaunpur to enquire the complaint. The C.O. (City), Jaunpur conducted the enquiry, recorded the statements of various persons including the daughters of complainant Firdaus Bano and Gulishtan Bano as well as the accused and submitted the report on 11.12.2016 opining that allegations labelled by the complainant have not been proved in the enquiry.

(viii) The complainant thereafter filed a complaint Case No.1 of 2017 dated 04.10.2017 repeating the same allegations against the appellants and other accused which were made in his application under Section 156(3) Cr.P.C.

(ix) The Learned Sessions Judge by order dated 19.12.2017 summoned the appellants under Section 323, 353, 504, 506 IPC and Section 7/8 POSCO Act. The appellant filed an application under Section 482 Cr.P.C. in the High Court praying for quashing the entire proceeding of Complaint Case No.1 of 2017 as well as the

summoning order. The application has been dismissed by the High Court by the impugned judgment dated 21.02.2018 aggrieved against which judgment this appeal has been filed.

3. Learned Counsel for the appellant in support of his case submits that dispute regarding property between the father of the appellant and the complainant is going on with regard to which Civil Suit No.744 of 2015, Anwarul Haq versus Sajjad Ali is pending in the court of Civil Judge(Junior Division). To put pressure on the appellant and to settle the property dispute pending in the court of Civil Judge, the complainants have filed frivolous complaints against the appellants and other family members before the Human Rights Commission, Police Authorities as well as in the Court of Sessions Judge.

4. Sessions Judge had already rejected his application under Section 156(3) Cr.P.C. on 29.08.2016. The complaint sent by the complainant to the Human Rights Commission resulted in enquiry by Deputy Superintendent of Police and report was submitted that no such incident took place as alleged. In spite of the rejection of the application and nothing having been found against the appellant in the enquiry, the complaint Case No.1 of 2017 has been filed. The complaint by the complainant is nothing but abuse of the process of Court which has been actuated to settle personal score and to put pressure on the appellants and his father to settle in the property dispute.

5 . It is submitted that High Court failed to consider the sequence of events and fact situation of the present case in which the complaint deserved to be quashed. It is submitted that the complaint is manifestly attended with mala fide and has been maliciously instituted with ulterior motives.

6. It is further submitted that for the same incident police has already initiated proceedings under Section 151, 107,115 Cr.P.C. against both the parties and they have been asked to maintain the peace. The incident as alleged against the appellant is imaginary and completely false.

7. Learned counsel for the complainant has supported the order of the High Court and submits that High Court has rightly refused to quash the proceedings. It is submitted that High Court in exercise of jurisdiction under Section 482 Cr.P.C. shall not examine the question as to whether the allegations made against the appellant in the complaint are true or false nor High Court will assess the evidence at this stage.

8. A Counter Affidavit has also been filed by the State of Uttar Pradesh bringing on record the application filed by complainant under Section 156(3) Cr.P.C. dated 29.08.2016 as well as the enquiry report dated 11.12.2016 and submitted to Superintendent of Police, Jaipur as Annexure-CA/2.

9. We have considered the submissions of learned counsel for the parties and perused the record.

10. Before we enter into facts of the present case and submissions made by learned counsel for the parties, it is necessary to look into scope and ambit of Inherent Jurisdiction which is exercised by the High Court under Section 482 Cr.P.C. This Court had occasion to consider the scope and jurisdiction of Section 482 Cr.P.C. This Court in *State of Haryana and others versus Bhajan Lal and others*<sup>1</sup>, had elaborately considered the scope and ambit of Section 482 Cr.P.C./ Article 226 of the Constitution in the context of quashing the criminal proceedings. In paragraph 102, this Court enumerated seven categories of cases where power can be exercised under Article 226/Section 482 Cr.P.C. by the High Court for quashing the criminal Proceedings. Paragraph 102 is as follows: -

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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 concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/o where there is 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 malafide 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. This Court in *Vineet Kumar and others versus State of Uttar Pradesh and another*<sup>2</sup>, had considered the jurisdiction of High Court under Section 482 Cr.P.C. In the above case also, the Additional Civil Judicial Magistrate had summoned the accused for offence under Section 452, 376, and 323 IPC and the Criminal Revision against the said order was dismissed by the District Judge.

12. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 Cr.P.C. and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 Cr.P.C. A three-Judge Bench of this Court in *State of Karnataka v. L. Muniswamy*<sup>3</sup>, held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated: (SCC p. 703)

"7. In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

13. A three-Judge Bench in *State of Karnataka v. M. Devendrappa*<sup>4</sup>, had the occasion to consider the ambit of Section 482 Cr.P.C. By analysing the scope of Section 482 Cr.P.C., this Court laid down that 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 further held that 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. The following was laid down in para 6: (SCC p. 94)

“6. ... 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.”

14. Further in para 8 the following was stated: (Devendrappa case, SCC p. 95)

"8. ... 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. 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*."

15. In *Sunder Babu v. State of T.N.*<sup>5</sup>, this Court was considering the challenge to the order of the Madras High Court where application was under Section 482 Cr.P.C. to quash criminal proceedings under Section 498-A IPC and Section 4 of the Dowry Prohibition

Act, 1961. It was contended before this Court that the complaint filed was nothing but an abuse of the process of law and allegations were unfounded. The prosecuting agency contested the petition filed under Section 482 Cr.P.C. taking the stand that a bare perusal of the complaint discloses commission of alleged offences and, therefore, it is not a case which needed to be allowed. The High Court accepted the case of the prosecution and dismissed the application. This Court referred to the judgment in Bhajan Lal's case and held that the case fell within Category 7. The Apex Court relying on Category 7 has held that the application under Section 482 deserved to be allowed and it quashed the proceedings.

16. After considering the earlier several judgments of this Court including the case of State of Haryana versus Bhajan Lal (supra), in Vineet Kumar (supra), this Court laid down following in paragraph 41: “

"41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal, which is to the following effect: (SCC p. 379, para 102)

"102. (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."

Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of State of Haryana v. Bhajan Lal, but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings."

17. Now, when we examine the facts of the present case in light of the ratio as laid down by this Court in above noted cases, it is clear that the present is a case where parties are related and are neighbours. Civil dispute regarding property is going on between father of the accused and the complainant. The incident which is basis for summoning of appellant is dated 19.07.2016 which is alleged to have taken place in front of the house of the complainant. The materials on record do indicate that quarrel took place between the

parties on 19.07.2016 and police visited the spot and initiated proceedings under Section 151, 107 and 116 Cr.P.C.. The state has brought on the record the copy of the enquiry report dated 11.12.2016 of the CO, City, in which enquiry report, following was stated: -

“...It was found from entire enquiry that there was dispute between applicant Shri Sajjad Quraishi and opposite party Anwarul Haq over constructing drain regarding which dispute started between both the parties on 19.07.2016. On receiving information of dispute at Police Station Kotwali, the then SHO SI Shri hari Prakash Yadav conducted proceeding under Sections 151, 107,116 CrPC on 20.07.2016 on both the parties to maintain peace tranquillity. During enquiry, perused the complaint dated 03.08.2016 filed by the applicant before the Hon'ble Commission and found that the applicant filed complaint dated 29.08.2016 of the same charges u/s 156(3) CrPC before the Hon'ble Court of Special Judge(POCSO Act)/Additional Session Judge, Court No.1, Jaunpur in which the Hon'ble Court of Special Judge, POCSO Act/Additional Session Judge, Court No.1, Jaunpur, as per its endorsement order dated 14.10.2016 has stated that in the entire facts and circumstances of the said case, sufficient grounds to register the case are not available. Statements of other witnesses recorded during enquiry and nearby people were interrogated whereupon eye witnesses stated the fact of the dispute between applicant Sajjad Qureshi and opposite party Anwar Ali over the drain and denying the allegations levelled by the applicant in his application, fact of opposite party Ahmed Ali and Liyakat Ali sons of Anwar doing dirty/indecent act/deed or manhandling whatsoever with the daughters of applicant has not come to light. During enquiry, applicant failed to submit oral/documentary evidence whatsoever. Other allegations levelled by the applicant have not been proved from the enquiry. Peace and tranquillity are prevailing at the spot, yet SHO of Kotwali is directed to ensure peace and tranquillity by keeping vigil on the parties. Report is submitted for kind perusal.”

18. We have taken note of the above report only to take the sequence of the event and not as a substantive piece of evidence. On the same allegations, the complainant has filed the application under Section 156(3) Cr.P.C. which was rejected by Sessions Judge by an order dated 14.10.2016, holding that no sufficient grounds have been made to register a complaint against the appellant.

19. In the Criminal Revision filed against the said order of the Session Judge, this Court did not interfere with the rejection of an application under Section 156(3) Cr.P.C., however, observed that the complainant has remedy to file appropriate application. The complainant thereafter had filed Complaint No.1 of 2017. It is true that rejection of an application under Section 156(3) Cr.P.C. in no manner preclude a complainant to file a complaint under Section 200 Cr.P.C.

20. From the sequence of the events as noticed above, it is clear that dispute regarding property between complainant and father of the appellant is pending much before the alleged incident dated 19.07.2016. The fact that on the same date of the incident Police

visited the spot and has drawn proceeding under Section 151, 107, 116 Cr.P.C. against both the parties and both the parties were required to maintain peace is a clear pointer to the nature of quarrel between the parties. It was more than six weeks thereafter that for the first time an application under Section 156(3) Cr.P.C. was filed by the complainant against the accused in the court of Session Judge.

21. One more fact which transpire from order of Session Judge summoning the accused need to be noted. As noted above, the complaint against the appellant and other accused refers to two incidents of 19.07.2016. One incident which took place near the Public hand pump outside the house of complainant and second, on the same day in the house of the complainant where he alleged that the appellants, their father and other accused entered into the house and started beating the complainant and his daughters. Sessions Judge in his summoning order did not believe the second incident as alleged in the complaint. Non believing on one part of the incident as alleged in the complaint by the Court clearly throws a shadow of doubt on the earlier part of the incident as alleged.

22. Learned session judge in the impugned judgment has not taken note of the Civil Suit pending between the parties.

23. In the facts of present case, we are fully satisfied that present is a case where criminal proceedings have been initiated by complainant with an ulterior motive due to private and personal grudge. The High Court although noticed the judgment of this Court in State of Haryana and others versus Bhajan Lal and others(supra) in the impugned judgment but did not examine the facts of the case as to whether present is a case which falls in any of the category as enumerated in Bhajan Lal's case. The present case clearly falls in category VII of Bhajan Lal's case and the High Court failed to exercise jurisdiction under Section 482 Cr.P.C. in quashing the criminal proceeding initiated by the complainant.

24. In view of the foregoing discussions, we are of the view that in permitting Criminal proceedings against the appellant shall be permitting a criminal proceeding which has been maliciously instituted with ulterior motives, permitting such criminal proceeding to go on is nothing but the abuse of the process of the Court which needs to be interfered by this Court.

25. In result, the appeal is allowed. The criminal proceedings initiated by Complaint Case No.1 of 2017, *Sajjad Quraishi versus Anwarul Haq Quraishi* are quashed.

Judgment Referred.

<sup>1</sup>(1992) suppl. 1 SCC 0335

<sup>2</sup>(2017) 13 SCC 0369

<sup>3</sup>(1977) 2 SCC 0699

<sup>4</sup>(2002) 3 SCC 0089

<sup>5</sup>(2009) 14 SCC 0244