

(2021) 08 SHI CK 0157

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No.812 Of 2019

Baldev Singh

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 16-08-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 156(3), 245, 482
Indian Penal Code, 1860 — Section 120B, 405, 420, 467, 471

Citation : (2021) 08 SHI CK 0157

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Advocate : Ajay Sharma, Ajay Thakur, Nand Lal Thakur, Ram Lal Thakur, Sunny Dhatwalia

Final Decision : Allowed

Judgement

Anoop Chitkara, J

1. The petitioner, arraigned as accused in the FIR mentioned above, has come up before this Court under Section 482, Code of Criminal Procedure,

1973, for quashing the proceedings on grounds that the investigations and the allegations do not make out any case.

2. As is evident from the complaint, Sher Singh (respondent No.3 herein) filed a written complaint in the Court of JMFC, Dehra, Kangra, which reads

as under:-

â??â? In the Court of Id. J.M.I.C. Dehra, Distt. Kangra H.P. Sher Singh s/o Raseela Ram R/o Thana, Teh. Jawalamukhi, Distt. Kangra, H.P.

Complainantâ?..Versus Baldev Singh S/o Raseela Ram R/o Thana, Teh. Jawalamukhi, Distt. Kangra, H.P. Accused Application under section 156(3)

Cr.P.C. for the direction to Police Station Jawalamukhi, Distt. Kangra to register

an F.I.R. against the accused persons under Section 420, 467, 471, 405 and 120-B I.P.C Sir, The complainant prays as under:- 1 That the complainant is permanent resident of village Thana, P.O. Dohag, Tehsil Jawalamukhi, Distt. Kangra, H.P. and the accused is also permanent resident of village mentioned above. Both complainant and accused are the real brothers in relation. 2. That the accused in bad intention, have managed a fake Will at Dharamshala on dated 24-09-1984 in the name of the mother Kalapati. After the death of the Kalapati the accused got transferred all the movable and immovable properties on his name. The accused also took charge of the jewelry of the mother to the extent of 27 tolas and 37000/- other brother Ram Singh and the complainant was not aware of the Will and the mother never disclosed the same during her life time. 3. That the Will in question has never been executed by the deceased mother Smt. Kalapati nor the mother has put any thumb impression upon the Will and the impression upon the Will can be checked after comparison from the thumb impression from the other documents such as the mothers bank account and post office accounts etc.

4. That after taking the benefits of the Will the accused has also grabbed the properties in Khasra No.193, 154, 237, 349, 350, 351, 459, 664/470, 520, 521, 522, 523, 696/520, 597/529, 530, 531, 536, 537, 546, 547 Area 03-77-08 Hects cultivable and 01-50-64 Hects non cultivable of Mohal Dohag, Tehsil Jawalamukhi, Distt. Kangra, H.P. 5. That the accused is a very quarrel some person who never served the mother during her life time. He has connived with the witnesses, document writer and have got executed fabricated Will just to debar the other legal heir and the act of the accused liable to be prosecuted. 6. That the complainant is within time from the date of knowledge. It is therefore prayed that the police authorities of Police station Jawalamukhi may kindly be order to Register an F.I.R. against the accused persons and to investigate the matter in the interest of justice. Verified at Dehra on dated 30-06- 2011 that the Contents of the application from Para one to Through Counsel six are True and correct to the best of my knowledge And belief and nothing concealed Complainant Arvind Sharma Advocate Dehra Sher Singh.â??

3. After the investigation was carried out, it revealed that Kalapati had died on 20.12.2000. During investigation, the original Will could not be

recovered. Baldev Singh, the present petitioner told the investigator that when he was going to Shimla for legal consultation and was carrying the Will then he lost the same in the bus and he had reported about its missing in Police Station, Darlaghat. He further stated to the Police that he has no record of the Will. The Investigator applied for the record from the Office of Registrar, Dharamshala and got the record of the Will prepared by Kalapati in favour of her son Sher Singh but it did not contain any thumb impression or signature of Kalapati. Subsequently, the Investigator tried to obtain the record from the Court of JMFC-II, Dehra and obtained the copy of the Will. The Investigator also obtained the thumb impression specimen from the bank account opened with Krishi Dohag Dehrian Cooperative Society, Gummar and sent the same for comparison to FSL, Junga. As per report of the Laboratory, they could not compare the thumb impression. Thus, after the conclusion of investigation, the Investigator did not find any offence as alleged in the complaint and filed a closure report. The Investigator further stated that they could not trace the record of any Will made by Kalapati in favour of her son Baldev Singh. Based on such complaint, the Police registered the FIR mentioned above.

4. The accused Baldev Singh has come up before this Court, seeking quashing of FIR on the grounds that a civil litigation had taken place between him and Sher Singh which was decided in his favour. The copies of all such civil litigations are annexed with this petition. The 3rd respondent (Sher Singh) did not file any reply to the quashing petition. In the status report, the filing of civil litigation has not been disputed. A perusal of the record of civil litigation reveals that these litigations stand adjudicated by the civil Court.

STAGE OF QUASHING FIR:

5. In *Ashok Chaturvedi v Shitul H. Chanchani*, 1998(7) SCC 698, Honâ??ble Supreme Court holds that the determination of the question as regards the propriety of the order of the Magistrate taking cognizance and issuing process need not necessarily wait till the stage of framing the charge. The Court holds, â??â?¡This argument, however, does not appeal to us inasmuch as merely because an accused has a right to plead at the time of framing of charges that there is no sufficient material for such framing of charges as provided in Section 245 of the Criminal Procedure Code, he is debarred from approaching the court even at an earliest (sic earlier) point of time when

the Magistrate takes cognizance of the offence and summons the accused to appear to contend that the very issuance of the order of taking cognizance is invalid on the ground that no offence can be said to have been made out on the allegations made in the complaint petition. It has been held in a number of cases that power under Section 482 has to be exercised sparingly and in the interest of justice. But allowing the criminal proceeding to continue even where the allegations in the complaint petition do not make out any offence would be tantamount to an abuse of the process of court, and therefore, there cannot be any dispute that in such case power under section 482 of the Code can be exercised.

6. In *Girish Sarwate v. State of A.P.*, 2005(1) R.C.R.(Criminal) 758, the Full Bench of Andhra Pradesh High Court observed that the High Court need not wait for completion of investigation and taking cognizance by the Magistrate.

JUDICIAL PRECEDENTS ON JURISPRUDENCE OF QUASHING:

7. The law is almost settled by various pronouncements of the Hon'ble Supreme Court that when the FIR and the investigation do not make out any case or the prosecution is inherently and patently illegal, and the matters that fulfill the criteria for quashing, the High Court resorting to S. 482 CrPC can quash such FIR and consequent proceedings. In *R.P. Kapur v State of Punjab*, AIR 1960 SC 866, a three-member Bench of Hon'ble

Supreme Court holds, [6]. ...It is well established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Ordinarily, criminal proceedings instituted

against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings

at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent

jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the

proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal

proceedings against an accused person may amount to the abuse of the process of the Court or that the quashing of the impugned proceedings would

secure the ends of justice. If the criminal proceeding in question is in respect of

an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, the High Court would be justified in quashing the proceedings on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such case, it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal Court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases, 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 manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under S. 561-A, the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained. Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court under S. 561-A in the matter of quashing criminal proceedings, and that is the effect of the judicial decisions on the point (Vide : In Re: Shripad G. Chandavarkar, AIR 1928 Bom 184, Jagat Chandra Mozumdar v. Queen Empress, ILR 26 Cal 786, Dr. Shankar Singh v. State of Punjab, 56 Pun LR 54 : (AIR 1954 Punj 193), NripendraBhusan Roy v. GobinaBandhu Majumdar, AIR 1924 Cal 1018 and Ramanathan Chettiyar v.

SivaramaSubramania, ILR 47 Mad 722 : (AIR 1925 Mad 39).â??

8. In *Madhavrao Jiwaji Rao Scindia v Sambhajirao Chandrojirao Angre*, 1988 (1) SCC 692, a three judgesâ?? bench of the Honâ??ble Supreme

Court holds â??[7]. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the

court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any

special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue.

This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction

is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into

consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.â??

CONCLUSION:

9. The allegations made in the complaint are only based on suspicion and on those facts which have already been finally adjudicated upon by the civil

Courts and cannot be re-opened. Consequently, even if all these allegations are taken to be true still no case is made out against the petitioner.

10. This Court has inherent powers under Section 482 of the Code of Criminal Procedure to interfere in this kind of matter.

11. An analysis of the entire allegations and the investigation does not contain legally admissible evidence and thus, does not make out any prima facie

case against the petitioner.

12. Given the entirety of the case and judicial precedents, I am of the considered opinion that the continuation of these proceedings will not suffice any

fruitful purpose whatsoever.

13. In *Himachal Pradesh Cricket Association v State of Himachal Pradesh*, 2018 (4) Crimes 324, Honâ??ble Supreme Court holds â??[47]. As far

as Writ Petition (Criminal) No. 135 of 2017 is concerned, the appellants came to this Court challenging the order of cognizance only because of the

reason that matter was already pending as the appellants had filed the Special Leave Petitions against the order of the High Court rejecting their

petition for quashing of the FIR/Chargesheet. Having regard to these peculiar

facts, writ petition has also been entertained. In any case, once we hold that FIR needs to be quashed, order of cognizance would automatically stand vitiated.â??

14. Given above, this is a fit case where the inherent jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure is invoked to

quash the proceedings mentioned above. The FIR mentioned above is quashed, and all the consequential proceedings are also quashed and set aside.

The bail bonds are accordingly discharged. All pending application(s), if any, stand closed.

In the facts and circumstances peculiar to this case, the petition is allowed in the aforementioned terms.