
(2019) 12 RAJ CK 0026

In the Rajasthan High Court

Case No : Criminal Miscellaneous (Pet.) No. 6400 Of 2019

Chunni Lal

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 02-12-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 216, 397, 401, 482
Indian Penal Code, 1860 — Section 186, 397, 341, 509
Constitution Of India, 1950 — Article 226

Citation : (2019) 12 RAJ CK 0026

Hon'ble Judges : Manoj Kumar Garg, J

Bench : Single Bench

Advocate : CR Choudhary, Gaurav Singh

Final Decision : Dismissed

Judgement

The instant criminal misc. petition under Section 482 Cr.P.C. has been filed for quashing of FIR No.433/2019 registered at Police Station Mandore, District Jodhpur for offence under Sections 341, 186, 509 IPC IPC.

Learned counsel for the petitioner submits that the complainant has deliberately lodged the impugned FIR against the petitioner on the basis of false, frivolous and bogus allegations just in order to harass the petitioner. From perusal of the FIR, necessary ingredients are not made out for such an offence alleged in the FIR and there is no independent witness of the incident, therefore it is prayed that the FIR in question may be quashed.

Per contra, learned Public Prosecutor has opposed the prayer.

I have considered the arguments and perused the FIR.

From the perusal of the FIR, it cannot be said that no cognizable offence has been committed. The specific allegations in the FIR have been levelled against the petitioner. The allegations in the complaint prima facie satisfy the essential ingredients of the offence alleged. The police has statutory right to investigate

the matter. No case is made out for quashing of FIR.

Hon'ble Supreme Court in the case of State of Haryana & Ors. Vs. Choudhary Bhajanlal & Ors. : 1992 Suppl. (1) SCC 335], laid down guidelines for exercising inherent powers under Section 482 Cr.P.C. to quash FIR and criminal proceedings. The Court held:

"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/or where there is a 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 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.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

Yet again, Supreme Court, in case of Janta Dal Vs. H.S. Choudhary : (1992) 4 SCC 305], while relying on Choudhary Bhajanlal's case (supra), held:

"This inherent power conferred by Section 482 of the Code 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 premature decision in a case wherein the entire facts are extremely 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 great 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 the cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage. This Court in State of Haryana v. Ch. Bhajan Lal and Ors., to which both of us were parties have dealt with this question at length and enunciated the law listing out the circumstances under which the High Court can exercise its jurisdiction in quashing proceedings. We do not, therefore, think it necessary in the present case to extensively deal with the import and intendment of the powers under Sections 397, 401 and 482 of the Code."

In another decision in the case of Pratibha Vs. Rameshwari Devi & Ors, JT 2007 (11) 122, the Hon'ble Apex Court held that while exercising the extraordinary jurisdiction under Section 482 Cr.P.C., the High Court cannot go beyond the allegations made in the F.I.R or rely upon extraneous consideration. For the purpose of finding out the commission of a cognizable offence, the High Court is only required to look into the allegations made in the complaint or the F.I.R.

In a subsequent decision, Vinod Raghuvanshi Vs. Ajay Arora & Ors. : (2013) 10 SCC 581], in a case under the Prevention of Corruption Act, Supreme Court affirmed the order passed by the High Court whereby it declined to exercise inherent powers for quashment of criminal proceedings. The Court observed:

"It is a settled legal proposition that while considering the case for quashing of the criminal proceedings the court should not "kill a still born child", and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegations have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the court is whether the uncontroverted allegations as made, prima facie establish the offence. At this stage neither can

the court embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor should the court judge the probability, reliability or genuineness of the allegations made therein. More so, the charge-sheet filed or charges framed at the initial stage can be altered/amended or a charge can be added at the subsequent stage, after the evidence is adduced in view of the provisions of Section 216 CrPC. So, the order passed even by the High Court or this Court is subject to the order which would be passed by the trial Court at a later stage."

In another case of N. Soundaram Vs. P.K. Pounraj & Anr. : (2014) 10 SCC 616], Supreme Court, while reiterating the principles laid down in Bhajan Lal (supra) on scope of exercise of powers under Section 482 Cr.P.C., held:

"It is well settled by this Court in a catena of cases that the power under Section 482 CrPC has to be exercised sparingly and cautiously to prevent the abuse of process of any Court and to secure the ends of justice [See State of Haryana v. Bhajanlal]. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should refrain from giving a prima facie decision unless there are compelling circumstances to do so. Taking the allegations and the complaint as they were, without adding or subtracting anything, if no offence was made out, only then the High Court would be justified in quashing the proceedings in the exercise of its power under Section 482, CrPC [See MCD v. Ram Kishan Rohtagi]. An investigation should not be shut out at the threshold if the allegations have some substance. [See Vinod Raghuvanshi v. Ajay Arora]."

In the facts and circumstances of the case so also in the light of the judicial pronouncements of Hon'ble Apex Court, no case for quashing of FIR No. 433/2019 registered at Police Station Mandore, District Jodhpur is made out. Hence, this misc. petition is hereby dismissed. Stay petition is also dismissed.