

(2006) 08 AHC CK 0131

In the Allahabad High Court

Case No : Criminal Misc. Application No's. 7791 and 7792 OF 2006

Dr. Monica Kumar and Mrs. Savitri Srivastava and Dr. Manish Kumar and Mrs. Savitri Srivastava APPELLANT

Vs

State of Uttar Pradesh, Indra Mohini Sharma, Dr. P. Mahalingam RESPONDENT

Date of Decision : 24-08-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 161, 239, 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 308, 323, 336, 420, 427

Citation : (2008) 2 ALT(Cri) 355

Hon'ble Judges : S.S. Kulshrestha, J

Bench : Single Bench

Advocate : Vinod Prakash Srivastava, Anil Kumar Singh, Aradhana Chauhan and Lav Srivastava, for the Appellant; G.S. Chaturvedi, Anurag Khanna and G.S. Hajela, for the Respondent

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : Dr. Monica Kumar and Another Vs. State of U.P. and Others, (2008) 7 JT 194 : (2008) 9 SCALE 166 : (2008) 8 SCC 781

S.S. Kulshrestha, J.—Both the applications are taken together as the common question of facts and law are involved. Criminal Misc. Application No. 7792 of 2006 u/s 482 of the Code of Criminal Procedure hereinafter referred to as the Code has been brought for quashing the charge sheet submitted by the police station Vijay Nagar district Ghaziabad in case crime No. 412 of 2005 under Sections 452, 323, 504, 506, 427 I.P.C. against the accused applicants and also for entrusting further investigation to C.B.I. In the meantime arrest of the accused applicants is sought to be stayed, Another Criminal Misc. Application No. 7791 of 2006 has been brought for quashing the charge sheet submitted by the police in case crime No. 21 of 2006 under Sections 452, 323, 336, 504, 506, 420

I.P.C. police station Vijai Nagar, Ghaziabad.

2. In both the cases it is asserted that Dr. Narendra Kumar, father of the applicants after acquiring high degrees in the field of medicine joined as Professor/ Medical Director of Neonatal Intensive Care Unit (NICU) and was also doing medical practice at 2917 Middleboro Place, Modesto, California. Both the applicants were born at California and acquired their higher secondary qualification from U.S.A. in Science subjects. Applicants had chosen medical education with the consent of their parents and got admission in MBBS course for the Academic Session 1996-97 in Santosh Medical College & Hospital, Ghaziabad in short the College" against N.R.I. quota. They had to make total payment of one lac U.S. dollar Rs. 50 lacs towards capitation fees. In addition the college also took loan of Rs. 25 lacs from the father of the applicants and its payment was assured by giving a hand written slip. The college also charged hostel and security fees from both the applicants. The dispute and differences had started between the father of the applicants and Dr. P. Mahalingam, Chairman Managing Director /Trustee of Maharaji Education Trust and Santosh Medical College and Hospital, when he was asked to refund the loan amount. The matter was also reported to the District Administration. Dr. P. Mahalingam also acknowledged the said loan amount in writing through the slip dated 19-4-2001 given to the Addl. District Magistrate, Ghaziabad and also assured to refund that amount, He gave five cheques each of Rs. 5 lacs against loan amount and two Demand Drafts each of Rs. 2.50 lacs for the accrued interest. One cheque for the amount of Rs. 5 lacs was dishonored by the bank on 18-10-2003. The father of the applicants had no option but to bring a complaint case No. 7272 of 2003 u/s 138 of the Negotiable Instruments Act on 16-12-2003 against Dr. P. Mahalingam. The Court had also taken cognizance and issued summons against him. From the day one when the demand of the money was made, Dr. P. Mahalingam without any lawful excuse started harassing Dr. Monica Kumar and she was maliciously declared failed in the theory paper of pharmacology held in March, 2000. She was also not permitted to appear in the supplementary examination conducted in the month of August and November, 2000. Dr. P. Mahalingam and Dr. M.K. Srivastava, Principal of that college refused to get her appear in Pharmacology examination and final professional M.B.B.S. Part-I examination of March, 2001, even order of Vice Chancellor, Chaudhari Charan Singh University in that regard was defied. Resultantly she had to bring Civil Misc. Writ Petition No. 9150 of 2001 wherein this Court summoned the answer book of pharmacology examination of March, 2000 along with the Tabulation chart and Marks sheet of final professional M.B.B.S. part-I examination. That was entrusted to the Head of Department, M.L.N. Medical College, Allahabad for evaluation. Dr. Monica Kumar got good marks and was declared successful. This court also directed the college authorities to declare the result of second professional M.B.B.S. and final professional M.B.B.S. examination Part-II examination commencing from 6-3-2002. Result of the applicant No. 1 was also withheld by the college authorities and so Contempt Petition No. 887 of 2002 was brought. Dr. P.

Mahalingam and Dr. M.K. Srivastava, Principal of the College after receiving show cause notice in that Contempt Petition declared the result and Dr. Monica Kumar was shown unsuccessful in surgery practical examination conducted in March, 2002. Again she had to bring Civil Misc. Writ Petition No. 14176 of 2002. This Court called for the Tabulation Chart of Surgery practical of all the students along with the applicant No. 1 and Agra Medical College was asked to take practical examination in surgery and on their evaluation she was declared successful. This annoyed Dr. P. Mahalingam and he started harassing the applicants on one or the other grounds.

3. It is further alleged that as many as 7 frivolous reports were got lodged by Dr. P. Mahalingam from his subordinates yes-men in collusion with Sri Anil Somaniya, S.H.O, police station Vijay Nagar, Ghaziabad. Police also rushed up for filing charge sheet against the applicants without making fair and effective investigation. This was all got done with the intention to harass the applicants. Even in case crime No. 21 of 2006 under Sections 452, 323, 336, 504, 506, 420 I.P.C. registered at the police station Vijay Nagar all possible efforts were made so as to get the offence u/s 308 I.P.C, added though not substantiated from the medical reports. This was all with the purpose to see detention of Dr. Manish Kumar in judicial custody for a long period. As a consequence of which he was detained in judicial custody for 18 days till he was admitted on bail. It is also said that the police personnel and all high-ups either in administration or in political circle are obliged from Dr. P. Mahalingam and the police proceeded to file charge sheets on fake, and fabricated grounds. It is said that the applicants approached the Human Rights Commission, China who had also sent communications to the various authorities for redressal of the grievances of the applicants. More so on the representation made by the applicants U.S.A. Government have also taken up the cause of the applicants who are U.S. Citizens with the Government of India.

4. These both the applications were resisted on behalf of Dr. P. Mahalingam contending them to be false and vexatious. Applicants are said to have concealed material facts in both the applications with the mala fide intentions so as to scuttle the criminal proceedings. Further it has been emphasized that the police after making extensive investigation submitted charge sheets in both the cases. The conduct of the applicants has been very much disorderly. They have flouted the court's order dated 24-7-2006 by not appearing before the concerned Magistrate. Through out in both the applications the incident and the statement of the witnesses were not questioned. All allegations and aspersions were made with a view to create impression that the applicants are being harassed on account of personal grudge of Dr. P. Mahalingam with Dr. Narendra Kumar on the issue of non refund of the money borrowed by him. As regard the prayer of the applicants for entrusting investigation to C.B.I. it is said that now charge sheet has been filed and there is no occasion for referring the matter afresh for further investigation to C.B.I. Moreover, when the applicants brought writ petition No. 11192 of 2005, before this Court, for quashing of the F.I.R. they ought to have

made such prayer if at all there was any apprehension for not having fair investigation. Now insisting for entrusting investigation to C.B.I. would amount to circumvent the result of investigation already arrived at. As regards the matter of enquiry by the National Commission for Women, the answering respondent brought Writ Petition No. 19638-40 of 2004 in the Delhi High Court wherein, applicants absented and the Commission also informed the court that no further action was contemplated against Dr. P. Mahalingam. In that backdrop, the said writ petition was also dismissed, Other complaints made to the various authorities by the applicants and their father were found to be baseless. Even the complaint to the Governor of Uttar Pradesh was on enquiry found to be frivolous. The Ministry of External Affairs also made enquiry in the matter and found the allegations in the complaint to be barren of substance. The other allegations made in the application were also controverted by Dr. P. Mahalingam. It is also contended that the applicants and their father are trying to blackmail the answering respondent and the staff members of the college by making false complaints to various authorities with a nefarious design.

5. Preliminary objection was raised from the side of the Learned Counsel for the respondents that these both the applications are not maintainable and this court cannot interfere with the criminal proceedings which are at the threshold and at the most accused may claim their discharge at the stage u/s 239 of the Code. However, from the side of applicants it is contended that the powers conferred on the High Court u/s 482 of the Code is to advance justice and not to thwart. The very purpose of such inherent power is that no one should be subjected to injustice by violating law. The look of the High Court is therefore, not merely to pick out any error of law though academic angle but to see whether the allegations do make out any offence whether injustice has resulted in the matter against whom processes have been issued. I do not think that for avoiding harassment if one files application u/s 482 of the Code, it cannot be entertained because of the availability of alternative forum. In this regard reliance may be placed in the cases of (i) Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, and (ii) Ashok Chaturvedi and Others Vs. Shitulh Chanchani and Another, wherein it has been specifically held that the Magistrate trying a case has jurisdiction to discharge the accused at any state of the trial if he considers the charge to be groundless but that does not mean that the accused cannot approach the High Court u/s 482 of the code or Article 227 of the Constitution to have the proceedings quashed against them when no offence has been made out against them and still why must they undergo the agony of a criminal trial. However, jurisdiction should be exercised with great care. Further in exercise of jurisdiction u/s 482 of the Code, a great deal of caution is required to prevent the abuse of process of any court or otherwise to secure the ends of justice. Reliance may also be placed in the cases of (i) State of Karnataka Vs. L. Muniswamy and Others, (ii) Kurukshetra University and Another Vs. State of Haryana and Another, (iii) State of Haryana and others Vs. Ch. Bhajan Lal and others, (iv) Ajay Mitra Vs. State of M.P. and Others, and (v) Union of India (UOI)

Vs. Prakash P. Hinduja and Another,

6. The contents of the report registered at case crime No. 412 of 2005 under Sections 452, 323, 504, 506, 427 I.P.C. police station Vijay Nagar, Ghaziabad transpires that on 5-10-2005 at about 6 p.m. Dr. Monika Kumar and Manish Kumar entered in the house of Dr. Indra Mohini Sharma, H-14, Sector 12, Pratap Vihar, Ghaziabad with knife and brick bats. They started hurling abuses to her saying that she is much close to Dr. P. Mahalingam. She was also slapped and was also threatened that her children would be kidnapped and killed. On her cries security men namely Rajveer, Prempal and some of the students of the college, came for her rescue. Some of the household goods were also damaged by them. The victim Dr. Indra Mohini Sharma who is teacher in Santosh Medical College u/s 161 of the Code supported the F.I.R. version and mentioned that both the accused threatened and slapped her. She was rescued by the security men Rajveer and Prempal. Police also recorded statement of these two security men also of Gaurav Pandey, student of the college who reiterated about the incident. For the other incident dated 14-1-2006 report was lodged at case crime No. 21 of 2006 under Sections 452, 323, 336, 504, 506, 420 I.P.C. at police station Vijay Nagar, Ghaziabad against Dr. Monika Kumar and Dr. Manish Kumar as they are said to have beaten the security man Rajendra Kuntal and also damaged the college properties. The investigating officer has recorded the statement of Rajendra Kuntal and other security personnel namely Prem Pal and Manoj Kumar. Both the witnesses have supported the F.I.R. version.

7. It may be mentioned that in exercise of the proceedings u/s 482 of the Code, this court has to prima facie ascertain about the existence of the sufficient ground for proceeding against the accused. For limited purpose the court can evaluate the material and documents on record but it cannot appreciate the evidence so as to access the credibility of the statement of the witnesses recorded in the course of investigation. Further it is not required to appreciate the evidence to find out whether the material produced are sufficient or not for convicting the accused. In the case of Smt. Chand Dhawan Vs. Jawahar Lal and others, it was observed by the Apex Court that when the materials relied upon by a party are required to be proved, no inference can be drawn on the basis of materials to conclude the F.I.R./ complaint version to be unacceptable. The scope of exercise of the power u/s 482 of the Code and categories of the cases where High Court may exercise its power under it relating to cognizable offences to prevent the abuse of the process of court or otherwise to secure the ends of justice were set in detail by the Apex Court in the case of State of Haryana v. Ch. Bhajan Lal 1995 supp 1 SCC 335, They have been enumerated as under:

(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 F.I.R. do not disclose a cognizable offence, justifying an

investigation by police officers u/s 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 F.I.R. 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 u/s 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.

8. Here allegations made in the report and the evidence so collected in the course of investigation construe a cognizable offence, it would not fall in any category of the case enumerated above, call for the exercise of the extraordinary powers or inherent power quashing the charge sheet submitted in the abovenoted cases.

9. It is however, urged by the Learned Counsel for the applicants that in the case of Bhajan Lal (Supra) it was also observed that where criminal proceedings are manifestly attained with malafide and they were instituted maliciously with ulterior motive, this court may quash those proceedings. Instances have been given that how Dr. Monika Kumar in her academic career was harassed by Dr. P. Mahalingam and also the Principal of the college. As the request for the refund of the loan amount was made by the father of the applicants to Dr. P. Mahalingam, he started harassing the applicants and these all the proceedings are said to be the out come of that demand made by the father of the applicants. It is also contended by the Learned Counsel for the applicants that the police and the staff of the college are acting with malafide intention in order to harass both the applicants with a view to unleash personal vendetta of Dr. P. Mahalingam and the applicants are being victimized. In this regard it may be mentioned that when the report was lodged at the police station, the malafide of the informant would be of secondary importune. It is the material conclusion during the investigation and evidence led in the court which decide the fate of the cases of the accused

persons. The allegation of malafides against the informant are of no consequence and cannot by the themselves be the basis of quashing of the proceedings. Reliance may be placed in the cases of (i) Dhanalakshmi v. R. Prasanna Kumar 1990 Supp 1 SCC 686 , (ii) State of Bihar and Another Vs. P.P. Sharma, IAS and Another, This position was also reiterated in the case of State of Karnataka Vs. M. Devendrappa and Another, and State of Madhya Pradesh Vs. Awadh Kishore Gupta and Others,

10. However, Learned Counsel for the applicants urged that it is a case where applicants were harassed through out their academic career by Dr. P. Mahalingam, Chairman of the College and there was ample evidence and lot of litigations have taken place. It is such a case where possibility of complaint being mala fide to have been got lodged from his yes man cannot be ruled out, Such proceedings are required to be quashed. Reliance may be placed in the cases of State of Orissa Vs. Debendra Nath Padhi, wherein Apex Court had given circumstances where the proceedings may be quashed which reads as under:

29. Regarding the argument of accused having to face the trial despite being in a position to produce material of unimpeachable character of sterling quality, the width of the powers of the High Court u/s 482 of the Code and Article 226 of Constitution of India is unlimited whereunder in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice within the parameters laid down in Bhajan Lal's case.

11. Here grievances have been set up against Dr. P. Mahalingam. Had there been any complaint from his side, such principle could have relevance? Report at case crime No. 412 of 2005 was made by the teacher said to have been beaten by her students. And the other incident was at the security check post where security guard was assaulted by the applicants. There could be no reason for taking benefit of the principle enunciated in the case of Debendra Nath Padhi (supra).

12. The investigating officer recorded the statement of the witnesses and collected other materials which facts cannot be said to be without relevance. The acceptability of the material placing culpability on the accused persons is the matter of trial. These are not the cases where the charge sheet did not disclose commission of the offence. Under such circumstance, interference at threshold with the charge sheet would not be justified. Reliance may be placed in the cases of R.P. Kapur Vs. The State of Punjab, and State of Andhra Pradesh Vs. Golconda Linga Swamy and Another,

13. This point also came up for decision in the case of Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, wherein it was held:

It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant

that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance, It is the material collected during the investigation and evidence led in Court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings.

14. Several papers including CD have been furnished by the Learned Counsel for the applicants. In this regard it may be mentioned that this Court cannot take into consideration the defence evidence. Ultimately acceptability of the malafides to fasten culpability on the accused persons is a matter of trial These are not the case where charge sheet did not disclose commission of an offence. In the result both the applications are dismissed.