

(2004) 09 AP CK 0109

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 5868 of 1999

Girish Sarwate

APPELLANT

Vs

State of A.P. and Another

RESPONDENT

Date of Decision : 24-09-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Criminal Procedure Code, 1973 (CrPC) — Section 156(1), 156(2), 482, 561A

Penal Code, 1860 (IPC) — Section 109, 114, 120B, 204, 211

Citation : (2004) 6 ALD 855 : (2005) 1 ALD(Cri) 150 : (2004) 6 ALT 757 : (2005) 1 ALT(Cri) 1 : (2005) CriLJ 729 : (2005) 1 CTC 166 : (2005) 1 RCR(Criminal) 758

Hon'ble Judges : P.S. Narayana, J;Goda Raghuram, J;Bilal Nazki, J

Bench : Full Bench

Advocate : Milind G. Gokhale, for the Appellant; Public Prosecutor, for the Respondent

Judgement

Bilal Nazki, J.—This matter has come before this Court on reference by a Division Bench of this Court. The reference of the Division Bench is a result of reference by a Single Judge. The question which needs to be answered is whether the High Court is empowered u/s 482 of the Code of Criminal Procedure (for short "Cr.P.C") to quash the First Information Report (FIR).

2. There are four judgments of this Court. The first one and the earliest in point of time is Hasan Ali Khan vs. State of A.P.¹. The second one is S.Sarat Babu Chowdary vs. Inspector of Police². The third one is Pearl Beverages Limited vs. State of A.P.³ and the last judgment is Gudavalli Murali Krishna and others v. Gudavalli Madhavi⁴. In Hasan Ali's case (1 supra) this Court held that powers u/s 482 Cr.P.C can be exercised by High Court only after initiation of criminal proceedings after a charge sheet is filed and not at the stage of investigation. In Sarat Babu's case (2 supra) the Division Bench held that High Court does not possess any power to quash FIR u/s 482 Cr.P.C. In a way it reiterated the view taken in Hasan Ali's case (1 supra). This judgment further held that High Court

cannot do anything under s 226 of the Constitution of India what it cannot do u/s 482 Cr.P.C. Even, in Pearl Beverages case (3 supra) the learned Single Judge held that this Court can quash the proceedings when the case is taken cognizance by the Magistrate and at no stage there before. However, in Gudavalli Murali Krishna's case (4 supra) the learned Single Judge held that the inherent power of the High Court u/s 482 Cr.P.C can be invoked to quash the proceedings even at the threshold be it an FIR or a charge sheet. The learned Single Judge took note of earlier judgments, but opined it was not necessary to refer the matter to a Larger Bench in view of later judgments of the Supreme Court. When the judgment in Gudavalli Murali Krishna's case (4 supra) was cited before the learned Single Judge, in the present case, he thought it was proper to refer the matter to a Larger Bench and he also thought that the learned Single Judge who decided Gudavalli Murali Krishna's case (4 supra) should have not decided the matter himself, rather if he had found that the earlier judgments of this Court were contrary to the judgments of the Supreme Court, he should have referred the matter to the Larger Bench. In these circumstances, a reference was made to the Division Bench and the Division Bench referred the matter to the Full Bench, because there are earlier Division Bench judgments as well.

3. The only question, which has to be considered by this Court is whether u/s 482 Cr.P.C, High Court is empowered to quash an FIR?

4. We have already given reference to the judgments of this Court, which are available on the subject. Learned Counsel for the parties have drawn our attention to various judgments of the Supreme Court.

5. R.P. Kapur v. State of Punjab⁵ is a three-Judge Bench judgment of the Supreme Court. This may be necessary to point out that in this case, the Supreme Court was dealing with an FIR. Some relevant facts, which were material in the Criminal Appeal before the Supreme Court, need to be mentioned.

6. One M.L. Sethi lodged a First Information Report against one Mr.R.P.Kapur and alleged that he and his mother-in-law Mrs.Kaushalya Devi had committed offences under Sections 420 read with 109 IPC, 114 and 120B IPC. Mr.Kapur was appellant before the Supreme Court. When the appellant, Mr.Kapur, found that for several months no further action was taken on the First Information Report lodged against him, he found himself, almost like under a hanging sword and therefore, filed a criminal complaint against Mr.Sethi under Sections 204, 211 and 385 IPC. Mr.Sethi moved an application praying that proceedings should be stayed as the police had not made any report on the First Information Report lodged by him. The Magistrate ordered that the appellant's complaint should stand adjourned. The appellant thereafter moved the High Court u/s 561-A of the Code of Criminal Procedure (old provision for 482 Cr.P.C).

7. In para 6 of the judgment, the Supreme Court while dealing with subject thought that it necessary to consider the nature and scope of the inherent power of the High Court under S.561-A of the Code and in the words of the Supreme

Court,

"The said Section saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. There is no doubt that this inherent power cannot be exercised in regard to matters specifically covered by the other provisions of the Code."

8. It proceeded further as under:

"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 proceeding 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 cases 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."

9. So, three categories were laid down by the Supreme Court in this judgment, in

which the Court can and should exercise the powers u/s 561-A Cr.P.C, which is now 482 Cr.P.C.

10. One of the categories of cases in which the Supreme Court held that High Court can and should interfere is where the First Information Report or the complaint, does not disclose any offence and the allegations levelled in First Information Report do not constitute an offence even if the allegations are taken at their face value and accepted in their entirety.

11. Another Bench of the Supreme Court, while dealing with a complaint filed by a Food Inspector, in *M/s Pepsi Foods Limited and another v. Special Judicial Magistrate and others*⁶, in para 29 of the judgment, held that:

"No doubt the Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under S.482 of the Code or Art.227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial."

12. *State of Tamilnadu v.Thirukkural Perumal*⁷ was the case, in which the First Information Report had been filed and investigation was in progress, then an application came to be filed u/s 482 Cr.P.C in the High Court and the High Court allowed the application and quashed the First Information Report. The Supreme Court found that the learned Single Judge of the High Court while quashing proceedings had placed reliance on some evidence collected by the Investigating Agency during the investigation and the Supreme Court was of the view that the approach of the Judge in relying upon the evidence, which was yet to be produced before the trial Court was not proper. Then it held that:

"The power of quashing an FIR and criminal proceeding should be exercised sparingly by the Courts. Indeed, the High Court has the extraordinary or inherent power to reach out injustice and quash the first information report and criminal proceedings, keeping in view the guidelines laid down by this Court in various judgments [reference in this connection may be made with advantage to *State of Haryana and others Vs. Ch. Bhajan Lal and others*, , but the same has to be done with circumspection. The normal process of the criminal trial cannot be cut short in a rather casual manner."

13. This judgment clearly and emphatically lays that the Court is not powerless in quashing of an FIR u/s 482 Cr.P.C. Availability of power is one thing and its exercise sparingly is another thing. This judgment referred to *State of Haryana v.Bhajan Lal* ⁸ and emphasized that whenever High Courts exercise this power, they should do so with circumspection. Having restrictions on exercise of power by the judgments of the Supreme Court would not mean that the High Court has no power u/s 482 Cr.P.C to quash an FIR.

14. If for instance, an FIR is filed, which does not disclose any offence, but on a

mistaken notion by the Investigating Officer, he thinks that an offence is made out, would a person be helpless? And if he approaches the High Court, would the High Court be helpless?

15. In another judgment reported in *Satvinder Kaur v.State (Govt.of NCT of Delh)*⁹ in para 16 of the judgment, it is stated that:

"Lastly it is required to be reiterated that while exercising the jurisdiction u/s 482 of the Criminal Procedure Code of quashing an investigation, the Court should bear in mind what has been observed in *State of Kerala and Others Vs. O.C. Kuttan and Others*, ."

16. It quoted the following observations from the judgment in *O.C.Kuttan*'s case.

"Having said so, the Court gave a note of caution to the effect that the power of quashing the criminal proceedings should be exercised very sparingly 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. It is too well settled that the first information report is only an initiation to move the machinery and to investigate into a cognizable offence and, therefore, while exercising the power and deciding whether the investigation itself should be quashed, utmost care should be taken by the Court and at that stage, it is not possible for the Court to sift the materials or to weigh the materials and then come to the conclusion one way or the other."

17. In *Mahavir Prashad Gupta v.State of National Capital Territory of Delhi*¹⁰ in paras 5 and 10 of the judgment the Supreme Court stated the law and again relied on *Bhajan Lal*'s case (8 supra) and came to the conclusion that the jurisdiction u/s 482 Cr.P.C should be exercised sparingly and with circumspection.

18. In *Rishi Anand and another v. Government of NCT of Delhi and others*¹¹ the Supreme Court relied on its earlier judgment reported in *S.W. Palanitkar and others Vs. State of Bihar and another*, , and quoted the following passage from the said judgment.

"While exercising power u/s 482 Cr.P.C the High Court has to look at the object and purpose for which such power is conferred on it under the said provision. Exercise of inherent power is available to the High Court to give effect to any order under Cr.P.C, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. This being the position, exercise of power u/s 482 Cr.P.C should be consistent with the scope and ambit of the same in the light of the decisions aforementioned. In appropriate cases, to prevent judicial process from being an instrument of oppression or harassment in the hands of frustrated or vindictive litigants, exercise of inherent power is not only desirable but necessary also, so that the judicial forum of Court may not be allowed to be

utilized for any oblique motive. When a person approaches the High Court u/s 482 Cr.P.C to quash the very issue of process, the High Court on the facts and circumstances of a case has to exercise the powers with circumspection as stated above to really serve the purpose and object for which they are conferred."

19. In *Ajay Mitra v. State of M.P.*¹², the Supreme Court again emphatically stated that where a complaint or FIR, prima facie, do not disclose commission of any cognizable offence against the accused, the same should be quashed.

20. In para 19 of the Judgment, it is held that:

"The High Court has held that the petitions filed by the appellants for quashing the complaint and the FIRs registered against them are premature. The question, which arises is that where the complaint or the FIR does not disclose commission of a cognizable offence, whether the same can be quashed at the initial stage. This question was examined by this Court in *State of West Bengal and Others Vs. Swapan Kumar Guha and Others*, and it was held that the first information report which does not allege or disclose that the essential requirements of the penal provision are prima facie satisfied, cannot form the foundation or constitute the starting point of a lawful investigation. It is surely not within the province of the police to investigate into a report (FIR) which does not disclose the commission of a cognizable offence and the Code does not impose upon them the duty of inquiry in such cases. It was further held that an investigation can be quashed if no cognizable offence is disclosed by the FIR. The same question has been considered in *State of Haryana and others Vs. Ch. Bhajan Lal and others*,¹³ and after considering all the earlier decisions, the category of cases, in which the Court can exercise its extraordinary power under Article 226 of the Constitution or the inherent power u/s 482 Cr.P.C either to prevent abuse of the process of any Court or to secure the ends of justice, were summarized in AIR para 108 of the Report and sub-paras (1) to (3) thereof are being reproduced hereinbelow: (SCC P.378, para 102)

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 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."

21. The Supreme Court in *B.S.Joshi v.State of Haryana*¹³ also placed reliance on Bhajan Lal's case and also on *Pepsi Limited* case (6 supra) which in turn had laid emphasis on Bhajan Lal's case.

22. It considered the impact of *Madhu Limaye Vs. The State of Maharashtra*, , and held at para 8 of the judgment as under:

"It is, thus, clear that *Madhu Limaye* case does not lay down any general proposition limiting power of quashing the criminal proceedings or FIR or complaint as vested in Section 482 of the Code or extraordinary power under Article 226 of the Constitution of India. We are, therefore, of the view that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 would not be a bar to the exercise of power of quashing. It is, however, a different manner depending upon the facts and circumstances of each case whether to exercise or not such a power."

23. In this judgment, the Supreme Court was emphatic in the view that if for the reasons of securing the ends of justice, quashing of FIR becomes necessary, then there would not be any impediment for the Court to adopt such a course.

24. In *M. Narayandas v. State of Karnataka*¹⁴ reliance was again placed on *Bhajan Lal*'s case to which we will give a reference in detail during the course of this judgment. However the Supreme Court in this judgment quoted para 108 of the judgment in *Bhajan Lal*'s case.

25. We have also been shown to *State of M.P v. Awadh Kishore Gupta and others*¹⁵. There also the same principles, which have been mentioned hereinabove, have been laid, but we would like to quote para 8 of the judgment.

"Exercise of power u/s 482 of the Code in a case of this nature is an exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine, which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. 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 the course of administration of justice on the principle *quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa 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 such 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."

26. Before going to Bhajan Lal's case, which has been relied upon in subsequent judgments by the Supreme Court consistently, it will be profitable to have a look at Section 482 Cr.P.C. This is in the nature of protecting the inherent power of the High Court and as a matter of fact, this does not confer any power on the High Court. It merely states that nothing in the Criminal Procedure Code shall be deemed to limit or affect the inherent powers of the High Court. These inherent powers to the High Court are available to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

27. Therefore, u/s 482 Cr.P.C, the High Court's inherent power to pass orders to secure the ends of justice is not limited by any provision in the Criminal Procedure Code. Therefore, even on those principles, if an FIR does not disclose any offence and a person complains to the High Court, the High Court cannot shut its door to him and tell him to face the investigation and also face the trial. In other terms, this has been the consistent view of the Supreme Court as well, which we have demonstrated hereinabove by referring to the judgments. We can multiply the judgments, but that will not be necessary in view of the fact that Supreme Court has in no uncertain terms stated that power u/s 482 Cr.P.C to quash an FIR or a complaint is available to the High Court, provided the conditions laid down in those judgments are satisfied.

28. In the light of the discussion hereinabove, a look at Bhajan Lal's judgment (8 supra) would be profitable. This case is often quoted by the High Courts as well as by the Supreme Court.

29. In para 108 of this judgment, the Supreme Court laid down the parameters regarding applications u/s 482 Cr.P.C and Article 226 of the Constitution of India in the context of quashing of proceedings and it is stated that:

"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 u/s 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."

30. Out of the seven conditions mentioned by the Supreme Court, six conditions pertain to FIRs and we have no option but to reproduce all these six conditions.

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 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 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.

31. In the light of these judgments of the Supreme Court, we have no doubt in our mind that u/s 482 Cr.P.C, the High Court has the power to quash an FIR or even a complaint subject to limitations and conditions laid down by Supreme Court in various judgments. It need not wait for completion of investigation and taking cognizance of by the Magistrate. There is no dispute that this power has to be exercised by the High Courts very sparingly with circumspection and also in rarest of rare cases. Though there are limitations on exercise of power by the High Court, yet that would not in any way suggest that High Court lacks the power.

32. In this view of the matter, we hold that the law laid down by this Court in

Hasan Ali's case (1 supra), in Sarat Babu's case (2 supra) and Pearl Beverages case (3 supra) is not good law. Whereas the law laid down in Gudavalli Murali Krishna's case (4 supra) is the correct position of law.

33. The reference is accordingly answered.