
(2018) 07 MP CK 0088

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No.24839 Of 2018

Indrajeet Singhaniya & Anr

APPELLANT

Vs

State Of Madhya Pradesh & Anr

RESPONDENT

Date of Decision : 11-07-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 202, 482
Indian Penal Code, 1860 — Section 34, 120B, 294, 323, 467, 506
Hindu Marriage Act, 1955 — Section 9, 13

Citation : (2018) 07 MP CK 0088

Hon'ble Judges : G.S. Ahluwalia, J

Bench : Single Bench

Advocate : Narottam Sharma, Pramod Pachauri

Final Decision : Dismissed

Judgement

This application under Section 482 of Cr.P.C. has been filed for quashing the FIR in Crime No.296/2018 registered by Police Station Civil Lines,

Morena for offence under Sections 323, 294, 506, 34 of IPC.

The applicant No.1 is the husband of the complainant whereas the applicant No.2 is the brother-in-law of the complainant.

According to the prosecution case, the complainant/respondent No.2 lodged a report on 21.5.2018 at about 22:00 to the effect that she is married

to the applicant No.1, who used to beat her after consuming liquor, as a result of which she went to her parental house. On 19.5.2018, she went

to her matrimonial home along with the applicant No.1 and on 20.5.2018 the applicants abused her. When the complainant reported this incident

to her father then her parents came to her matrimonial house. Around 5:00 PM, the applicants started abusing the complainant and when the

complainant objected to it then both the applicants by catching hold from her scalp hair started assaulting her, as a result of which she sustained

various injuries. It is submitted by the counsel for the applicants that the complainant has lodged the report with malafide intentions. The applicant

No.1 has filed a petition under Section 9 of Hindu Marriage Act for Restitution of Conjugal Rights and only after receiving the notices of the said

proceedings, the false FIR has been lodged. It is further submitted that only husband and brother-in-law have been falsely implicated in the

matter because the applicant Non.1 is working in District Balrampur (Chhatisgarh) whereas the applicant No.2 is working and posted at

Bhayandar, District Thane (Maharashtra). It is further submitted that the applicants have been falsely implicated.

Considered the submissions made by the counsel for the applicants.

Before considering the submissions made by the counsel for the parties, it would be necessary to consider the scope of powers under Section 482

of Cr.P.C.

The Supreme Court in the case of Padal Venkata Rama Reddy Vs. Koveuri Satyanarayana Reddy reported in (2011) 12 SCC 437 has held as

under:

“8. Section 482 of the Code deals with inherent power of the High Court. It is under Chapter 37 of the Code titled “Miscellaneous” which

reads as under:

“482. Saving of inherent powers of High Court. “Nothing in this Code shall be deemed to limit or affect the inherent powers 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.”

This section* was added by the Code of Criminal Procedure (Amendment) Act of 1923 as the High Courts were unable to render complete

justice even if in a given case the illegality was palpable and apparent. This section envisages three circumstances in which the inherent

jurisdiction may be exercised, namely:

1. to give effect to any order under CrPC,
2. to prevent abuse of the process of any court,

3. to secure the ends of justice.

9. In *R.P. Kapur v. State of Punjab* AIR 1960 SC 866 this Court laid down the following principles:

(i) Where institution/continuance of criminal proceedings against an accused 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;

(ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding e.g. want of sanction;

(iii) where the allegations in the first information report or the complaint taken at their face value and accepted in their entirety, do not constitute

the offence alleged; and

(iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly

fails to prove the charge.

10. In *State of Karnataka v. L. Muniswamy* (1977) 2 SCC 699 this Court has held as under: (SCC p. 703, para 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."

11. Though the High Court has inherent power and its scope is very wide, it is a

rule of practice that it will only be exercised in exceptional cases.

Section 482 is a sort of reminder to the High Courts that they are not merely courts of law, but also courts of justice and possess inherent powers

to remove injustice. The inherent power of the High Court is an inalienable attribute of the position it holds with respect to the courts subordinate

to it. These powers are partly administrative and partly judicial. They are necessarily judicial when they are exercisable with respect to a judicial

order and for securing the ends of justice. The jurisdiction under Section 482 is discretionary, therefore the High Court may refuse to exercise the

discretion if a party has not approached it with clean hands.

12. In a proceeding under Section 482, the High Court will not enter into any finding of facts, particularly, when the matter has been concluded by

concurrent finding of facts of the two courts below. Inherent powers under Section 482 include powers to quash FIR, investigation or any

criminal proceedings pending before the High Court or any court subordinate to it and are of wide magnitude and ramification. Such powers can

be exercised to secure ends of justice, prevent abuse of the process of any court and to make such orders as may be necessary to give effect to

any order under this Code, depending upon the facts of a given case. The Court can always take note of any miscarriage of justice and prevent

the same by exercising its powers under Section 482 of the Code. These powers are neither limited nor curtailed by any other provisions of the

Code. However, such inherent powers are to be exercised sparingly, carefully and with caution.

13. It is well settled that the inherent powers under Section 482 can be exercised only when no other remedy is available to the litigant and not in

a situation where a specific remedy is provided by the statute. It cannot be used if it is inconsistent with specific provisions provided under the

Code (vide *Kavita v. State* 2000 Cri LJ 315 and *B.S. Joshi v. State of Haryana* (2003) 4 SCC 675). If an effective alternative remedy is

available, the High Court will not exercise its powers under this section, specially when the applicant may not have availed of that remedy.

14. The inherent power is to be exercised *ex debito justitiae*, to do real and substantial justice, for administration of which alone courts exist.

Wherever any attempt is made to abuse that authority so as to produce injustice,

the Court has power to prevent the abuse. It is, however, not necessary that at this stage there should be a meticulous analysis of the case before the trial to find out whether the case ends in conviction or acquittal. (Vide *Dhanalakshmi v. R. Prasanna Kumar* 1990 Supp SCC 686; *Ganesh Narayan Hegde v. S. Bangarappa* (1995) 4 SCC 41 and *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque* (2005) 1 SCC 122.)

15. It is neither feasible nor practicable to lay down exhaustively as to on what ground the jurisdiction of the High Court under Section 482 of the

Code should be exercised. But some attempts have been made in that behalf in some of the decisions of this Court vide *State of Haryana v.*

Bhajan Lal 1992 Supp (1) SCC 335, *Janata Dal v. H.S. Chowdhary* (1992) 4 SCC 305, *Rupan Deol Bajaj v. Kanwar Pal Singh Gill* (1995) 6 SCC

194 and *Indian Oil Corpn. v. NEPC India Ltd.* (2006) 6 SCC 736.

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18. In *State of Orissa v. Saroj Kumar Sahoo* (2005) 13 SCC 540 it has been held that probabilities of the prosecution version cannot be analysed

at this stage. Likewise, the allegations of mala fides of the informant are of secondary importance. The relevant passage reads thus: (SCC p.

550, para 11) "It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order

to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It

would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with."

19. In *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre* (1988) 1 SCC 692 this Court held as under: (SCC p. 695, para 7)

"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??

20. This Court, while reconsidering the judgment in *Madhavrao Jiwajirao Scindia* (1988) 1 SCC 692, has consistently observed that where matters are also of civil nature i.e. matrimonial, family disputes, etc., the Court may consider â??special factsâ? and â??special featuresâ? and quash the criminal proceedings to encourage genuine settlement of disputes between the parties.

21. The said judgment in *Madhavrao* case (1988) 1 SCC 692 was reconsidered and explained by this Court in *State of Bihar v. P.P. Sharma*

1992 Supp (1) SCC 222 which reads as under: (SCC p. 271, para 70)

â??70. *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre* (1988) 1 SCC 692 also does not help the respondents. In that case the

allegations constituted civil wrong as the trustees created tenancy of trust property to favour the third party. A private complaint was laid for the

offence under Section 467 read with Section 34 and Section 120-B IPC which the High Court refused to quash under Section 482. This Court

allowed the appeal and quashed the proceedings on the ground that even on its own contentions in the complaint, it would be a case of breach of

trust or a civil wrong but no ingredients of criminal offence were made out. On those facts and also due to the relation of the settler, the mother,

the appellant and his wife, as the son and daughter-in-law, this Court interfered and allowed the appeal. â? Therefore, the ratio therein is of no

assistance to the facts in this case. It cannot be considered that this Court laid down as a proposition of law that in every case the court would

examine at the preliminary stage whether there would be ultimate chances of conviction on the basis of allegation and exercise of the power

under Section 482 or Article 226 to quash the proceedings or the chargesheet.â??

22. Thus, the judgment in *Madhavrao Jiwajirao Scindia* (1988) 1 SCC 692 does not lay down a law of universal application. Even as per the law

laid down therein, the Court cannot examine the facts/evidence, etc. in every case to find out as to whether there is sufficient material on the

basis of which the case would end in conviction. The ratio of *Madhavrao Jiwajirao Scindia* (1988) 1 SCC 692 is applicable in cases where the

Court finds that the dispute involved therein is predominantly civil in nature and that the parties should be given a chance to reach a compromise

e.g. matrimonial, property and family disputes, etc. etc. The superior courts have been given inherent powers to prevent the abuse of the process

of court; where the Court finds that the ends of justice may be met by quashing the proceedings, it may quash the proceedings, as the end of

achieving justice is higher than the end of merely following the law. It is not necessary for the Court to hold a full-fledged inquiry or to appreciate

the evidence, collected by the investigating agency to find out whether the case would end in conviction or acquittal??.

The Supreme Court in the case of State of Orissa v. Ujjal KumarBurdhan reported in (2012) 4 SCC 547 has held as under :

â??8. It is true that the inherent powers vested in the High Court under Section 482 of the Code are very wide. Nevertheless, inherent powers

do not confer arbitrary jurisdiction on the High Court to act according to whims or caprice. This extraordinary power has to be exercised

sparingly with circumspection and as far as possible, for extraordinary cases, where allegations in the complaint or the first information report,

taken on its face value and accepted in their entirety do not constitute the offence alleged. It needs little emphasis that unless a case of gross

abuse of power is made out against those in charge of investigation, the High Court should be loath to interfere at the early/premature stage of

investigation.

9. In State of W.B. v. Swapan Kumar Guha, emphasising that the Court will not normally interfere with an investigation and will permit the

inquiry into the alleged offence, to be completed, this Court highlighted the necessity of a proper investigation observing thus: (SCC pp. 597-98,

paras 65-66)

â??65. â?| An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is

disclosed. When an offence is disclosed, a proper investigation in the interests of justice becomes necessary to collect materials for establishing

the offence, and for bringing the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender

may succeed in escaping from the consequences and the offender may go

unpunished to the detriment of the cause of justice and the society at large. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. If the court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the court normally does not interfere with the investigation of a case where an offence has been disclosed.

â?|

66. Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. â?| If on a

consideration of the relevant materials, the court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation

into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence.â??

(emphasis supplied)

10. On a similar issue under consideration, in Jeffrey J. Diermeier v. State of W.B.4, while explaining the scope and ambit of the inherent powers of the High Court under Section 482 of the Code, one of us (D.K. Jain, J.) speaking for the Bench, has observed as follows: (SCC p. 251, para

20)

â??20. â?| The section itself 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. Nevertheless, it is neither

possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the court. Undoubtedly, the

power possessed by the High Court under the said provision is very wide but it is not unlimited. It has to be exercised sparingly, carefully and

cautiously, *ex debito justitiae* to do real and substantial justice for which alone the court exists. It needs little emphasis that the inherent jurisdiction

does not confer an arbitrary power on the High Court to act according to whim or caprice. The power exists to prevent abuse of authority and

not to produce injustice.â??

The Supreme Court in the case of Vinod Raghuvanshi Vs. Ajay Arora, reported in (2013) 10 SCC 581 has held as under :

30. It is a settled legal proposition that while considering the case for quashing of the criminal proceedings the court should not kill a stillborn 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.

The Supreme Court in the case of Smt. Nagawwa vs. Veeranna Shivalingappa Konjalgi & Ors. reported in AIR 1976 SC 1947 has held as under:-

6. The High Court appears to have gone into the whole history of the case, examined the merits of the evidence, the contradictions and what it called the improbabilities and after a detailed discussion not only of the materials produced before the Magistrate but also of the documents which had been filed by the defence and which should not have been looked into at the stage when the matter was pending under Section 202, has held that the order of the Magistrate was illegal and was fit to be quashed.....

7. For these reasons, therefore, we are satisfied that the order of the High Court suffers from a serious legal infirmity and the High Court has exceeded its jurisdiction in interfering in revision by quashing the order of the Magistrate. We, therefore, allow the appeal, set aside the order of the High Court dated December 16, 1975 and restore the order of the Magistrate issuing process against respondents No.1 and 2.

Furthermore, it is well established principle of law that that the Supreme Court in the case of CBI vs. K.M. Sharan reported in (2008) 4 SCC 471 has held as under:-

31. At this stage, the High Court in its jurisdiction under Section 482 CrPC was not called upon to embark upon the inquiry whether the

allegations in the FIR and the charge-sheet were reliable or not and thereupon to render definite finding about truthfulness or veracity of the

allegations. These are matters which can be examined only by the court concerned after the entire material is produced before it on a thorough

investigation and evidence is led.

32. In the impugned judgment, according to the settled legal position, the High Court ought to have critically examined whether the allegations

made in the first information report and the charge-sheet taken on their face value and accepted in their entirety would prima facie constitute an

offence for making out a case against the accused (the respondent herein).

Thus, it is clear that when the entire allegations are accepted on their face value, and if they do not disclose the commission of offence, only then

this Court in exercise of powers under Section 482 of Cr.P.C. can quash the proceedings. It is well established principle of law that the legitimate

prosecution should not be stifled in the mid way.

The submissions made by the counsel for the applicants are highly disputed question of fact and even if all the allegations which have been made

are accepted to be true and even thereafter if no offence is made out, this Court is of the considered opinion that the correctness of the

allegations made by the complainant/respondent No.2 against the applicants cannot be considered at the stage of exercising powers under

Section 482 of Cr.P.C.

It is contended by the counsel for the applicants that the FIR has been lodged by way of counterblast to the proceedings under Section 9 of

Hindu Marriage Act.

The Supreme Court in the case of Pratibha vs. Rameshwari Devi & Ors. reported in 2007(12) SCC 369 has held as under:

â??16. It is pertinent to note that the complaint was filed only when all efforts to return to the matrimonial home had failed and Respondent 2

husband had filed a divorce petition under Section 13 of the Hindu Marriage Act, 1955. That apart, in our view, filing of a divorce petition in a

civil court cannot be a ground to quash criminal proceedings under Section 482 of the Code as it is well settled that criminal and civil proceedings

are separate and independent and the pendency of a civil proceeding cannot bring to an end a criminal proceeding even if they arise out of the

same set of facts. Such being the position, we are, therefore, of the view that the High Court while exercising its powers under Section 482 of

the Code has gone beyond the allegations made in the FIR and has acted in excess of its jurisdiction and, therefore, the High Court was not

justified in quashing the FIR by going beyond the allegations made in the FIR or by relying on extraneous considerations.â??

It is well established principles of law that the findings given by the Civil Court are not binding on the criminal Court. Thus, if the applicants have

filed an application under Section 9 of Hindu Marriage Act, then the FIR cannot be quashed merely on the ground that it might have been lodged

by way of counterblast.

It is further submitted that the complainant has deliberately implicated the applicants because the applicant No.1 is posted in the State of

Chhatisgarh and the applicant No.2 is posted in the State of Maharashtra so that they are compelled to come to Morena to attend the

proceedings.

The Supreme Court in the case of Renu Kumari Vs. Sanjay Kumar and Others reported in (2008) 12 SCC 346 has held as under:-

9.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 the 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

proceedingsâ??. [See Dhanalakshmi v. R. Prasanna Kumar(1990 Supp SCC 686), State of Bihar v. P.P. Sharma (1992 Supp (1) SCC 222),

Rupan Deol Bajaj v. Kanwar Pal Singh Gill (1995(6) SCC 194) ,State of Kerala v. O.C. Kuttan(1999(2) SCC 651), State of U.P. v. O.P.

Sharma (1996 (7) SCC 705),Rashmi Kumar v. Mahesh Kumar Bhada(1997 (2) SCC 397), Satvinder Kaur v. State (Govt. of NCT of Delhi)

(1999 (8) SCC 728) andRajesh Bajaj v. State NCT of Delhi(1999 (3) SCC 259)].

Thus, it is clear that where the FIR discloses the commission of cognizable offence, the malafides of the informant becomes secondary.

Furthermore, whether the FIR has been lodged mala fide or it is the correct narration of facts, is a highly disputed question of fact which can be

decided only after recording of the witnesses in the trial.

So far as the contention of the counsel for the applicants that the applicants have been deliberately implicated is concerned, again it is a highly disputed question of fact which cannot be adjudicated at this stage.

Thus it is clear, that this Court in exercise of powers under Section 482 of Cr.P.C. cannot adjudicate upon the correctness of the allegations. The

entire allegations are to be treated as correct and only thereafter if the Court comes to a conclusion that no offence is made out, the proceedings

can be quashed. In the present case, if the allegations are taken on their face value, then it is clear that the FIR prima facie discloses the

commission of cognizable offence and the submissions made by the counsel for the applicants are their defence, which has to be proved in the

Trial.

Under these circumstances, the FIR in Crime No.296/2018 registered at Police Station Civil Lines, Morena for offence under Sections 323, 294,

506, 34 of IPC cannot be quashed.

The application fails and is hereby dismissed.