

(2013) 06 SHI CK 0163
In the High Court Of Himachal Pradesh
Case No : Criminal MMO No. 44 of 2013

Jiwan Lal

APPELLANT

Vs

State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 13-06-2013

Acts Referred:

Citation : (2013) 3 ShimLC 1254

Hon'ble Judges : Dharam Chand Chaudhary, J

Bench : Single Bench

Advocate : H.S. Rana and Mr. Shanti Swarup, for the Appellant; D.S. Nainta, Additional Advocate General with Mr. Virender Verma, Additional Advocate General for the Respondent No. 1 and Party-in-Person, for the Respondent

Judgement

Dharam Chand Chaudhary, J.—In this petition, an interesting legal question that the complaint disclosed no cognizable offence and as such, no investigation could have been conducted in the matter by the police without the order of the Magistrate, having jurisdiction to try the case has been brought to this Court with a prayer to set aside the FIR and also the order dated 30.6.2012 passed by learned Judicial Magistrate 1st Class Court No. (V), Shimla, summoning thereby the accused-petitioner in the case after being satisfied. This Court need not go into the past history and dispute between the accused-petitioner and the 2nd respondent in respect of a piece of land they purchased jointly in the year 2000 at Mauza Rehal Baichari, Tehsil and District Shimla and the dispute having arisen between them with regard to the house constructed thereon, being not relevant to decide the present controversy.

2. Learned Counsel representing the accused-petitioner during the course of arguments canvassed that complaint dated 29.08.2011 lodged by the 2nd respondent against the petitioner in Police Station, Sadar, Shimla, on the basis whereof FIR Annexure P-5 under Sections 341 and 323 IPC has been registered, does not disclose the commission of any cognizable offence and as such, the investigating agency should have not conducted any investigation without

seeking order from the Magistrate concerned having jurisdiction over the matter. It has also been pointed out that otherwise also, no evidence is available on record to establish even prima-facie the commission of offence under Sections 341 and 323 IPC by the petitioner.

3. On the other hand, the 2nd respondent, who is present in person, has forcefully contended that the complaint on the basis whereof FIR has been registered itself demonstrates the commission of a cognizable offence punishable u/s 341 of the Indian Penal which strengthened further from the evidence collected by the investigating agency during the course of investigation. The 2nd respondent, therefore, has sought the dismissal of this petition.

4. Learned Additional Advocate General has also contended that the present is not a case where this Court in the exercise of inherent power vested in it u/s 482 Cr.P.C. should quash the FIR as well as the order passed by the learned Magistrate, whereby the petitioner has been booked for the commission of an offence punishable under Sections 341 and 323 IPC.

5. Having gone through the record and also analyzing the rival submissions, before coming to the merits of the case, it is desirable to take down the legal principles applicable to a case of this nature settled by the Apex Court in State of Haryana and others Vs. Ch. Bhajan Lal and others, The relevant portion of this judgment reads as follow:

108 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 given an exhaustive list of myriad kind 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 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.

6. The Apex Court while placing reliance on the judgment in Bhajan Lal's case cited supra and examining the scope of Section 482 Cr.P.C. has held, in *The State of Andhra Pradesh Vs. Vangaveeti Nagaiah*, that:

...When 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 itself be the basis for quashing the proceeding.

7. What, therefore, emerges from the law so laid down by the Apex Court is that the inherent powers vested in the High Court u/s 482 Cr.P.C., should not be exercised to defeat the legitimate prosecution and rather should refrain from exercising such powers in a case where on an information lodged at the police Station an offence is registered and the evidence collected during the course of investigation. The allegations of mala fides, if any, against the informant would be of secondary importance. Such powers, however, can be exercised in those cases where the allegations in the complaint, even if taken at its face value and accepted as true in its entirety, does not disclose even prima-facie the commission of an offence as it is that complaint which can be said to be the abuse of process of law and deserves to be quashed. To this effect is even the ratio of the judgment of the Apex Court in *G. Sagar Suri and Another Vs. State of U.P. and Others*, and of this Court in *Khan Mohammad Vs. Talib Hussain*, cited by learned Counsel representing the petitioner. The Apex Court in *R. Kalyani Vs. Janak C. Mehta and Others*, has also held that High Court should not exercise its inherent jurisdiction to quash the criminal proceedings and in particular, First Information Report containing the allegations during the course of investigation.

8. Now, coming to the factual matrix, though at this stage, the appreciation of

the evidence collected by the investigating agency exhaustively and elaborately is not required as it may cause prejudice to the case of either party. However, suffice would it to say that the complaint lodged against the petitioner prima-facie discloses the commission of an offence punishable u/s 341 IPC, which is a cognizable offence. The offence u/s 323 allegedly committed by the petitioner, no doubt, is non-cognizable, however, to be tagged with the substantive offence u/s 341 IPC, the accused-petitioner allegedly committed. The commission of offence prima-facie can also be inferred from own supplementary statement of the complainant and also the witnesses associated by the Investigating Officer. Therefore, it is not a case where the order of the Magistrate having jurisdiction over the matter was required for investigation of the complaint lodged by the 2nd respondent, for the reason that complaint itself discloses the commission of a cognizable offence. Above all, while passing the impugned order learned Magistrate had perused the final report and the documents annexed thereto and it is after being satisfied about the existence of sufficient grounds to proceed further against the petitioner ordered the issuance of process against him. Therefore, this petition does not disclose any grounds for quashing of FIR No. 183/2011 under Sections 341 and 323 IPC registered in Police Station, Sadar, Shimla against the petitioner and also the impugned order dated 30.06.2012, passed by learned Judicial Magistrate 1st Class, Court No. V, Shimla. This petition, therefore, fails and the same is accordingly dismissed. The parties through their Counsel are directed to appear in the trial Court on 3rd July, 2013. Petition stands disposed of.