
(2004) 08 MP CK 0050

In the Madhya Pradesh High Court

Case No : Miscellaneous Cri. Case No. 3998 of 2004

Ku. Reena and Another

APPELLANT

Vs

Vallabh Das

RESPONDENT

Date of Decision : 27-08-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 294, 323, 506

Citation : (2004) ILR (MP) 1100 : (2004) 4 MPHT 375 : (2005) 1 MPJR 71

Hon'ble Judges : S.L. Jain, J

Bench : Single Bench

Advocate : Imtiyaz Hussain, for the Appellant; Kamal Singh Rajpoot, for the Respondent

Final Decision : Allowed

Judgement

S.L. Jain, J.

Invoking extra-ordinary jurisdiction of this Hon"ble Court u/s 482 of the Code of Criminal Procedure, applicants/accused have filed this petition for quashing the complaint Case No. 100/04 pending in the Court of JMFC, Harda in which cognizance was taken vide order dated 25-3-04 for the offences punishable under Sections 323, 294 and 506 of the IPC.

Facts leading to the registration of the case pithily narrated as under:-

On the report of applicant No. 1 Ku. Reena, Ganesh s/o complainant was prosecuted for offences punishable under Sections 451 and 354, IPC with regard to the incident alleged to have occurred on 24-2-2000. Thereafter respondent Vallabh Das filed a private complaint for offence punishable u/s 506, IPC against the applicants as well as Smt. Chandra Kanta, mother of applicant No. 1 and one Satendra Thakur in the Court of JMFC, Harda on 28-1-04, which was registered as Criminal Case No. 354/03. In this Criminal Case No. 354/03, on 10-7-03; complainant filed an application narrating an incident occurred on 15-5-03.

Thereafter complainant filed a complaint on 4-3-04 against the applicants regarding the incident which occurred on 15-5-03 which was also described in his application filed in Criminal Case No. 354/03. This complaint filed on 4-3-2004 was registered as Criminal Case No. 100/04.

It is alleged by the applicants that complaint in Criminal Case No. 354/03 was filed with an intention to pressurize the applicants to compound the offence of Crime No. 15/2000 of Police Station, Timarni. The present complaint has also been filed with the same ulterior motive. It is alleged that the allegations made in the complaint bearing Criminal Case No. 100/04 with regard to the incident occurred on 15-5-03 are all together contradictory to the allegations made in the application dated 10-7-03. In support of the complaint in question, the complainant examined himself, one Sandeep and his son Ganesh in the preliminary enquiry. The learned JMFC on the basis of statement recorded under Sections 200 and 202 of the Cr.PC registered the case under Sections 323 294 and 506, IPC against the applicants vide order dated 25-3-04. It is this order, which is impugned in this petition.

I have heard Shri Imtiyaz Hussain, learned Counsel for the applicant and Shri Kamal Singh Rajpoot, learned Counsel for the complainant/respondent.

Learned Counsel for applicant submits that complaint has been filed with an oblique motive to rope in the applicants so as to wreak vengeance from them. Even if all the allegations made in the complaint and the initial version of the complainant made in the application filed on 10-7-03 in Complaint Case No. 354/03 are taken in its entirety without any addition or subtraction, they do not make out an offence, therefore, this Court in exercise of its inherent power quash the impugned order taking cognizance or else it would amount to a gross abuse of the process of the law. The allegations made in the complaint in view of the application are patently after thought. The reference of application dated 10-7-03 and the report lodged regarding the incident dated 15-5-03 was given in the complaint and the statement recorded under Sections 200 and 202, Cr.PC but without insisting for filing of those documents, learned Magistrate exercised his jurisdiction in a capricious or arbitrary manner therefore, the proceedings should be quashed.

As against this, learned Counsel for respondent submits that inherent power of the High Court should be sparingly and cautiously used. Where the Magistrate after satisfying himself found that there was a prima facie case to summon the accused persons, took cognizance against them and issued process, it can not be said that the Magistrate acted illegally or without jurisdiction and the High Court can not, interfere with the order taking cognizance in its inherent powers. The High Court can not launch a detailed examination of case on merits and set aside the order of Magistrate directing issue of process.

Learned Counsel for respondent relying on State of Haryana and others Vs. Ch. Bhajan Lal and others, and Manohar M. Galani Vs. Ashok N. Advani and

Another, , submitted that when the allegations made in the complaint disclosed the commission of the offence the trial in the matter should not be throttled.

Having perused the record and looking to the facts stated in the application dated 10-7-03, filed in Criminal Case No. 3564/03,¹ find that the facts do not disclose any offence and exaggerated version has been made in the complaint just to wreak vengeance from applicants and the proceedings in the complaint case can not be allowed to continue as the same will amount to the abuse of the process of the Court.

The complainant in his application, filed in Criminal Case No. 354/03, has stated thus :-

vxkkeh is"kh dh rkjh[k fnukad 15&5&2003 dks o`)&Qfj;knh dks nh xbZ FkhA o`) Qfj;knh fn- 15&5&2003 dks ekuuh; U;k;ky; ds le{k esa] gkftj gksus ds fy;s Lo;a ds fuokl LFkku ls] ?f"k mit eaMh] fVejuh ds lkeus okys jkLrs ls] cl ds lehi tkus ds fy, iSny tk jgk Fkka

?2?;g fd] brus esa ihNs ls fdLh eksVj lkbfdy okys us o`) ifj;knh dks VDdj ekj nhA VDdj yxrs gh o`) Qfj;knh tehu ij fxj x;k vkSj csgks"kh vk xbZ] mlh csgks"kh gkyr es dqN O;fDr;ksa us] o`) Qfj;knh dks mlds fuokl LFkku ij igqpk fn;kA

?3? ;g fd csgk"kh ds ckn o`) Qfj;knh dks ;g fofnr gqv fd "kklu dh vksj ls fn- 15] 16] 17 ,oa 18&5&2003 ls 4 jkst dk vodk" ?kksf"kr dj fn;k x;k gSA fn- 15&5&2003 dks eksVj lkbfdy dh VDdj dh lwpuk o`) Qfj;knh ds }kjk fn- 19&5&2003 dks iqfyl Fkkuk] fVejuh dh vksj] Mkd&?kj] Vhejuh ds ek;/e ls Hkst nh xbZ gSA

fdUrq

?4?;g fd o`) Qfj;knh dh o`)koLFkk ds "kjhj ij dqN vUn:uh pksV yx tkus ds otg ls fn- 19&5&2003 dks bl izdj.k dh vxkkeh is"kh dh rkjh[k ysus ds fy, o`) Qfj;knh ekuuh; U;k;ky; ds le{k esa gkftj gksus esa vleFkZ jgk gSA ?i;k {kek djsaxsA o`) Qfj;knh dks ;g fofnr gks x;k gS fd bl izdj.k dh vxkkeh is"kh dh rkjh[k ekuuh; U;k;ky; dh vksj ls fnukad 10&7&2003 dk nh xbZ gSA

?5? ;g fd fn- 22&5&2003 dks vfHk;qDr ?- 2 o`) Qfj;knh ds fuokl LFkku ij vk;k vkSj o`) Qfj;knh ls bl izdkj ls dgus yx fd] vjs cq<? rge cp x;s ge rks le>s fd ml fnu eksVj lkbfdy dh VDdj yxus ls ijykd fl/kkj x;s gekjk vfHk Hkh dguk ekuks fd gekjs fo:) esa dksVZ esa izLrr fd;k x;k izdj.k dks [kkftj dj yks] ugha rks] fdLh Hkh fnu rqu nksuksa cki] csvs dks ge tku ls ejok nsaxs] mlds ckn iqfyl Fkkuk] gekjk dqN Hkh ugha fcxkM+ ldrh gS vkSj u gh vnkyr gekjk dqN fcxkM+ ldrh] D;ksafd geus dkuwu dks iSl ls ck?/k fn;k gSA

While the complainant in Para 4 of the complaint has alleged as under:-

;g fd] ifjoknh fnuakd 15&5&03 dks gjnk is"kh ij vk jgk Fkka ?f"k mit eaMh xsV ds lkeus lqcg 9-30 cts ds djhc vkjksih ?ekad 1 us ifjoknh dks mldh gksjks&iqd ls VDdj ekj nh] ifjoknh VDdj yxus ls fxj x;kA ifjoknh dks pksV vkbZA vkl ikl pyus okys yxsksa us ifjoknh dks mBk;kA vkjksih ?- 2 xkfy;ka nsrs gq, cksyk fd rw

gjnk is"kh ij x;k rks rq>s ftank ugha NksMwaxkA ifjoknh nnZ ds dkj.k ijs"kku FkkA ifjoknh pksV ds dkj.k cksyus esa Hkh vleFkZ FkkA ifjoknh dks vkjksih ?- 1 us gjnk is"kh ij ugha vkus fn;kA ifjoknh dks yksx mBkdj ys vk;sA vkjksih ?- 1 us ifjoknh dks /kedh nh fd mlds i= ,oa Qksvks okil ugha fd;s rks ftUnk ugha NksM+saxhA

In this written report, dated 10-7-03, the complainant stated that some unknown motorcycle rider hit him. In this application, the complainant did not state that the applicants gave him any threat or called names. Thus, the fact that prior to filing of the complaint, an application narrating the incident occurred on 15-5-03 was filed before the Magistrate and a report was lodged to the police were stated in the complaint but without calling for the application and the report which would have shown that the allegations made in the complaint are false, Magistrate registered the case.

It is true that the discrepancy in the statements of witnesses examined at the stage of preliminary evidence can not be normally seen but where materials have been suppressed and the Court would not have issued process if materials were disclosed, the Court can certainly quash the proceedings. When there was no whisper regarding the use of obscene words or criminal intimidation by the applicant, in the application filed in Complaint Case No. 354/03 on 10-7-03, the continuous of the criminal case will amount to harassment and injustice. In such a case, the High Court would be justified in avoiding the ordeal of the trial by quashing the complaint in exercise of the inherent powers.

From the material on record, I am satisfied that the complaint has been filed to harass the applicants and the offence has been registered mechanically on the basis of the complaint. The allegations initially made by the complainant do not make out case; therefore, in order to prevent the abuse of the process of the Court or otherwise to secure the ends of justice, I think it apposite to quash the complaint.

In the result, the petition is allowed and the criminal complaint filed by the complainant pending in the Court of JMFC, Harda whereby cognizance for the offences punishable under Sections 294 and 506, IPC has been taken vide order dated 25-3-03 is hereby quashed. Misc. Cr. Case allowed.