

(2019) 07 J&K CK 0012

In the Jammu And Kashmir High Court

Case No : Miscellaneous Criminal Cases (CRMC) No. 310 Of 2012 IA No. 366 Of 2012, CrIM No. 1, 251 Of 2019

Madhubala Tandon

APPELLANT

Vs

State Of Jammu & Kashmir And Anr

RESPONDENT

Date of Decision : 11-07-2019

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 420, 467, 468, 471
Code Of Criminal Procedure, 1973 — Section 397(1), 397(2), 482
Code Of Criminal Procedure, 1898 — Section 561A
Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 07 J&K CK 0012

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : Aseem Sawhney

Final Decision : Dismissed

Judgement

Ali Mohammad Magrey, J

1. Petitioner in the instant petition has challenged the order passed by the learned Sessions Judge Poonch on 06.10.2012 whereby the petitioner has been charge sheeted for the commission of offences under Section 420/471/467/468 of RPC

on the grounds detailed out in the petition with particular reference that the order impugned amounts to non-application of mind as the petitioner had not committed any offence and case was registered on the basis of enmity. Learned counsel

for the petitioner had been asked as to whether the material forming basis for investigation of the case qua statements recorded by the Police and also on the strength of the documentary evidence, this Court can evaluate the evidence in depth

for the purpose of quashing the order of learned Sessions Judge in terms whereof the petitioner has been charge sheeted for the offences mentioned above, but he could not convince the Court with any answer.

2. At the outset and without going to the merits of the case, what requires to be stated herein this case is that the Apex Court has held that power is to be exercised cautiously, carefully and sparingly and Court has not to function as a Court

of appeal or revision. It has also laid down the parameters and guidelines in cases titled as 'K.L.E Society & Ors. V. Siddalingesh' reported in '2008 AIR SCW 1993; 'A.P Vs Bojjoori Kanthaiah' reported as '2008 AIR SCW 7860' and

'Reshma Bano Vs State of Uttar Pradesh' reported in '2008 AIR SCW 1998'.

3. It is also well settled that the High Courts should not interfere with the investigation which would amount to stalling the investigation and jurisdiction of statutory authorities to exercise powers in accordance with the provisions of criminal

Code. The Apex Court in cases reported as AIR 2004 SC 3967, AIR 1972 SC 484, AIR 1974 SC 1446, AIR 1977 SC 2229, AIR 1989 SC 01, has laid down the same principle. It is apt to reproduce para 10, 13, 14, 15, 17 & 19 out of the

judgment titled as Som Mittal Vs Govt. of Karnataka reported in 2008 AIR SCW 1003 herein:

10. In a catena of decisions this Court has deprecated the interference by the High Court in exercise of its inherent powers under Section 482 of the Code in a routine manner. It has been consistently held that the power under Section 482

must be exercised sparingly with circumspection and in rarest of rare cases. Exercise of inherent power under section 482 of the Code of Criminal Procedure is not the rule but it is an exception. The exception is applied only when it is brought

to the notice of the Court that grave miscarriage of justice would be committed if the trial is allowed to proceed where the accused would be harassed unnecessarily if the trial is allowed to linger when prima facie it appears to Court that the

trial would likely to be ended in acquittal. In other words, the inherent power of the Court under section 482 of the Code of Criminal Procedure can be invoked by the High Court either to prevent abuse of process of any Court or otherwise to

secure the ends of justice.

13 In State of Bihar v. J.A.C Saldanha (1980) 1 SCC 554 this Court pointed out at SCC P. 574:

The High Court in exercise of the extraordinary jurisdiction committed a

grave error by making observations on seriously disputed questions of facts taking its cue from affidavits which in such a situation would hardly provide any reliable

material. In our opinion the High Court was clearly in error in giving the direction virtually amounting to a mandamus to close the case before the investigation is complete. We say no more.â??

â?? 14. In *Hazari Lal Gupta v Rameshwar Prasad* (1972) 1 SCC 452 this Court at SCC P. 455 pointed out:

In exercising jurisdiction under section 561-A of the Criminal Procedure Code, the High Court can quash proceedings if there is no legal evidence or if there is any impediment to the institution or continuance of proceedings but the High Court

does not ordinarily inquire as to whether the evidence is reliable or not. Where again, investigation into the circumstances of an alleged cognizable offence is carried on under the provisions of the Criminal Procedure Code, the High Court does

not interfere with such investigation because it would then be the impeding investigation and jurisdiction of statutory authorities to exercise power in accordance with the provisions of the Criminal Procedure Code.

15. In *Jehan Singh vs Delhi Administration* (1974) 4 SCC 522 the application filed by the accused under section 561-A of the old Code for quashing the investigation was dismissed as being premature and incompetent on the finding that prima

facie the allegations in the FIR if assumed to be correct, constitute a cognizable offence.

17. In *State of Bihar vs Murad Ali Khan* (1988) 4 SCC 655 this Court held that the jurisdiction under Section 482 of the Code has to be exercised sparingly and with circumspection and has given the working that in exercising that jurisdiction, the High Court should not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not.

19. We may observe here that despite this Court consistently held in catena of decisions that inherent power of the High Court should not be exercised according to whims and caprice and it has to be exercised sparingly with circumspection

and in the rarest of rare cases, we often come across the High Court exercising the inherent power under Section 482 of the Code of Criminal Procedure in a routine manner at its whims and caprice setting at naught the cognizance taken and

the FIR lodged at the threshold committing grave miscarriage of justice. While it

is true that so long as the inherent power of Section 482 is in the Statute Book, exercise of such power is not impressible but it must be noted that such power has

to be exercised sparingly with circumspection and in the rarest of rare cases, the sole aim of which is to secure the ends of justice. The power under Section 482 is not intended to scuttle justice at the threshold.â??

4. While keeping in view the scope of Section 561-A Cr.P.C., the Court should refrain from making prima facie decision at interlocutory stage when entire facts of the case are incomplete, hazy and more so, when material evidence is yet to be collected and issues involved could not be seen in their true perspective.

5. Apex Court in case titled as 'R.P Kapur v. State of Punjab' reported in 'AIR 1960 SC 866' and case titled 'State of Andhra Pradesh v. Golconda Linga Swamy' reported in 'AIR 2004 SC 3967' has laid down the same principle. It is apt to reproduce para 8 of the judgment reported in AIR 2004 SC 3967 herein:

â?? 8â?|.The complaint/FIR 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 or disclosed in the FIR that the ingredients of the offence or offences are

disclosed and there is no material to show that the complaint/FIR is malafide, 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 malafides 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

malafides against the informant are of no consequence and cannot by itself be the basis for quashing the proceeding.â??

6. In case titled â??Asian Resurfacing of Road Agency Pvt. Ltd. & Anr. V. Central Bureau of Investigationâ??, reported as â??2018 16 SCC 299â??, Honâ??ble the Supreme Court, while dealing with an issue similar to the one involved in

the instant petition, in paragraph Nos. 18, 20 and 25, has laid down the following principles:

â??18. It is not necessary to refer to all the decisions cited at the Bar. Suffice it to say that a Bench of three Judges in Madhu Limaye (supra) held that legislature has sought to check delay in final disposal of proceedings in criminal cases by

way of a bar to revisional jurisdiction against an interlocutory order under sub-Section 2 of Section 397 Cr.P.C. At the same time, inherent power of the High

powers of the High Court? But, if we were to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers. In such a

situation, what is the harmonious way out? In our opinion, a happy solution of this problem would be to say that the bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning

thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the

Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High

Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is

absolutely necessary, then nothing contained in section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very

sparingly. One such case would be the desirability of the quashing of, a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. Take for example a case where a prosecution is launched under the Prevention of

Corruption Act without a sanction. then the trial of the accused will be without jurisdiction and even after his acquittal a second trial after proper sanction will not be barred on the doctrine of *Autrefois Acquit*. Even assuming, although we shall

presently 18 show that it is not so, that in such a case an order of the Court taking cognizance or issuing processes is an interlocutory order. does it stand to reason to say that inherent power of the High Court cannot be exercised for stopping

the criminal proceeding as early as possible, instead of harassing the accused upto the end ? The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure, the ends of justice. The label of

the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with

that if reversal of impugned order results in conclusion of proceedings, such order may not be interlocutory but final order. It was observed :

15. In the majority decision four tests were culled out from some English decisions. They are found enumerated at p. 688. One of the tests is if the order in question is reversed would the action have to go on? Applying that test to the facts of the instant case it would be noticed that if the plea of the appellant succeeds and the order of the Sessions Judge is reversed, the criminal proceeding as initiated and instituted against him cannot go on. If, however, he loses

on the merits of the preliminary point the proceeding will go on. Applying the test of Kuppaswami case such an order will not be a final order. But applying the fourth test noted at p. 688 in Mohan Lal case it would be a final order. The real

point of distinction, however, is to be found at p. 693 in the judgment of Shelat, J. The passage runs thus: "As observed in Ramesh v. Gendalal Motilal Patni[(1966) 3 SCR 198 : AIR 1966 SC 1445] the finality of that order was not to be

judged by co-relating that order with the controversy in the complaint viz. whether the appellant had committed the offence charged against him therein. The fact that that controversy still remained alive is irrelevant."

20. It was observed that power under Section 482 Cr.P.C. could be exercised only in rarest of rare cases and not otherwise.

38. The Criminal Procedure Code is undoubtedly a complete code in itself. As has already been discussed by us, the discretionary jurisdiction under Section 397(2) CrPC is to be exercised only in respect of final orders and intermediate

orders. The power under Section 482 CrPC is to be exercised only in respect of interlocutory orders to give effect to an order passed under the Criminal Procedure Code or to prevent abuse of the process of any court or otherwise to serve

the ends of justice. As indicated above, this power has to be exercised only in the rarest of rare cases and not otherwise. If that is the position, and we are of the view that it is so, resort to Articles 226 and 227 of the Constitution would be

permissible perhaps only in the most extraordinary case. To invoke the constitutional jurisdiction of the High Court when the Criminal Procedure Code restricts it in the interest of a fair and expeditious trial for the benefit of the accused person,

we find it difficult to accept the proposition that since Articles 226 and 227 of the Constitution are available to an accused person, these provisions should be resorted to in cases that are not the rarest of rare but for trifling issues."

25. Thus, even though in dealing with different situations, seemingly conflicting observations may have been made while holding that the order framing charge was interlocutory order and was not liable to be interfered with under Section 397(2)

or even under Section 482 Cr.P.C., the principle laid down in *Madhu Limaye* (supra) still holds the field. Order framing charge may not be held to be purely a interlocutory order and can in a given situation be interfered with under Section

397(2) Cr.P.C. or 482 Cr.P.C. or Article 227 of the Constitution which is a constitutional provision but the power of the High Court to interfere with an order framing charge and to grant stay is to be exercised only in an exceptional situation.â??

7. In the above background, coupled with the law quoted herein above, this petition is found to be without any merit, as a sequel thereto, the same shall stand dismissed alongwith all connected IA(s). Interim directions, if any, in force as on

date, shall stand vacated. Registry to send down copy of this order to learned Sessions Judge, Poonch, who shall proceed in the matter in accordance with the law.