
(1999) 07 J&K CK 0012
In the Jammu And Kashmir High Court
Case No : L.P.A. No. 78 of 1999

Mohammad Maqbool Hakim and Others	APPELLANT
Vs	
State of J. and K. and Others	RESPONDENT

Date of Decision : 20-07-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 173, 482
Jammu and Kashmir Criminal Procedure Code, 1989 — Section 561A
Jammu and Kashmir Prevention of Corruption (Amendment) Act, 2006 — Section 5(2)
Penal Code, 1860 (IPC) — Section 415
Ranbir Penal Code, 1989 — Section 120B, 420, 465, 466, 467

Citation : (2000) CriLJ 645

Hon'ble Judges : Bhawani Singh, C.J; Syed Bashir-Ud-Din, J

Bench : Division Bench

Advocate : R.A. Jan, for the Appellant; M.H. Attar, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Bhawani Singh, C.J.—This Letters Patent Appeal is directed against Judgment of single Judge dated June 3, 1999, whereby petition for

quashing Government Order Nos. 11-GR-Home (Vig)/90 and 12-GR-HOME (Vig)/90, dated May 05, 1990, sanctioning prosecution of

petitioners has been dismissed.

2. Briefly stated, Mohammad Muzaffer Hamdani was General Manager, Ghulam Mohammad Sofi, Manager and Mohammad Maqbool Hakim,

Industrial Promotion Officer, DIC, Srinagar. They processed claims for refund of Central Sales Tax, ultimately sanctioned by District Development

Commissioner, Srinagar. Petitioners submit that they did so in the discharge of their normal duties honestly and diligently, a fact substantiated by

Committee appointed by District Development Commissioner to examine whether the claims for refund were justified. With this background, no

offence has been committed by them, therefore, initiation of criminal case is vexatious and without evidence. This apart, before sanction is

accorded, matter is required to be sent to the Chief Minister. This having not been done, the sanction is bad. Even otherwise, it is result of non-

application of mind by the Competent Authority. Before answering these submissions, it would be appropriate to mention certain decisions of

Apex Court with reference to the jurisdiction of this Court with respect to quashing of criminal proceedings, particularly at the initial stages.

3. In R.P. Kapur Vs. The State of Punjab, , the Apex Court said in para 6 that:

6. Before dealing with the merits of the appeal it is necessary to consider the nature and scope of the inherent power of the High Court u/s 561-A

of the Code. 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. In the present case the magistrate before

whom police report has been filed u/s 173 of the Code has yet not applied his mind to the merits of the said report and it may be assumed in

favour of the appellant that his request for the quashing of the proceedings is not at the present stage covered by any specific provision of the

Code. 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 proceedings 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. In exercising its jurisdiction u/s 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained. Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court u/s 561-A in the matter of quashing criminal proceedings, and that is the effect of the judicial decisions on the point (Vide : In Re: Shripad G. Chandavarkar, , Jagat Chandra Mozumdar v. Queen Empress (1899) ILR26 Cal 786, Dr.

Shankar Singh Ganda Singh Vs. State of Punjab, Nripendra Bhusan Ray Vs. Gobinda Bandhu Majumdar, and Ramanathan Chettiar Vs. K.

Sivarama Subramania Aiyar, .

4. In State of Bihar and Another Vs. P.P. Sharma, IAS and Another, The Court said in paras 15 and 16 that:

15. The finding that no prima facie offence was made out against the respondents was reached by the High Court on the following reasons :

We are always conscious of the legal position and the various pronouncements of the Courts in India that disputed questions of facts cannot be

decided on the basis of affidavits. But when some documents have been brought on the record which are official records, which were in

possession of the BISCOMAUN and so in the possession of the informant himself and further when in the replies neither the informant nor the IO

nor any officer of the State Government has challenged the correctness of those documentary material so they are at present not disputed and

when it appears from the argument and the notes given by the learned counsel for the opposite party that Annexures 1, 2, 9, 10, 12 and 13 have

been considered by the IO and they formed part of the records of the investigation except Annexure 1 which was seized during the investigation

and formed part of the criminal proceedings. Annexures 3,4, 5,6, 7, 11, 15, 16, 17, 18, 19, 20, 29/1, 22, 22/1, 24, 25, 26 and 39 which have

been referred to earlier and dealt with, do not appear to have been considered by the IO nor any reference about these have been made in the

arguments by the learned counsel for the opposite party which apparently have non-considered and non-disputed and when those documents

themselves demonstrate that no prima facie offence is made out on the face value of those materials, then the criminal prosecution should not be

allowed to continue and so it should be quashed.

16. It is thus obvious that 'the annexures' were neither part of the police reports nor were relied upon by the Investigating Officer. These

documents were produced by the respondents before the High Court along with the writ petitions. By treating 'the annexures' and affidavits as

evidence and by converting itself into a trial Court the High Court pronounced the respondents to be innocent and quashed the proceedings. The

least we can say Is that this was not at all a case where High Court should have

interfered in the exercise of its inherent jurisdiction. This Court has repeatedly held that the appreciation of evidence is the function of the criminal Courts. The High Court, under the circumstances, could not have assumed jurisdiction and put an end to the process of investigation and trial provided under the law. Since the High Court strongly relied upon "the annexures" in support of its findings, we may briefly examine these documents. Further, the Court said (Para 68, p. 269) that :

68. Another crucial question is whether the High Court, in exercise of its extraordinary jurisdiction under Article 226 of the Constitution, would interfere and quash the charge-sheet. The High Court found that the documents relied on by the respondents/ accused were not denied by the State by filing the counter-affidavit. Therefore, they must be deemed to have been admitted. On that premise the High Court found that no prima facie case was made out on merits and chances of ultimate conviction is "bleak". The Court is not passive spectator in the drama of illegalities and injustice. The inherent power of the Court under Article 226 of the Constitution of India is permitted to be resorted to. When the documents relied on by the respondents "demonstrate that no prima facie offence is made out on the face value of those materials, then the criminal prosecution should not be allowed to continue and so it should be quashed", and "in such a situation and circumstances the petitioners who had got a right under the Constitution for the protection of their liberty have rightly approached this Court and this Court in these circumstances has no option but to grant the relief by quashing the FIR and both the charge-sheets". Accordingly it quashed them. If this decision is upheld, in my considered view startling and disastrous consequence would ensue. Quashing the charge-sheet even before cognizance is taken by a criminal Court amounts to killing a still born child". Till the criminal Court takes cognizance of the offence there is no criminal proceedings pending. I am not allowing the appeals on the ground that alternative remedies provided by the Code as a bar. It may be relevant in an appropriate case. My view is that entertaining the writ petitions against charge-sheet and considering the matter on merit in the guise of prima facie evidence to stand an accused for trial amount to pre-trial of a criminal trial under Article 226 or 227 even before the competent Magistrate or the Sessions Court takes cognizance

of the offence. Once the proceedings are entertained the further proceedings get stayed. Expeditious trial of a criminal case is the cardinal rule.

Delay feeds injustice to social order and entertaining writ petitions would encourage to delay the trial by diverse tricks. It is not to suggest that

under no circumstances a writ petition should be entertained. As was rightly done by Rajasthan High Court, in this case at the instance of the

directors of the company, wisdom lies to keep the hands back and relegate the accused to pursue the remedy under the Code. In several cases

this Court quashed the criminal proceedings on the sole ground of delay. In a case FIR filed in 1954 for violation of the provisions of the Customs

Act and Foreign Exchange Regulation Act was challenged in the Allahabad High court. It was deliberately kept pending in the High Court till 1990.

The accusation was violation of law by named persons in the name of non-existing firm. The FIR was quashed in the year 1990 by another Bench

of which I was a member solely on the ground of delay. He achieved his object of avoiding punishment. This would show that an accused with a

view to delay, resorts to writ proceedings, raises several contentions including one on merit as vehemently persisted by Sri Jain to consider this

case on merits and have the proceedings kept pending. The result would be that the people would lose faith in the efficacy of rule of law.

Documents relied on by the respondents are subject to proof at the trial and relevancy. If proved to be true and relevant then they may serve as a

defence for the respondents at the trial. The State quite legitimately and in my view rightly did not choose to file the counter- affidavit denying or

contradicting the version of the respondents, in those documents. The commission of offence cannot be decided on affidavit evidence. The High

Court has taken short course ""in annihilating the still born prosecution"" by going into the merits on the plea of proof of prima facie case and

adverted to those facts and gave findings on merits. Grossest error of law has been committed by the High Court in making pre-trial of a criminal

case in exercising its extraordinary jurisdiction under Article 226. After the charge-sheet was filed, the FIR no longer remains sheet-anchor. The

charge-sheet and the evidence placed in support thereof form the base to take or refuse to take cognizance by the competent Court. It is not the

case that no offence has been made out in the charge-sheets and the first information report. It is, therefore, not necessary to consider all the

decisions dealing with the scope of the power of the High Court either u/s 482, Cr. P.C. or Article 226 of the Constitution to quash the first information report.

5. In *Rajesh Bajaj Vs. State NCT of Delhi and Others*, , Thomas, J. speaking for the Court said in para 9 that :

9. It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor

is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. Splitting up of the

definition into different components of the offence to make a meticulous scrutiny. Whether all the ingredients have been precisely spelled out in the

complaint, is not the need at this stage. If factual foundation for the offence has been laid in the complaint the Court should not hasten to quash

criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. For quashing an

FIR (a step which is permitted only in extremely rare cases) the information in the complaint must be so bereft of even the basic facts which are

absolutely necessary for making out the offence. In *State of Haryana and others Vs. Ch. Bhajan Lal and others*, this Court laid down the premise

on which the FIR can be quashed in rare cases. The following observations made in the aforesaid decisions are a sound reminder (Para 109 of

AIR) :

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and 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.

Finally, learned Judge further said in para 12 that:

12. The High Court seems to have adopted a strictly hypertechnical approach and sieved the complaint through a cullendar of finest gazes for

testing the ingredients u/s 415, IPC. Such an endeavour may be justified during trial, but certainly not during the stage of investigation. At any rate,

it is too premature a stage for the High Court to step in and stall the

investigation by declaring that it is a commercial transaction simpliciter wherein no semblance of criminal offence is involved.

(See also: State of Maharashtra and others Vs. Ishwar Piraji Kalpatri and others, .

6. Adverting to the present case, we find the allegation against the petitioners is that they fraudulently processed the CST refund claims of certain

Units on fictitious and forged documents, got sanctions from the Competent Authority for various amounts by abusing their official position by

entering into conspiracy. Collection of evidence during investigation also points out the involvement of petitioners. The evidence has been examined

by the Competent Authority before according the sanction. It. is also satisfied that on the basis of evidence on record, a prima facie case is made

Out against the accused u/s 5(2), Prevention of Corruption Act, 2006, 465/466/467/468/420/471/ 477-A Ranbir Penal Code read with Section

120-B, Ranbir Penal Code (RFC).

7. Shri R. A. Jan, learned counsel for the petitioners, heavily relies on State of Punjab and Others Vs. Ram Singh Ex. Constable, and submits that

petitioners did not commit misconduct as de-i fined by the Apex Court in this decision, which is clear from the fact that they processed the cases in

exercise of their official duties and their conclusion was confirmed by the Committee appointed by the District Development Commissioner,

Srinagar, therefore, no misconduct has been committed by them attracting the provisions of Penal Laws. We are not convinced by this submission.

We cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made against the petitioners; nor can we in

exercise of this jurisdiction interpret sections invoked against the petitioners minutely and with fineness, since it is too premature a stage for this

Court to examine the niceties of the matter; nor can we, at this stage, admit a document or enquiry report and appreciate the same.

8. Next, perusal of sanction Orders plainly demonstrate that the Competent Authority has examined the matter quite seriously and

comprehensively. Before according the sanction, evidence on record has also been examined. There is application of mind. Contention that case

was required to be submitted to the Chief Minister by the Competent Authority along with its views, containing full facts of the case and sanction

could be given after orders of Chief Minister were obtained, does not impress us.

It is presumed that official functions are done in the manner provided, unless contrary is proved, which the petitioners have failed to do. Even otherwise, the requirement is procedural and not mandatory.

Assuming that it is not followed, sanction granted by Competent Authority is not rendered illegal.

No other point was urged.

What emerges out of the aforesaid discussion is that there is no merit in this Appeal and the same is dismissed.