
(1993) 01 MP CK 0027

In the Madhya Pradesh High Court

Case No : Miscellaneous Cri. Case No. 547 of 1992

Mohammed Haneeba Meera

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 29-01-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 420

Citation : (1993) 2 MPJR 455 : (1994) 39 MPLJ 235 : (1994) MPLJ 235

Hon'ble Judges : P.N.S. Chouhan, J

Bench : Single Bench

Advocate : S.C. Datt, for the Appellant; L.S. Singh, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.N.S. Chouhan, J.

This is a petition u/s 482 of the Code of Criminal Procedure for quashing the F.I.R. and the investigation proceedings, pending against the petitioner in Crime No. 27/92, u/s 420 of the Indian Penal Code, in Police Station Ambikapur, Distt. Surguja.

The petitioner claims to be a permanent resident of village Pariyanayagipuram, Police Station Perewurni, Distt. Tanjaur, Tamilnadu where he possesses 13 acres of agricultural land and a Pucca House as certified, vide Annexure-1, by the Village Administrative Officer. He came to Ambikapur in 1991 and rented house No. 1, Mahamaya Road, Ambikapur, for his business. He obtained Sales Tax Registration, vide Annexure-5, and started business in the name and style of M/s. Meera Complex in the aforesaid premises. The scheme that he floated was as under :

Any customer could take articles of the value of Rs. 100/- after 20 days of depositing Rs. 30/- as advance. He was required to pay the balance in three

instalments spread over 20 months for articles of higher value, a group of 100 buyers was required. Then, there was to be a draw of names and the first 10 lucky customers of such draw were to get the articles only for the initial payment of one-third whereas the remaining 90 members were to get the articles after 20 days of their payment of one-third advance and were required to pay the balance instalments spread over 20 months. A copy of the pamphlet issued to advertise this scheme is Annexure-6. The Articles and their prices were given in the pamphlet. Order forms were required to be filled in and cash receipts were given to the customers.

After starting booking on 13-11-1991, the petitioner started making delivery of goods to the customers from. 2-12-1991. The petitioner claims that till the date of his arrest on 8-1-1992, he had supplied goods worth Rs. 10,18,542 to the customers after collecting approximately Rs. 5,05,063. He had in his godown goods worth Rs. 5.50 lakhs at that time. At the instance of the then Superintendent of Police, Shri N. L. Shyam, the Sales Tax Officer examined petitioner's record and submitted report to the effect that the applicant had collected Rs. 2,23,356 from various customers and had assured to supply goods worth Rs. 7 lacs, which appeared impossible for him to do. The report further mentioned that the petitioner has not maintained any account of his business and the amount received by him from the customers was not deposited in any bank. This report was forwarded by Superintendent of Police to Ambikapur Police Station where the aforesaid crime was registered against the petitioner. No customer has made any complaint to the police that he has been cheated. Though the sales tax registration was withdrawn on 30- 12-1991, the continuance of petitioner's business thereafter had nothing clandestine and no assurance to any of the customers was broken. The scheme does not involve any cheating. As such the registering of the aforesaid crime against the petitioner amounts to abuse of the process of law and deserves to be quashed under the inherent powers of this Court.

The Privy Council in AIR 1945 18 (Privy Council) at p. 212, observed as follows :

"The function of the judiciary and the police are complementary, not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function always, of course subject to the right of the Court to intervene in an appropriate case when moved u/s 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the Court's functions being when a charge is preferred before it and not until then. It has sometimes been thought that Section 561A has given increased powers to the Court which it did not possess before that section was enacted. But this is not so. The section gives no new powers, it only provides that those which the Court already inherently possesses shall be preserved and is inserted, as their Lordships think, lest it should be considered that the only powers possessed by the Court are those expressly conferred by the Criminal Procedure Code and that no inherent

power had survived the passing of that Act."

The above dictum reiterated in *State of West Bengal Vs. S.N. Basak*, and relied on by the State has since been considered more than once by the Apex Court, latest in *State of Haryana and others Vs. Ch. Bhajan Lal and others*, wherein High Court's power u/s 482 of the Code of Criminal Procedure to quash the investigation initiated on a first information report recorded u/s 154 of the Code has been accepted and after a resume of case law on the topic the parameters of such power have been thus drawn in para 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 case 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 give an exhaustive list of myriad kinds 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 First Information Report do not disclose a cognisable 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 First Information Report 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 First Information Report 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 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."

Summing up in para 109, the Court has observed that:

"109. 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."

Thus, this Court's power to quash a criminal proceeding and/or investigation u/s 482 of the Code does not appear to be in doubt.

Shri S. C. Datt, Senior Advocate, for the petitioner, argued that there has been no misrepresentation of facts in relation to the scheme floated by the petitioner nor has there been any suppression of material facts in this behalf. Till the time of filing of the FIR the petitioner has not defaulted in making delivery of the goods assured by him to any of his customers. No one had come forward to complain that he was cheated by the petitioner. The case was initiated on the basis of the report submitted by the Sales Tax Officer at the behest of Superintendent of Police, Surguja. This report does not prima facie disclose a case of cheating and, therefore, the investigation commenced on its basis is without legs and amounts to abuse of the process of law.

To show that the scheme floated by the petitioner may have been speculative in nature but had no element of deception, Shri Datt relied on the following dictum in State of Madhya Pradesh Vs. Mir Basit Ali Khan and Others,

"In the absence of misrepresentation or suppression of any material facts with a view to defraud or cheat the public the promoters of a money circulation scheme are not guilty of cheating even if the scheme is speculative and unworkable."

He also cited A.C. Dastoor Vs. S.A. Kandawalla, , to support his contention that an appeal to the gambling instinct of humanity does not per se amount to cheating. Both these cases are appeals arising out of conviction u/s 420, Indian Penal Code. At this early stage when the investigation has just started the above" authorities can have no application as the question is not whether the petitioner is guilty of cheating but whether there is reason to suspect the commission of an offence of cheating.

The report of the S.T.O. inter alia mentioned that the petitioner had collected Rs. 2,23,356/- being 30 per cent of the price of goods booked by customers after 22-12-1991, had promised delivery of goods to such customers worth Rs. 7 lacs which appear impossible to do. The petitioner did not deposit the amount received by him from his customers in any bank and failed to maintain account of his business (Para 9 of the petition.) It appears naive to assert that these facts were insufficient to disclose prima facie the commission of a non-cognizable offence of cheating for the satisfaction of S. P. concerned to entitle him to direct

an investigation to be made. True it is that by this time no customer had made any complaint of nondelivery of goods assured to him but that is immaterial as the S. P. was required to be satisfied only of the commission of cognizable offence and it was not imperative for him to have ascertained as to who was cheated before issuing direction for investigation. The report submitted by the S.T.O. read as a whole does contain misrepresentation of a material fact to, with due registration of the Firm with Sales Tax Department in the order form even after its withdrawal and does disclose a prima facie case of cheating. It was stressed that the petitioner did not have any dishonest intention. A person embarking upon a business which netted a couple of lacs within a few months and could have run in crores within a span of a few years failing to maintain account of his business right from the inception. It is not understood as to how this wizard was going to manage his affairs in absence of account. Thus the assertion that there was no misrepresentation by the petitioner is not found to be valid. All this material appears sufficient to satisfy a reasonable person of the commission of a cognizable offence of cheating and, therefore, the initiation of the investigation against the petitioner is not liable to be characterised as abuse of process of law. More so because during investigation statements of witnesses have been recorded to the effect that they booked orders with the petitioner honestly believing his representation of having valid sales tax registration although on such date of booking the said registration was withdrawn. Shri Datt criticised their statements saying that the same were falsely procured to show a prima facie case of cheating. In these proceedings u/s 482 of the Code of Criminal Procedure such criticism is wholly misplaced because adjudging the credibility of the evidence collected in the case is the domain of the trial Judge and not of this Court in this proceeding u/s 482 of Criminal Procedure Code.

Thus, it is seen that the initiation of the investigation against the petitioner suffers from No. 6uch infirmity as to be characterised abuse of the process of law. At any rate, it is certainly not one of the rarest of rare cases referred to in the aforementioned Bhajanlal's case where quashing of the investigation is warranted to secure the ends of justice. In result, the petition fails and is hereby dismissed.