

(1995) 07 MAD CK 0030

In the Madras High Court

Case No : Writ Petition No's. 8481 and 8482 of 1995

Praveenkumar R. Jain

APPELLANT

Vs

The Chief Judicial Magistrate and Others

RESPONDENT

Date of Decision : 12-07-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 177, 482

Citation : (1995) 2 CTC 383

Hon'ble Judges : Jagadeesan, J

Bench : Single Bench

Advocate : M. Ranka, for the Appellant;

Final Decision : Dismissed

Judgement

Jagadeesan, J.—The petitioner has filed these writ petitions to quash the criminal complaint in C.C.No. 43 and 44 of 1995 on the file of the

first respondent. The said complaints have been filed by the second respondent herein.

2. The second respondent had inspected the Government Hospital, Dindigul and took the vials of two injections, one is Oxeteracycline I.P. and the

other is Adernaline I.P. on 28.10.93 for test. After following the formalities, he had sent the samples to Government Analyst for report. By report

dated 23.8.94, the Government Analyst had informed that the said medicines are ""not of standard quality"". Thereafter, show-cause notice was

issued to the petitioner herein. The petitioner had sent a reply. It is admitted, due to his own mistake intyping the address, the replied were not

reached the second respondent. The second respondent filed two complaints in respect of two medicines against the petitioner for violation of

Section 18(a)(i) and 18B of the Drugs and Cosmetics Act, 1940. The petitioner has filed these writ petitions to quash both the criminal complaints pending trial on the file of the first respondent.

3. The learned counsel for the petitioner raised the following contentions:

(i) The manufacturing concern had given instructions on every vial not to administer the drug if the solution is not clear. The solution as per I.P. 85

should be clear yellow to tan yellow with a greenish tinge. When admittedly the solution turned to be brown, when it was taken for testing, the

second respondent ought to have initiated Criminal proceedings against the concerned persons in the hospital for keeping such medicines for

administering them to the patients. The hospital authorities have not followed the instructions issued by the manufacturer.

(ii) The decoloration of the drug may be due to the improper storage condition and exposure to the climate. This may perhaps due to the failure of

the hospital authorities to follow the instructions issued by the manufacturers that the medicine should be kept in cold storage

(iii) On seeing the decoloration of the drug, the hospital authorities ought to have removed the stock and kept it separately or ought to have sent it

back either to the petitioner or to the manufacturers for replacement. Hence only the hospital authorities have to be prosecuted, as they have not

followed the instructions given to them by the manufacturer

(iv) The petitioner has purchased both the medicines from the local manufacturers and he has supplied the same to the Government Hospital,

Dindigul and in the absence of any evidence to show that he has meddle with the packing, no prosecution can be launched against him.

(v) The second respondent has no jurisdiction to file the complaint against the petitioner herein because the petitioner's firm does not fall under the

territorial jurisdiction of the second respondent.

4. When I asked the counsel for the petitioner as to why he cannot invoke Section 482 Cr. P.C. which empowers the High Court to quash the

criminal proceedings, he replied that the apex court has held that it is open to the accused to file a petition for quashing either u/s 482 Cr. P.C. or

under Article 226 of the Constitution of India. He further contended that Section 482 Cr.P.C. confers a discretionary power on the court and the

discretionary power cannot be termed as alternative remedy and he referred to a

judgment reported in V. Vellaswamy Vs. Inspector General of

Police, Tamil Nadu, Madras and Another, . Since I am not dismissing the Writ petitions on the ground of alternative remedy available u/s 482

Cr.P.C, I am not discussing anything with regard to the right of the petitioner to invoke Section 482 Cr.P.C. In a later judgment reported in State

of Haryana v. CH. Bhajan Lal 1992 L.A. (Cri.) 257 the Supreme Court has held that the High Court can exercise the inherent power u/s 482

Cr.P.C. or the extraordinary power under Article 226 of the Constitution of India to quash Criminal complaint. Hence the writ petition can be

maintained.

5. Coming to the merits of the case, I am of the view that the petitioner's request to quash the complaint at this stage cannot be granted. In State of

Haryana v. CH. Bhajan Lal 1992 L.W. (Crl.) 257, the Supreme Court has laid down under what circumstances the criminal complaint can be

quashed.

In the backdrop of the interpretation of the various relevant provisions of the Code under chapter XIV and of the principles of law enuciated 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 formula and to give an exhaustive list of myriad kinds of

cases wherein such power should be exercised.

1. Wherein the allegations made in the First Information Report or the complaint even if they are taken at their face value and accepted in their

entirely 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 FIR 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 FIR 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 malafide 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.

The points raised by the petitioner herein do not fall under any one of the causes enumerated by the apex court. More over, the plea raised by the

petitioner in this writ petition as to the maintainability of the complaint has to be decided only after the evidence is taken. Whether the petitioner is

liable or whether the hospital authorities are liable for decoloration of the drug cannot be decided at this stage. As pointed out by the Supreme

Court, only if the FIR do not disclose any offence, then only this court can quash the complaint.

8. In dealing with the matter of quashing, the Supreme Court in *State of Haryana v. CH. Bhajan Lal* 1992 L.W.Cri. 257 has also observed as

follows:

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.

From the caution given by the Supreme Court, it is clear that at this stage, the court cannot venture to enter into an enquiry as to the reliability or

genuineness or otherwise of the allegations made in the FIR or the complaint.

9. I am not proposed to discuss anything on merits because if any observation I made in this proceeding, that may affect either of the parties

because I may have to give a finding on merits, which may be premature at this stage.

10. With regard to the contention of the petitioner that the second respondent has no jurisdiction to file the complaint against the petitioner herein

because the petitioner's firm does not fall under the territorial jurisdiction of the second respondent, it has to be seen that the jurisdiction is not

conferred on the prosecution authorities on the basis of the accused's residence or the business. The prosecuting authorities will have jurisdiction if

the alleged offence has taken place within his jurisdiction and it is also a matter to be decided during the trial.

11. Hence the writ petitions are liable to be dismissed and accordingly the same are dismissed. It is open to the petitioner to raise all the objections

on merits before the first respondent during trial.