

(2002) 01 DEL CK 0092
In the Delhi High Court
Case No : Criminal W. 811 of 2001

Sujeet and Others

APPELLANT

Vs

State of Delhi and Others

RESPONDENT

Date of Decision : 24-01-2002

Acts Referred:

Citation : (2002) 3 AD 291 : (2002) 2 Crimes 231 : (2002) 96 DLT 200 : (2002) 1 DMC 403

Hon'ble Judges : Vinod Sagar Aggarwal, J;B.A. Khan, J

Bench : Division Bench

Advocate : Rashmi Singla, for the Appellant; Akshay Bipin and C.M. Khan, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Aggarwal. J.

1. Sujeet and four others have filed the present petitions invoking the Article 226 of the Constitution read with Section 482 of the Code of Criminal Procedure seeking quashing of FIR No. 243/2001 with respect to the offences punishable u/s 498A/406/34 of the Indian Penal Code.

2. Some of the alleged facts giving rise to the present petitions are that petitioner no.1 and respondent no.2 were married on 6th December, 2000 according to Hindu Rites and Customs. As per the petitioners the marriage did not unfold itself with the happiness. Petitioners gave certain instances in this regard and contended that respondent no.2 had broken the lock of the almirah lying in the rented accommodation at Rohini and taken away all the important papers. Respondent no.2 is alleged to have filed a compliant with the police as a result of which FIR 243/2001 has been registered. As per the petitioners the assertions made therein are false, frivolous and scandalous because all the petitioners are residing separately and at distance places. Petitioner no.1 had taken all steps to save his marriage but it was respondent no.2 who turned the

petitioner no.1 out of the house. Reference even has been made to certain other facts in support of their contentions which are not relevant for disposal of the present petition. In short it is claimed, as already pointed, that there is no basis for the First Information Report and it requires to be quashed.

3. Needless to state that what is being alleged is being contested and in this connection it would be appropriate to mention that status report with respect to the investigation even had been called. It has been pointed that preliminary investigation of the case was conducted by the local police and thereupon it was transferred to Crime Against Women Cell (North West) district. Respondent no.2 had been conducted and she had stated that she was subjected to mental and physical harassment. She had supported the contents of the First Information Report and further it has been recorded that as per respondent no.2 all dowry articles are in possession of her husband and in laws and that prima facie the complaint discloses commission of offence punishable u/s 406 read with Section 498/34 Indian Penal Code.

4. During the course of submissions learned counsel for the petitioner had urged vehemently that the assertions made are false and baseless. Reference in this connection by the learned counsel for the petitioners was made to certain other facts which she purports to bring on the record.

5. As already pointed above the petitioners are relying on the provisions of Section 482 Code of Criminal Procedure and Article 226 of the Constitution in this regard for quashing of the First Information Report and a corresponding registration of a case against respondent no.2. Section 482 of the Code of Criminal Procedure reads as under:-

"482. Saving of inherent power of High Court- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order this Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice."

6. Perusal of Section 482 of the Code of Criminal Procedure which have been reproduced above from its plain language clearly show that the Code of Criminal Procedure though it had put an end to the inherent powers of the subordinate courts but saved inherent powers of the High Court. But the inherent powers as is apparent from Section 482 of the Code of Criminal Procedure would only be exercised in appropriate cases where it becomes necessary to prevent abuse of the process of any court or to secure ends of justice. Once it is so, necessarily the High Court would exercise the inherent powers in terms of the clear and unambiguous language of Section 482 Code of Criminal Procedure. So far as the powers under Article 226 of the Constitution are concerned the extraordinary remedy though unfettered necessarily has to be exercised sparingly only in appropriate cases and once again it is the ends of the justice which hold the key which may prompt the court in appropriate cases to take necessary steps for interference.

7. One of the earliest decisions with respect to the inherent powers of the High Court came into being in the case of R.P. Kapur Vs. The State of Punjab, the Supreme Court held that it is the function of the trial courts to appreciate the evidence and it would not be appropriate for the High Court in inherent powers to take over that function that may amount to pronouncing a judicial decision in this regard. The Supreme Court while looking into the facts laid the guide-lines and held:

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 be 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 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 continuances of the said proceedings 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 arise; it is a matter merely of looking at the compliant 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 allegation made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidenced adduced clearly or manifestly fails to prove the charge."

8. In other words it must manifestly appears from the First Information Report that no offence is disclosed or there is some other legal impediment or interest of justice so required that proceedings as such should be quashed.

9. Similarly in the case of Madhu Limaye Vs. The State of Maharashtra, the question as to under what circumstances inherent powers of the High Court would be exercised was subject matter of consideration and the Supreme Court

held:

"At the outset the following principles may be noticed in relation to the exercise of the inherent power of the High Court which have been followed ordinarily and generally, almost invariably, barring a few exceptions:-

- (1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;
- (2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;
- (3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code."

10. As few years later in the case of State of West Bengal and Others Vs. Swapan Kumar Guha and Others, the petition had been filed under Article 226 of the Constitution of India and the same controversy again came up for consideration. The Supreme Court held as to whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. If on consideration of relevant material the court is satisfied that an offence is disclosed it would normally not interfere with the investigation into the offence and generally allow the investigation to be completed. If on the other hand the court on consideration of relevant material is satisfied that no offence is disclosed it will be the duty of the court to interfere with the investigation and stop the same to prevent any kind of uncalled for or unnecessary harassment to an individual.

11. At this stage one can refer the decision rendered by the Supreme Court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, . Detailed guide-lines were provided as to under what circumstances the High Court could wash the First Information Report. The Supreme court took note of the fact that no rigid formula or an exhaustive list can be provided. It was further held that this power has to be exercised sparingly and thus without being exhaustive still it was provided:-

"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 F.I.R. 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 uncontroversial 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 F.I.R. 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 mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge."

12. Identical was the reasoning provided in the case of Smt. Chand Dhawan Vs. Jawahar Lal and others, and once again it was reiterated that inherent powers of the High Court to quash the criminal proceedings or First Information Report would be exercised when the Court can come to a conclusion that it does not constitute any offence. The precise findings read:-

".....This Court has in various decisions examined the scope of the power u/s 482, Cr.P.C., and has reiterated the principle that the High Court can exercise its inherent jurisdiction of quashing a criminal proceeding only when the allegations made in the complaint do not constitute an offence or that the exercise of the power is necessary either to prevent the abuse of the process of the court or otherwise to secure the ends of justice. No inflexible guide-lines or rigid formula can be set out and it depends upon the facts and circumstances of each case wherein such power should be exercised. When the allegations in the complaint prima facie constitute the offence against any or all of the respondents in the absence of materials on record to show that the continuance of the proceedings would be an abuse of the process of the court or would defeat the ends of justice, the High Court would not be justified in quashing the complaint."

13. Even in the case of The Janata Dal Vs. H.S. Chowdhary and Others, the Supreme Court in clear terms held that inherent powers of High Court should not be exercised to stifle a legitimate prosecution. It will normally refrain from giving a premature decision in a case where the entire facts are extremely incomplete and hazy and appropriate evidence as yet even has not been collected.

14. Reference with advantage can further be made to the decision in the case of Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another, . The earlier decision rendered by the Supreme Court in the case of Chaudhary Bhajan Lal (supra) was looked with approval and it was held that the Punjab and Haryana High Court which has quashed the proceedings was not justified in

embarking upon an enquiry as to the probability and genuineness of the allegations. taking stock of the totality of facts and the assertions made the appeal as such was allowed by the Supreme Court. Identical indeed was the decision rendered by the Supreme Court in the case of *State of Maharashtra v. Ishwar Piraji Kalpatri* 1995 (4) Crim 769 it was held:

"The position of law, in this regard, has been very succinctly stated in the above said case that at the stage of quashing a First Information Report or complaint, the High Court is not justified in embarking upon an enquiry as to the probability, reliability or genuineness of the allegations made therein. This is precisely what has been done by the learned Judge in the present case. The First Information Report having been lodged, the Government of Maharashtra having accorded sanction and thereafter, the charge having been filed, there was absolutely no justification for the High Court to have stopped the normal procedure of the trial being allowed to continue. It cannot be presumed that there was no application of mind when the First Information Report was prepared and the sanction of the Government obtained. The allegations as made in the First Information Report and the order granting sanction, if true, would clearly establish that the respondent was rightly prosecuted and was guilty of criminal misconduct. The truthfulness of the allegations and the establishment of the guilt can only take place when the trial proceeds without any interruption....."

15. From the aforesaid it is clear that the guide-lines provided in the case of *Bhajan Lal* (supra) still holds good and necessarily before embarking to quashing the First Information report the allegations made in the First Information Report taking the same on its face value have to be considered. If they do not disclose any cognizable offence the High Court can look into all the facts and circumstances before quashing the First Information Report. If the allegations made are absurd or inherently improper even there the proceedings or the First Information Report can be quashed. In exercise of the inherent powers the court can indeed interfere under Article 226 of the Constitution if alternate remedies are available thereto also the court would hesitate before quashing such proceedings.

16. With this backdrop one can revert back to the assertions made in the First Information Report, copy of which has been placed on the record, respondent No. 2 has specifically alleged that petitioners were demanding dowry and that caused harassment to her. Petitioner No. 1 even has been physically assaulting her and further there are assertions with respect to the dowry articles to be with petitioner No. 1. This indeed is the gist of the assertions made in the First Information Report. Once it is so it is patent that it cannot be termed that the First Information Report is inherently false or does not disclose the offences punishable under Sections 406 and 498A Indian Penal Code.

17. Some of the allegations made during the course of arguments were to look into some other material but as already pointed above this court would restrain itself from going into the said controversy or scrutinise the evidence in detail to

the prejudice of the other party. That indeed is not to be gone into by the High Court in exercise of the inherent powers. Otherwise also the material placed would not be sufficient to exfacie state that allegations are inherently false. Therefore further opinion is not to be expressed.

18. No other argument was urged.

19. For these reasons we are of the considered opinion that it is not a fit case for us to exercise inherent powers. The petition must fail and is dismissed. However, nothing said herein should be taken as any expression of opinion with respect to the merits of the matter or any interference in the investigation pending before the authorities.