

(2014) 06 SHI CK 0019
In the High Court Of Himachal Pradesh
Case No : Cr. MMO No. 4072 of 2013

Vinay Sharma

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 02-06-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 482
Forest Act, 1927 — Section 33
Penal Code, 1860 (IPC) — Section 447

Citation : (2014) 06 SHI CK 0019

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : H.S. Rana, Advocate for the Appellant; Neeraj K. Sharma, Dy. A.G. for Respondent No. 1, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—This petition u/s 482 Cr. P.C. has been filed for quashing final report dated 25.12.2012 prepared in sequel to FIR No. 11 of 2012, registered u/s 447 of the Indian Penal Code and u/s 33 of the Indian Forest Act at Police Station Paonta Sahib, District Sirmaur.

2 Pertinent facts necessary for the adjudication of this petition are that FIR No. 11 of 2012 was registered at Police Station, Paonta Sahib, District Sirmaur on 8.1.2012 against M/s. Indian Technomac Company Ltd. (hereinafter referred to as the "ITCOL" for the sake of convenience) on the basis of complaint filed by Lahore Singh, Range Officer, Forest Range Majra. According to the averments contained in the FIR, the Company encroached upon the land and constructed a RCC wall. The spot was visited by the Tehsildar and the land was identified. Another wall, measuring 1400 meters in length and 8-10 feet in height, was constructed on khasra No. 76. It was found during the course of investigation that the petitioners had channelized the rivulet by raising a wall.

3 Mr. H.S. Rana, learned Advocate, has vehemently argued that the walls were constructed in the larger public interest after seeking permission from the competent authority.

4 The competent authority could not grant permission to raise wall on the forest land even in order to channelize the rivulet. In fact, the ITCOL was also issued show-cause notice by the Divisional Forest Officer on 1.7.2011 to which reply was filed by the company. The respondent-State has already put up the challan before the competent court on 14.1.2013. There is sufficient material on record to establish prima facie the complicity of the petitioners in the alleged offences.

5 Their Lordships of the Hon"ble Supreme Court in State of Maharashtra and Others Vs. Arun Gulab Gawali and Others, have held that court under its inherent powers can neither intervene at an uncalled for stage nor can it "soft-pedal" the course of justice at crucial stage of investigation/proceedings. Their Lordships have further held that inherent power is to be exercised with due care and caution. Their Lordships have held as under:

13. The power of quashing criminal proceedings has to be exercised very sparingly and with circumspection and that too in the rarest of rare cases and the Court cannot be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of allegations made in the F.I.R./Complaint, unless the allegations are so patently absurd and inherently improbable so that no prudent person can ever reach such a conclusion. The extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice. However, the Court, under its inherent powers, can neither intervene at an uncalled for stage nor it can `soft-pedal the course of justice" at a crucial stage of investigation/proceedings. The provisions of Articles 226, 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 (hereinafter called as "Cr. P.C.") are a device to advance justice and not to frustrate it. The power of judicial review is discretionary, however, it must be exercised to prevent the miscarriage of justice and for correcting some grave errors and to ensure that esteem of administration of justice remains clean and pure. However, there are no limits of power of the Court, but the more the power, the more due care and caution is to be exercised in invoking these powers. (Vide State of West Bengal and Others Vs. Swapan Kumar Guha and Others, ; Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, ; G. Sagar Suri and Another Vs. State of U.P. and Others, ; and Ajay Mitra Vs. State of M.P. and Others,).

16. In State of Karnataka Vs. L. Muniswamy and Others, , this Court held as under:-

In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's

inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realization of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction.

(Emphasis added)

6. Their Lordships of the Hon^{ble} Supreme Court in *Iridium India Telecom Ltd. Vs. Motorola Incorporated and Others*, have held that inherent power of High Court u/s 482 of the Code of Criminal Procedure of quashment of proceedings in case of economic offences/commercial transactions, breach of trust, cheating etc. is to be exercised sparingly and only when prosecution is launched maliciously or with ulterior motive. Their Lordships have held as under:

76. As noticed earlier, both the appellants and the respondents have much to say in support of their respective view points. Which of the views is ultimately to be accepted, could only be decided when the parties have had the opportunities to place the entire materials before the Court. This Court has repeatedly held that power to quash proceedings at the initial stage have to be exercised sparingly with circumspection and in the rarest of the rare cases. The power is to be exercised *ex debito justitiae*. Such power can be exercised where a criminal proceeding is manifestly attended with malafide and have been instituted maliciously with ulterior motive. This inherent power ought not to be exercised to stifle a legitimate prosecution.

78. In our opinion, the High Court clearly exceeded its jurisdiction in quashing the criminal proceeding in the peculiar facts and circumstances of this case. The High Court noticed that while exercising jurisdiction u/s 482 Cr. P.C. "the complaint in its entirety will have to be examined on the basis of the allegations made therein. But the High Court has no authority or jurisdiction to go into the matter or examine its correctness. The allegations in the complaint will have to be accepted on the face of it and the truth or falsity cannot be entered into by the Court at this stage." Having said so, the High Court proceeded to do exactly the opposite.

7. Their Lordships of the Hon^{ble} Supreme Court in *Asmathunnisa Vs. State of A.P.* represented by the Public Prosecutor, High Court of A.P., Hyderabad and Another, have laid down the following broad categories where inherent powers can be used u/s 482 of the Code of Criminal Procedure:

(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;

(ii) Where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) Where the allegations constitute an offence but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

8. Their Lordships of the Hon"ble Supreme Court in Padal Venkata Rama Reddy @ Ramu Vs. Kovvuri Satyanarayana Reddy and Others, have held that there is no need to analyze each and every aspect meticulously before trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole and the statement of witnesses made on oath to be verified in full and materials put forth in the charge-sheet ought to be taken note of as a whole before arriving any conclusion. Their Lordships have finally concluded that it is the material concluded during the investigation and evidence led in court which decides the fate of the accused persons.

9. Accordingly, in view of the observations and analysis made hereinabove, there is no merit in the petition and the same is dismissed. Pending application(s), if any, also stand dismissed. No costs.