

(1991) 10 KAR CK 0014

In the Karnataka High Court

Case No : Criminal Petition No. 1330 of 1991

Yeshvir Goyal and another

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 10-10-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Income Tax Act, 1961 — Section 276 C, 277
Penal Code, 1860 (IPC) — Section 120 B, 420

Citation : (1993) 199 ITR 119 : (1991) 3 KarLJ 18

Hon'ble Judges : N.Y. Hanumanthappa, J

Bench : Single Bench

**Advocate : B.V. Acharya for M. Mahabaleshwara Gowda, for the Appellant;
Shylendra Kumar, for the Respondent**

Judgement

N.Y. Hanumanthappa, J.—Though the matter is listed for admission, on the request made by learned counsel for the petitioner and learned Central Government standing counsel, the matter is taken up for final hearing.

2. Admit.

3. This petition is filed u/s 482, Criminal Procedure Code, seeking to quash the complaint lodged against the petitioners for the offences punishable u/s 420 and 120B, Indian Penal Code, read with sections 276C and 277 of the Income Tax Act. The point for consideration in this case is whether, in the absence of prima facie and a reasonable cause to proceed with the investigation, this court should refuse to exercise its powers u/s 482 of the Criminal Procedure Code.

4. Sri B. V. Acharya, learned counsel for the petitioners, submits that, if the entire complaint is read, it does not disclose that offences punishable u/s 420 read with section 120B, IPC, have been made out.

5. Sri Shylendra Kumar, learned Central Government standing counsel for the respondents, submits that the ingredients of the offences punishable u/s 420

read with section 120B, IPC, have been made out in the complaint. The Department felt that the main idea of the petitioners was to cheat the Department in making an attempt to escape from payment of tax amounting to the tune of rupees ten lakhs. He further submits that if the complaint is read as a whole, it is clear that a case has been made out, merely because the wordings as mentioned in the Indian Penal Code are not mentioned in the complaint and that itself is not sufficient to contend that no prima facie case has been made out. He further submits that this court can quash either FIR or investigation only under exceptional and extraordinary circumstances. The proceedings are not of that type.

6. In support of this contention, he relied upon the decision of the Supreme Court in *State of Bihar Vs. Murad Ali Khan and Others*, wherein it is held as follows (headnote) :

"Where it was alleged in the written complaint filed by the Range Forest Officer that the accused person shot and killed an elephant in a particular Range forest and removed the ivory tusks of the elephant and it was mentioned in the complaint that elephant was included in the Schedule I of the Wild Life (Protection) Act, 1972, and that the complaint was authorised by the Bihar Government's Notification No. S.O. 1022/418/73 to file complaints under the Act and the Magistrate took cognizance of the offence under the Wild Life Protection Act and ordered issue of the process to the accused, it could not be said that the allegations in the complaint, taken on their face value, would not amount in law to any offence against the "Act". Therefore, the quashing of the proceedings of the Magistrate, on the facts of the case by the High Court, was impermissible as an exercise u/s 482, Criminal Procedure Code. Criminal Miscellaneous Nos. 258 and 259 of 1987 (R), dated 18-2-1987 (Patna) and Criminal Miscellaneous No. 223 of 1987, dated 13-2-1987 (Patna), Reversed.

It is trite that jurisdiction u/s 482, Criminal Procedure Code, which saves the inherent power of the High Court to make such orders as may be necessary to prevent the abuse of the process of any court or otherwise to secure the ends of justice, has to be exercised sparingly and with circumspection. In exercising that jurisdiction the High Court would not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not. That is the function of the trial Magistrate when the evidence comes before him. Though it is neither possible nor advisable to lay down any inflexible rules to regulate that jurisdiction, one thing, however, appears clear and it is that when the High Court is called upon to exercise this jurisdiction to quash a proceeding at the stage of the Magistrate taking cognizance of an offence the High Court is guided by the allegations, whether those allegations, set out in the complaint or the charge-sheet, do not in law constitute or spell out any offence and that resort to criminal proceedings would, in the circumstances, amount to an abuse of the process of the court or not."

7. The other contention is that the offence punishable is not merely u/s 420 but

also u/s 120B, IPC, read with sections 276C and 277 of the Income Tax Act, 1961. When different acts are committed, the court which has got jurisdiction or the authority can as well proceed against the petitioners for the offences made out unmindful of the fact that some of the offences are cognizable and some are non-cognizable. For this proposition, Sri Shylendra Kumar relies upon a decision of this court in State of Karnataka Vs. Kallappa Yallappa Goni, . He also submits that this court can exercise its inherent powers u/s 482, Criminal Procedure Code, only when it is required to correct any order passed under the Criminal Procedure Code or to prevent abuse of the process of the court or to secure the ends of justice. According to him, in the instant case, none of the above three ingredients is made out. Hence, the request of the petitioners to set aside the proceedings is neither tenable nor reasonable.

8. As an answer to these contentions, Sri Acharya, learned counsel for the petitioners, submits that, if the entire complaint is read, there is nothing to indicate that the petitioners have committed any of the offences as alleged. The complaint reads as follows :

"Credible information has been received to the effect that S-1 to S-3 who are partners/directors of South Eastern Roadways, Bangalore, entered into a criminal conspiracy with S-4 who is a resident of Gangtok, East Sikkim, and some unknown officials/persons during 1985 to cheat the Government of India, i.e., Income Tax Department, by way of evading payment of Income Tax and in pursuance of the conspiracy S-1 to S-3 handed over to S-4 unaccounted black money to the tune of above Rs. 10 lakhs, S-4 obtained eight demand drafts in November, 1985, from the State Bank of India and the United Commercial Bank branches in Sikkim on Bangalore branch of these banks favouring minor children/wives of S-1 to S-3 for a total sum of Rs. 10 lakhs and sent them to S-1 to S-3 along with affidavits sworn before the court of the Judicial Magistrate, East Sikkim, Gangtok, to the effect that he had donated the amount to the minor children/wives of S-1 to S-3 out of love and affection and out of his capital, etc., S-1 to S-3 opened accounts in the names of their minor children/wives in Canara Bank, Benson Town Branch, between July and November, 1985, and deposited the demand drafts in those accounts which were cleared from the State Bank of India and the United Commercial Bank and credited to the respective accounts from where the funds were later on transferred to the credit of South Eastern Roadways and Nandavanam Roadways - an associate firm. Thus S-1 to S-3 with the connivance of S-4 and others cheated the Government of India of Income Tax on Rs. 10 lakhs and thereby committed offences punishable u/s 420 read with section 120B, IPC, and section 276C and 277 of the Income Tax Act, 1961, section 420, IPC, section 276C and 277 of the Income Tax Act, 1961."

9. In order to know whether any offence has been committed, particularly the offence punishable u/s 420, I. P. C., as submitted by Sri Shylendra Kumar, it is proper to bear in mind section 415 and 420, IPC, which deals with "cheating". Section 415 reads thus :

"415. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation. - A dishonest concealment of facts is a deception within the meaning of this section."

10. Section 420, IPC, reads thus :

"420. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

11. According to Sri Acharya, if the averments made in the complaint and the words used in the above section are compared and understood properly, the conclusion will be that the averments made in the complaint fall short of the requirements as provided u/s 415 and 420, IPC. Hence, the request of Sri Acharya is to quash the proceedings.

12. On a perusal of the allegations made in the complaint and the requirements in section 415 and 420, IPC, the conclusion will be that the complaint does not make out a prima facie case to proceed with the case.

13. The next point is whether this court will be justified in quashing the proceedings at the stage of investigation.

14. Section 482, Criminal Procedure Code, is analogous to section 561A of the old Code, viz., Criminal Procedure Code, 1898. Dealing with section 561A of the 1898 Code, the Supreme Court in *R.P. Kapur Vs. The State of Punjab*, observed that the inherent power of this court to quash any proceeding can be exercised in a proper case either to prevent abuse of the process of court or to secure the ends of justice. However, the court must be cautious. Ordinarily, criminal proceedings instituted against an accused person must be tried under the provisions of the Code and the High Court must be reluctant to interfere with the proceedings at an interlocutory stage. The Supreme Court further held that it is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. Thus the Supreme Court categorised the case where the inherent jurisdiction to quash proceedings can be exercised thus (headnote) :

"(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceedings in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this

category.

(ii) 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.

(iii) Where 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 the 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 561A 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 High Court u/s 561A in the matter of quashing criminal proceedings, and that is the effect of the judicial decisions on the point."

15. While interpreting section 482, Criminal Procedure Code, read with article 226 of the Constitution, the Supreme Court in *State of West Bengal and Others Vs. Swapan Kumar Guha and Others*, , held that whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. If on a consideration of the relevant materials, the court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation into the offence and will generally allow the investigation in the offence to be completed for collecting materials for proving the offence. If, on the other hand, the court on a consideration of the relevant materials is satisfied that no offence is disclosed, it will be the duty of the court to interfere with any investigation and to stop the same to prevent any kind of uncalled for and unnecessary harassment to an individual. The Supreme Court further held (headnote of AIR and at pages 124, 129 of 53 Comp Cas) :

"A First Information Report which does not allege or disclose that the essential requirements of the penal provision are prima facie satisfied, cannot form the foundation or constitute the starting point of a lawful investigation.

An investigation can be quashed if no cognizable offence is disclosed by the FIR. It is surely not within the province of the police to investigate into a Report (FIR) which does not disclose the commission of a cognizable offence and the Code does not impose upon them the duty inquiry in such cases.

The condition precedent to the commencement of investigation u/s 157 of the Code is that the FIR must disclose, prima facie, that a cognizable offence has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation u/s 157 of the Code. Their right of inquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the FIR, prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on. The court shall then no power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. On the other hand, if the FIR does not disclose the commission of a cognizable offence, the court would be justified in quashing the investigation on the basis of the information as laid or received. The power to investigate into cognizable offences must, therefore, be exercised strictly on the condition on which it is granted by the Code."

16. Earlier, the Supreme Court in *Sardar Trilok Singh and Others Vs. Satya Deo Tripathi*, , explaining the scope of section 482, Criminal Procedure Code, held that the inherent jurisdiction can be exercised to quash the proceedings, if so required to prevent the abuse of the process of the court. That was a case where on the material the court came to the conclusion that the allegations made were purely civil in nature and held as follows (headnote) :

"The proceedings initiated was clearly an abuse of the process of the court. It was not a case where any process ought to have been directed to be issued against the accused (appellants). On the well-settled principles of law it was a very suitable case where the criminal proceeding ought to have been quashed by the High Court in exercise of its inherent power. The dispute raised by the respondent was purely of a civil nature even assuming the facts stated by him to be substantially correct."

17. Apart from the decisions of the Supreme Court referred to above, this court in *C.N. Seetharam Vs. State of Karnataka*, explaining the scope of section 482, Criminal Procedure Code, held thus :

"Where, within the limits of the exercise of the statutory power, the police, in cognizable offence, takes up investigation u/s 157, Criminal Procedure Code, the High Court will refrain from interfering in the course of investigation. There are exceptions to this broad principle of law as laid in various decisions. For instance where the facts in the FIR themselves do not constitute any cognizable or non-cognizable offence and if the police proceed to register a case and take up investigation, the High Court will be within its powers to interfere with such investigation and quash the FIR either in exercise of the powers of writ jurisdiction or inherent powers conferred u/s 482, Criminal Procedure Code, to prevent abuse of the process of court or otherwise to secure the ends of justice."

18. Again, in 1990, the Supreme Court in *Dhanalakshmi Vs. R. Prasanna Kumar and Others*, , held that quashing of proceedings by exercising the power u/s 482,

Criminal Procedure Code, is unwarranted and uncalled for particularly when the proceedings do not disclose any mala fides or are not in any way frivolous or vexatious. However, in the same decision, the Supreme Court laid down the circumstances in which the High Court can quash the proceedings. The relevant portion reads thus (headnote) :

"Section 482 empowers the High Court to exercise its inherent powers to prevent abuse of the process of court. In proceedings instituted on complaint, exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegation set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers u/s 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole."

19. From the above rulings of the Supreme Court and also this court, it is clear that the inherent powers u/s 482, Criminal Procedure Code, are to be used sparingly and with circumspection. But, it cannot be said that, if the allegations made in the complaint are either vague and frivolous in nature or vexatious, this court should close its eyes and refuse to quash the proceedings initiated on such baseless allegations. Thus, powers u/s 482, Criminal Procedure Code, to quash the FIR or investigation be exercised when it is shown on consideration of relevant material that : (i) Grounds made out in the complaint to suspect that an offence has been committed are reasonable; (ii) Allegations in the complaint if read as a whole do not constitute an offence; (iii) The First Information Report is quite frivolous and vexatious in that prima facie no cognizable or non-cognizable offence has been made out; (iv) (a) Interference u/s 482, Criminal Procedure Code, is required to correct any order passed under this code, or, (b) to prevent an abuse of the process of the court, or (c) to secure the ends of justice.

20. Keeping the above principles laid down by this court as well as by the Supreme Court, if the complaint is read as a whole, the only conclusion that could be arrived at is that the proceedings initiated are vague, vexatious and unreasonable and the result of non-application of mind on the part of the Department to the provisions of section 120B read with section 415 and 420, IPC, because, there is neither fraud played nor inducement made so as to make the Department part with any property for the benefit of the petitioners. When it is said that the complaint itself is the result of vague and baseless allegations coupled with non-application of mind to the provisions of the Act upon which the Department relies, it has to be said that any investigation pursuance to such complaint is a misconceived one and, if such proceedings are allowed to continue, the same would result in abuse of the process of the court. When such a probable abuse of the process of the court is brought to the notice of this court, it is the paramount duty of this court to prevent such abuse of the process

of the court at the threshold instead of driving the parties to a disadvantageous position.

21. It is not the case of the prosecution that, in the case of evasion of tax, the Department has no power to book the evader and recover the revenue to the State. When such a course is still available, it is difficult to understand why the Department is interested in present proceeding initiated on baseless allegations. Hence, in order to prevent abuse of the process of the court and to secure the ends of justice, the proceedings have to be quashed.

22. Another peculiarity in this case is that the complaint was filed on June 30, 1989. So far, the prosecution has not completed its investigation. The delay caused is sufficient to infer that every thing is going on in a very leisurely manner and the seriousness which the Department thought of at the time of filing the complaint has been diluted at a later stage.

23. Accordingly, this petition is allowed and the complaint is quashed. Consequently, the proceedings initiated by the prosecution on the said complaint also are quashed. All other contentions which are available to the Department including its right to recover the tax, if any, from the petitioners in the manner known to it are left open.