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BAIJNATH JHA

v

SITA RAM AND ANR.

(Criminal Appeal No. 403 of 2000)

JUNE 12, 2008

B

[DR. ARIJIT PASAYAT AND P.P. NAOLEKAR, JJ.]

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Code of Criminal Procedure, 1973 – s.482 – Exercise of power under – Scope of – Discussed – Raid conducted in premises of Respondent No.1 by officers of the State Electricity Board – Allegation that he committed theft of electricity – Appellants were members of the raiding party – Respondent No.1 though arrested on basis of the FIR lodged with the police officials, subsequently released on bail – Thereafter, Respondent No.1 filed complaint before the Magistrate alleging that the three Appellants and one ‘R’, then functioning as Executive Engineer in the Electricity Board, had demanded illegal gratification – Proceedings instituted on the said complaint – Appellants filed petition u/s.482 – Dismissal of, by High Court – On appeal, held: The proceedings instituted were malafide, based on vague assertions and were initiated with malafide intents – It constituted sheer abuse of the process of law – No reason was shown before the High Court as to why the complainant-Respondent No.1 chose not to proceed against one of the four accused persons initially named viz ‘R’ – Proceedings against the Appellants directed to be quashed.

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A raid was conducted in the premises of Respondent No.1 by four officers of the Bihar State Electricity Board on the allegation that he had committed theft of electricity attracting penal consequences under s.379 IPC and ss.39 and 44 of the Indian Electricity Act, 1910. Appellants were members of the raiding party. Respondent No.1 was arrested on basis of the FIR lodged with the police officials, but subsequently released on bail. Thereafter,

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Respondent No.1 filed complaint before the Magistrate alleging that the three Appellants and one 'R', then functioning as Executive Engineer in the Electricity Board, had demanded illegal gratification. The date of the demand was not indicated in the complaint. When the Magistrate (Trial Court) took cognizance, Appellants filed petition before the High Court under s.482 CrPC contending that the complaint was a counter blast by Respondent No.1 to the action taken against him. The petition was dismissed by the High Court.

Meanwhile, the said 'R' had filed a petition for quashing the prosecution against him. The same was dismissed by the High Court while the petition filed by the Appellants was pending. 'R' moved this Court, before which, a statement was made by Respondent No.1 that he did not want to proceed against 'R' but wanted to continue the proceedings as regards the others. Consequently the proceedings were quashed qua 'R'.

The contention raised by the Appellants before this Court is that the proceedings against them was a sheer abuse of the process of the Court; that they and the said 'R' stood on a similar footing and that Respondent No.1 had lodged the complaint with a view to harass the Appellants for taking action against him.

Allowing the appeals and quashing the proceedings against the Appellants, the Court

HELD:1.1. Exercise of power under s. 482 CrPC in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of the Court, and (iii) to otherwise secure the ends

- A of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. The Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All Courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, have all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle "*quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest*" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, the court would be justified to quash any proceeding if it finds that initiation/ continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought

to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto. [Para 3] [1142-E-H, 1143-A-F]

1.2. In *R.P. Kapur's case*, this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings, namely (i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction; (ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged and (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. In dealing with the last case, 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 clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under s.482 CrPC, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. The Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. [Para 4 and 5] [1143-F-H, 1144-A-F]

A *R.P. Kapur v. State of Punjab* (1960) 3 SCR 388-referred to.

2.1. The scope of exercise of power under s.482 CrPC and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in the Bhajan Lal case. A note of caution was, however, added that the power should be exercised sparingly and that too in the rarest of rare cases.

B The seven illustrative categories indicated by this Court in that case were: (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

C 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 under s.156(1), CrPC except under an order of a Magistrate within the

D purview of s.155(2), CrPC; (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

E accused; (4) where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-

F cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under 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

G 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 Act concerned (under

H which a criminal proceeding is instituted) to the institu-

tion and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party and (7) where a criminal proceeding is manifestly attended with *malafides* 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. [Para 5] [1144-E-H, 1145-A-G]

2.2. The powers possessed by the High Court under s.482 CrPC are very wide and the very plenitude of the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a *prima facie* decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. [Para 6] [1145-G,H, 1146-A-F]

- A 2.3. The background of the present case clearly show that the proceedings instituted were *malafide*, based on vague assertions and were initiated with *malafide* intents and constitute sheer abuse of process of law. No reason was shown before the High Court as to why the complainant chose not to proceed against one of the four persons initially named. The cases at hand fit in with category (7) of the *Bhajan Lal's* case. [Para 7] [1146-E,F,G]

- B *State of Haryana v. Bhajan Lal* (1992) Supp 9 SCC 335; *Janata Dal v. H.S. Chowdhary* (1992) 4 SCC 305 and *Raghubir Saran (Dr.) v. State of Bihar* (1964) 2 SCR 336 – relied on.

C CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 403 of 2000

- D From the final Judgment and Order dated 23.11.1998 of the High Court of Judicature at Patna in CrI. Misc. No. 10561 of 1998

WITH

Criminal Appeal Nos. 404 and 405 of 2000.

- E Pramod Swarup for the Appellant.
Manish Kumar and Gopal Singh for the Respondents.

The following Judgment of the Court was delivered

- F Dr. ARIJIT PASAYAT, J. 1. In these appeals challenge is to the order passed by a learned Single Judge of the Patna High Court dismissing the application filed under Section 482 of the Code of Criminal Procedure, 1973 (in short the 'Code'). The validity of the order taking cognizance in Complaint Case No.40 of 1994 pending in the Court of Judicial Magistrate, 1st Class, Patna City was questioned in the petition filed before the High Court.

- G 2. Background facts as highlighted by the appellant in a nutshell are as follows:

- H A raid was conducted on 4.1.1994 in the premises of respondent No.1 by four officers of the Bihar State Electricity

Board. The appellant in each of the Criminal Appeal was a member of the raiding party alongwith others and one Ravindra Kumar Singh who was then functioning as Executive Engineer. Respondent No.1 was arrested on the basis of First Information Report was lodged with the police officials. Allegation against respondent No.1 was that he had committed theft of electricity attracting penal consequences under Section 379 of the Indian Penal Code, 1860 (in short the 'IPC') and Sections 39 and 44 of the Indian Electricity Act, 1910 (in short the 'Electricity Act'). The respondent No.1 was released on bail on 7.1.1994 and on 11.2.1994 respondent No.1 filed a complaint before the learned Judicial Magistrate alleging that the appellant in each case and aforesaid Ravindra Kumar Singh had demanded illegal gratification. Interestingly, no date of such demand was indicated in the complaint. When the learned Judicial Magistrate took the cognizance of the offences punishable under Sections 347, 161, 167, 385 and 511 IPC the appellants filed petitions before the High Court questioning correctness of the order. A specific stand was that the complaint was a counter blast by respondent No. 1 to the action taken against him and no explanation was offered as to why the complaint was filed on 11.2.1994 without even indicating as to when the alleged demand for illegal gratification was made. The said Ravindra Kumar Singh had filed an application (Crl.Misc.No.1973 of 1995) for quashing the prosecution. The same was dismissed on 20.7.1995. The High Court dismissed the application filed by Ravindra Kumar Singh while the application filed by present appellants was pending. He moved this Court in SLP (Crl.) No.3045 of 1996. This Court granted stay on 23.9.1996 and therefore proceedings before the trial Court remained stayed. The special leave petition was disposed of on 17.7.1997. Since a statement was made before this Court by the complainant that he did not want to proceed against the petitioner in the special leave petition but he would like to continue the proceedings so far as the others are concerned, the proceedings were accordingly quashed qua the petitioner in the SLP.

A So far as the present appellants are concerned the High Court was of the view that this Court had interfered because of the concession made and, therefore, no case for interference was made out. The High Court did not attach importance to the fact that the complaint was lodged in February, 1994 and there was no date indicated as to when the alleged demand was made.

B Learned counsel for the appellant in each case submitted that the proceedings were sheer abuse of the process of the Court. The appellants and Ravindra Kumar Singh stood on similar footing. His case was disposed of by this Court and earlier in his case the High Court had declined to interfere and he had moved this court. It was submitted that in the background facts it is clear that with a view to harass the appellants for taking action against him, the respondent No.1 had lodged the complaint. There is no appearance on behalf of the respondent No.1.

D Learned counsel for respondent No.2-State supported the order of the High Court.

E 3. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. The courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether

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civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle "*quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest*" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

4. In *R.P. Kapur v. State of Punjab* (1960(3)SCR 388) this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings: (SCR p. 393)

- (i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;
- (ii) where the allegations in the first information report or complaint taken at its face value and accepted in

- A 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.

- B 5. In dealing with the last case, 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 clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. The Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in *State of Haryana v. Bhajan Lal* (1992 Supp91) SCC 335. A note of caution was, however, added that the power should be exercised sparingly and that too in the rarest of rare cases. The illustrative categories indicated by this Court are as follows: (SCC pp. 378-79, para 102)

 "102. (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.

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(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 under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

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(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.

C

(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 under Section 155(2) of the Code.

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(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.

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(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (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 Act concerned, providing efficacious redress for the grievance of the aggrieved party.

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(7) Where a criminal proceeding is manifestly attended with mala fides 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."

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6. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the

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- A very plenitude of the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally
- B refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material.
- C Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. [See *Janata Dal v. H.S. Chowdhary* (1992(4)SCC 305) and *Raghubir Saran (Dr.) v. State of Bihar* (1964(2) SCR 336).] It would not be proper for the High Court to analyse the case of the complainant in the
- D light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on
- E complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive.

7. The backgrounds clearly show that the proceedings instituted were malafide, based on vague assertions and were
- F initiated with malafide intents and constitute sheer abuse of process of law. No reason was shown before the High Court as to why the complainant chose not to proceed against one of the four persons initially named. The cases at hand fit in with category (7) of Bhajan Lal's case (supra).
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8. The appeals are allowed and the proceedings in complaint case No.40 of 1994 in the Court of Judicial Magistrate, First Class, Patna City stand quashed.