

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 852 OF 2009
(Arising out of SLP (Crl.) No.5908 of 2007)

Sanjeet Kumar

....Appellant

Versus

State of Bihar & Anr.

....Respondents

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Patna High Court allowing the petition filed in terms of Section 482 of the Code of Criminal Procedure, 1973 (in short 'Code'). The petition was filed by the respondent no.2. In the petition challenge was to the order dated 22.9.2003 passed by the Chief Judicial Magistrate, Chapra in Trial No.286 of 2003. The petition filed by the present respondent no.2 for discharge under Section 245 of the Code was rejected. The stand of the applicant before the High Court was that as a counter blast to certain incidents, the petition had been filed belatedly. The present appellant opposed the petition taking the stand that ultimately it was a question of defence and could not have been agitated in an application under Section 482 of the Code.

3. The High Court noted that on the basis of the complaint lodged by the present respondent no.2 charge sheet had been filed. According to him, the original occurrence took place on 5.5.2000 and the complaint was filed after a week as a counter blast. The High Court by practically a non-reasoned order has allowed the application filed in terms of Section 482 of the Code. It is the stand of learned counsel for the appellant that ultimately what the High Court has done is to consider the possible defence which is beyond the scope of consideration under Section 482 of the Code.

4. There is no appearance on behalf of respondent no.2 despite service of notice.

5. Learned counsel for the State submitted that the State has a very limited role to play in a complaint case.

6. We find that the High Court has only referred to the respective stand of the parties and has come to an abrupt conclusion that since the complaint case was filed after filing of the police case by the present respondent no.2, it was filed with ulterior and oblique motive. That certainly is not the way to deal with an application under Section 482 of the Code.

7. The parameters where exercise of inherent power under Section 482 of the Code can be exercised either on proof of abuse of process of any Court or otherwise to secure the ends of justice have been highlighted in several cases. In State of Haryana and Ors. v. Bhajan Lal and Ors. (1992 Supp. (1) SCC 335), it was held that though it will not be possible to lay down any precise, clearly defined sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised, certain illustrative cases were indicated. They are as follows:

(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 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.

(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 under Section 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 wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

8. A note of caution was indicated in the following words:

“103. 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.”

9. In the circumstances, we set aside the impugned order of the High Court and remit the matter for a fresh consideration in accordance with law keeping in view the parameters of Section 482 of the Code.

10. The appeal is allowed to the aforesaid extent.

11. We make it clear that we have not expressed any opinion on the merits of the case.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(ASOK KUMAR GANGULY)

New Delhi,
April 27, 2009

