REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELALTE JURISDICTION

CRIMINAL APPEAL NO. 2055 OF 2007
(Arising out of SLP (Crl.) No. 2272 of 2007)

Dhariwal Tobaco Products Ltd. and others …. Appellants

Versus

Sate of Maharashtra and another …. Respondents

J U D G M E N T

S.B. SINHA, J.

1. Leave granted.

2. Whether an application under Section 482 of the Code of Criminal Procedure, 1973, (for short 'the Code') can be dismissed only on the premise that an alternative remedy of filing a revision application under Section 397 of the Code is available, is the question involved herein.

3. First Appellant is a company incorporated and registered under the Companies Act, 1956 and is engaged in the business of manufacturing Gutkha. Appellant Nos. 2 and 3 are the Chairman and Managing Director of the company. It is said to be a large organization. It has multi-locational manufacturing units and each of them is said to be headed by senior officials of the company, who were responsible for the conduct of its business. Inter alia on the premise that the samples collected from the manufacturing unit of appellants at Solapur were found to be adulterated in terms of Rule 62(1) of the Prevention of Food Adulteration Rules, 1955 (in short '1955 Rules) providing for restriction on the use of anti-caking agents, a criminal complaint was filed in the Court of the Judicial Magistrate, First Class at Akkalkot, Solapur. Cognizance was taken thereof and summons were issued to the appellants.

4. They filed an application under Section 482 of the Code, which by reason of the impugned judgment and order dated 21st December, 2006 has been dismissed, stating :-

> "2. The jurisdiction under section 482 of the said Code has to be exercised sparingly and only in exceptional cases. As held by this Court in the case of V.K. Jain and others (Supra) the

> jurisdiction under section 482 of the said Code will not be exercised if recourse can be taken by the Applicants to the remedy of filing a Revision Application under Section 397 of the said Code. In this view of the matter, the Application is rejected. Notwithstanding the rejection of this Application, it will be open for the Applicants to take out appropriate proceedings before the appropriate court. All contentions on merits are kept open."

5. By an order dated 30th April, 2007 a limited notice was issued. It reads :-

> " Issue notice limited to the question as to whether the matter should be directed to be considered afresh by the High Court keeping in view the fact that other matters wherein similar contentions have been raised are pending before the High Court.
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> Dasti service, in addition is permitted.
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> Liberty to mention after service is complete."

6. Mr. Siddhartha Dave, learned counsel appearing on behalf of appellants would urge that the High Court committed a serious error in rejecting the application filed by appellants under Section 482 of the Code

without entering into the merit of the matter. It was urged that reliance placed by the High Court on its earlier judgment in V.K. Jain and others v. Pratap V. Padode and another, [2005 (30) Mh.L.J. 778] rendered by the learned Single Judge of that Court is contrary to various other decisions of the same Court inter alia in Vishwanaath Ramkrishna Patil and another v. Ashok Murlidhar Sonar and another, [2006 (5) Mh.L.J. 671] and Keki Bomi Dadiseth and others v. State of Maharashtra, [2002 (3) Mh.L.J. 246].

7. Ms. Madhavi Diwan, learned counsel appearing on behalf of the respondents, on the other hand, contended that having regard to the conduct of appellants, this Court should not exercise its extra-ordinary jurisdiction under Article 136 of the Constitution of India, particularly when the power under Section 482 of the Code should not be used mechanically or routinely.

8. Indisputably issuance of summons is not an interlocutory order within the meaning of Section 397 of the Code. This Court in a large number of decisions beginning from R.P. Kapur v. State of Punjab, AIR 1960 SC 866 to Som Mittal v. Govt. of Karnataka , [(2008) 3 SCC 574] has laid down

the criterion for entertaining an application under Section 482. Only because a revision petition is maintainable, the same by itself, in our considered opinion, would not constitute a bar for entertaining an application under Section 482 of the Code.

Even where a revision application is barred, as for example the remedy by way of Section 115 of the Code of Civil Procedure, 1908 this Court has held that the remedies under Articles 226/227 of the Constitution of India would be available. (See Surya Dev Rai v. Ram Chander Rai and others, [(2003) 6 SCC 675]).

. Even in cases where a second revision before the High Court after dismissal of the first one by the Court of Sessions is barred under Section 397 (2) of the Code, the inherent power of the Court has been held to be available.

9. The power of the High Court can be exercised not only in terms of Section 482 of the Code but also in terms of Section 483 thereof. The said provision reads thus :-

> "483. Duty of High Court to exercise continuous superintendence over Courts of Judicial

> Magistrates:- Every High Court shall so exercise its superintendence over the Courts of Judicial Magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cases by such Magistrates."

10. Inherent power of the High Court is not conferred by statute but has merely been saved thereunder. It is, thus, difficult to conceive that the jurisdiction of the High Court would be held to be barred only because the revisional jurisdiction could also be availed of.

(See Krishnan and another v. Krishnaveni and another, [(1997) 4 SCC 241]).

In fact in Adalat Prasad v. Rooplal Jindal and others, [(2004) (7) SCC 338)] to which reference has been made by the learned Single Judge of the Bombay High Court in V.K. Jain and others (supra) this Court has clearly opined that when a process is issued, the provisions of Section 482 of the Code can be resorted to.

11. It may be true, as has been noticed by the High Court that thereunder availability of appellate or revisional jurisdiction of the High Court did not

fall for its consideration but in our considered opinion it is wholly preposterous to hold that Adalaat Prasad (supra), so far as it related to invoking the inherent jurisdiction of the High Court is concerned, did not lay down good law. The High Court in saying so did not only read the said judgment in its proper perspective; it misdirected itself in saying so as it did not pose unto itself a correct question.

In Amar Nath and others v. State of Haryana and others, [AIR 1977 SC 2185] it was opined :-

> "….It was only with the passing of the impugned order that the proceedings started and the question of the appellants being put up for trial arose for the first time. This was undoubtedly a valuable right which the appellants possessed and which was being denied to them by the impugned order. It cannot, therefore, be said that the appellants were not at all prejudiced, or that any right of their's was not involved by the impugned order. It is difficult to hold that the impugned order summoning the appellants straightaway was merely an interlocutory order which could not be revised by the High Court under sub-sections (1) and (2) of Section 397 of the 1973 Code. The order of the Judicial Magistrate summoning the appellants in the circumstances of the present case, particularly having regard to what had preceded, was undoubtedly a matter of moment, and a valuable right of the appellants had been taken away by the Magistrate in passing an order prima facie in sheer mechanical fashion without applying his mind. We are, therefore, satisfied that the order impugned was one which was a matter of moment and which did involve a decision regarding the rights of the appellants. If the appellants were not summoned, then they could not have faced the

> trial at all, but by compelling the appellants to face a trial without proper application of mind cannot be held to be an interlocutory matter but one which decided a serious question as to the rights of the appellants to be put on trial."

12. We may notice that in G. Sagar Suri v. State of U.P., [(2000) 2 SCC 636] this Court has held :-

> "7. It was submitted by Mr Lalit, learned counsel for the second respondent that the appellants have already filed an application in the Court of Additional Judicial Magistrate for their discharge and that this Court should not interfere in the criminal proceedings which are at the threshold. We do not think that on filing of any application for discharge, the High Court cannot exercise its jurisdiction under Section 482 of the Code. In this connection, reference may be made to two decisions of this Court in Pepsi Foods Ltd. v. Special Judicial Magistrate and Ashok Chaturvedi v. Shitul H. Chanchani wherein it has been specifically held that though the Magistrate trying a case has jurisdiction to discharge the accused at any stage of the trial if he considers the charge to be groundless but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against them when no offence has been made out against them and still why must they undergo the agony of a criminal trial.
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> 8. Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under

> Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

This Court therein noticed a large number of decisions to opine that whenever the High Court comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of court and that the ends of justice require that the proceedings should be quashed, it would not hesitate to do so.

13. We may furthermore notice that in Central Bureau of Investigation v. Ravi Shankar Srivastava, [(2006) 7 SCC 188] this Court while opining that the High Court in exercise of its jurisdiction under Section 482 of the Code does not function either as a court of appeal or revision, held :-

> "7. 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 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."

14. It is interesting to note that the Bombay High Court itself has taken a different view. In a decision rendered by the Aurangabad Bench of the

Bombay High Court, a learned Single Judge in Vishwanath Ramkrishna Patil (supra), where a similar question was raised, opined as under :-

> "It is difficult to curtail this remedy merely because there is a revisional remedy available. The alternate remedy is no bar to invoke power under Article 227. What is required as to see the facts and circumstances of the case while entertaining such petition under Article 227 of the Constitution and/or under Section 482 of Criminal Procedure Code. The view therefore, as taken in both the cases V.K. Jain and Saket Gore, no way expressed total bar. If no case is made out by the petitioner or the party to invoke the inherent power as contemplated under Section 482 of Criminal Procedure Code and/or the discretionary or the supervisory power under Article 227 of the Constitution of India they may approach to the revisional Court, against the order of issuance of process.
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> 11. Taking into consideration the facts and circumstances of those cases, the learned Judge has observed in V.K. Jain and Saket Gore (supra) that it would be appropriate for the parties to file revision application against the order of issuance of process. There is nothing mentioned and/or even observed that there is total bar to file petition under Section 482 of Criminal Procedure Code and/or petition under Article 227 of the Constitution of India.
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> 12. The Apex Court's decision already referred above, nowhere prohibited or expressly barred to invoke Section 482 of Criminal Procedure Code or Article 227 of the Constitution of India against the order of issuance of process."

In Keki Bomi Dadiseth (supra), another learned Single Judge of the Nagpur Bench of the Bombay High Court entertained an application under Section 482 of the Code, where summons have been served for commission of offence under the Prevention of Food Adulteration Act, 1954, holding:-

> "33. In view of the ratio laid down by the Apex Court in the above referred cases, it is well settled that inherent power under Section 482 can be invoked by the accused in the appropriate case irrespective of other factors and this Court can exercise the same in a deserving case within parametres of law and, therefore, the contentions canvassed by the learned Additional Public Prosecutor in this regard are misconceived and same are rejected."

15. In our considered opinion V.K. Jain (supra) does not lay down a good law. It is over-ruled accordingly.

16. For the reasons aforementioned the impugned judgment cannot be sustained which is set aside accordingly. The High Court is directed to consider the matter afresh on merits. The appeal is allowed.

…….J.

[S.B. Sinha]

…….J.
[Cyriac Joseph]

New Delhi
December 17, 2008