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UNION OF INDIA AND ORS.

v.

SH. B.R. BAJAJ AND ORS.

JANUARY 18, 1994

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[K. JAYACHANDRA REDDY AND G.N. RAY, JJ.]

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Code of Criminal Procedure, 1973 : S.482—Inherent powers of High Court—Criminal proceedings—F.I.R.—Held, when F.I.R. discloses commission of cognizable offence which had still to be investigated thoroughly by police, court should not exercise the power to investigate whether offence alleged in F.I.R. is committed or not.

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The Chandigarh Unit of Indian Council of Child Welfare was granted permission to run a lottery in order to raise funds for the welfare of the handicapped children. In the second week of August 1985 the Council invited tenders for running the lottery. The Tender Committee opened tenders on 29.8.1985 and sent their recommendations to respondent no.1 the then Finance Secretary in State Government, recommending that tender of the second highest tenderer should be accepted as the first highest tenderer had already withdrawn his offer. Respondent no.1 accepted the recommendations and marked the file to the President of the Council. However, on 21.10.1985 respondent no.1 recorded a note purported to have been made after discussion with the President of the Council stating that the second highest tenderer was not a reliable and suitable party and since the third highest tenderer had also withdrawn, the contract may be finalised with the fourth highest tenderer. The file was marked to the President who approved the proposal of respondent no.1. Meanwhile the fourth and the fifth highest tenderers withdrew on the ground of inordinate delay. Thereafter the Committee recommended to offer the lottery to the sixth highest tenderer. Respondent no.1 made a note to that effect and after discussing the matter with the President, proposal was approved and ultimately the lottery came to be awarded to the sixth highest tenderer.

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The Delhi Special Police Establishment, Chandigarh came to know that fourth, fifth and sixth highest tenderers were all sister concerns and they had entered into a conspiracy with a view to gaining undue pecuniary

benefit and causing corresponding loss to the Council, and respondent no.1 with this object in view recorded a false note on 21.10.1985 against the second highest tenderer. Accordingly an F.I.R. was registered against respondent no.1, fourth to sixth highest tenderers and some others for offences punishable under s.120-B, read with s.418, s.468 I.P.C. and s.5(2) read with s.5(1)(d) of the Prevention of Corruption Act. The investigation was entrusted to the C.B.I. Chandigarh.

Respondent no.1 filed a petition under s.482, Cr.P.C. in the High Court for quashing of the F.I.R. against him and others. The High Court allowed the petition and quashed the F.I.R. Hence the appeal by the Union of India and others.

Allowing the appeal, this Court

HELD : 1.1. The High Court has grossly erred in quashing the F.I.R. itself when several aspects of the allegations in the F.I.R. had still to be investigated. There are some important allegations in the F.I.R. which make out a cognizable offence at that stage and the registration of an F.I.R. is only the beginning of the investigation. [146-G-H, 147-A]

1.2. The F.I.R. shows that a false note was recorded by respondent no.1 with a view to help one of the tenderer companies and its sister concerns. Before the agreement with the sixth highest tenderer and the Council was signed, the second highest tenderer had sent a telegram and also a complaint alleging mal-practices in the awarding of the contract. Even after receiving such a telegram respondent no.1 did not take any steps to stop the loss to the council. [146-E-F]

1.3. The High Court while coming to the conclusion that the allegations in the F.I.R. do not disclose any offence has taken into consideration several aspects including the guidelines, normal duty of respondent no.1 etc. It went further in considering several other records produced by respondent no.1 and certain other documents, and investigated whether the offences alleged in the F.I.R. are made out or not. The High Court has treated the whole matter as though it was an appeal against the order of conviction. That should never be the approach in exercising the power under s. 482 Cr.P.C. particularly at the stage of F.I.R. when the same discloses commission of a cognizable offence which had still to be investigated thoroughly by police. [147-A-C]

- A 2. The High Court should consider the limitations in exercising the inherent power under s.482, Cr.P.C. to quash the criminal proceedings at the stage of F.I.R. with a view to prevent abuse of process of any Court or otherwise to secure the ends of justice. This power should not be exercised to stifle a legitimate prosecution. At the stage of F.I.R. the Courts should refrain from interfering when the F.I.R. discloses the commission of a cognizable offence and statutory power of police to investigate cannot be interfered with in exercise of the inherent power of the Court.

[143-H; 144-A; 146-C]

- C *State of Haryana & Ors. v. Ch. Bhajan Lal & another*, [1992] Suppl. 1 S.C.C. 335 & *Janta Dal v. H.S. Chowdhary and others*, [1992] 4 S.C.C. 305 relied on.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 467 of 1986.

- D From the Judgment and Order dated 10.7.1986 of the Punjab & Haryana High Court in CrI.Misc.No.2208 of 1986.

Altaf Ahmed, Additional Solicitor General, N.N. Goswamy, C.V. Subba Rao, T.C. Sharma and P. Parmeswaran for the Appellants.

- E U.R. Lalit, D.V. Sehgal, Gopal Singh, P. Gaur, Ms. Gunwant Dara, Jitendra Sharma and R.S. Sodhi for the Respondent.

The Judgment of the Court was delivered by

- F K. JAYACHANDRA REDDY, J. 1. This appeal by Union of India and Delhi Special Police Establishment, Chandigarh Branch and its two officials is filed against the judgment of the Punjab & Haryana High Court allowing a petition under Section 482 Cr.P.C. filed by Shri B.R. Bajaj, I.A.S., Finance Secretary, Union Territory of Chandigarh, who figured as an accused in the F.I.R. registered against him and some others. The appeal arises under the following circumstances.

- G 2. In the Union Territory of Chandigarh, a Unit of Indian Council of Child Welfare (hereinafter referred to as the "Council"), a registered Society was established. Shri B.R. Bajaj, respondent no.1 being the Finance Secretary was the Ex-officio Vice- President of the said Council. Shri K. Banerjee, the Chief Commissioner of the Union Territory was the President of the said Council. On 23.4.1985 the Council sought permission of
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the Union Territory to run a lottery in order to raise funds for opening a rehabilitation centre for handicapped children and the Union Territory granted permission to the Council by its letter dated 10.7.1985. The funds thus raised were meant to be used for the welfare of the handicapped children. The Government of India, Ministry of Home affairs issued guidelines on the running of lotteries to all the State Governments including the Union Territory of Chandigarh. As per the guidelines the maximum number of bumper draws in a year can be 12 and the minimum revenue accruing from the lottery can be atleast 15% of the gross value of the tickets printed for sale. A B

3. During the second week of August, 1985, advertisements were given by the Council in the Tribune, Indian Express and other newspapers inviting tenders for running the said lottery. As per this advertisement the prescribed form which also contained the terms and conditions of the tender could be obtained from the Secretary, Bal Bhavan Chandigarh on payment of Rs. 20. The terms and conditions indicated that tenders were invited in respect of 156 draws covering a period of three years namely 52 draws per year. For ensuring that the payments were made regularly by the tenderer whose tender is ultimately accepted, securities were to be furnished as per Condition nos. 8 & 9 which lay down that the organiser should deposit Rs. 5 lacs as security in a nationalised bank duly pledged in the name of the Council and also a bank guarantee of the equal amount of security which shall be forfeited in full or in part at the discretion of the Council in case a breach of any of the terms and conditions of the agreement; and that the organiser shall pay a net guaranteed profit to the Council for the three contractual years in 12 equal instalments and each instalment would be payable before the printing of the tickets is ordered for a draw and if the organiser fails to pay any instalment during the stipulated period, he shall be liable to pay interest @ 12% P.A. for each day of default. Eight parties submitted their tenders. The Tender Committee of the Council opened the tenders on 29.8.1985 and sent their recommendations to Shri B.R. Bajaj, Finance Secretary. The Tender Committee in its note recommended that the tender of M/s V. Kumar Lotterywala who was the second highest tenderer should be accepted since the first highest tenderer had withdrawn his offer before the Committee took up the tenders for consideration. The file remained with Shri B.R. Bajaj and he accepted the recommendations of the Tender Committee on 23.9.1985 and marked the file to the President of the Council. On 21.10.1985 Shri Bajaj C D E F G H

- A recorded a note purported to have been made after discussion with the President, stating that he was informed that M/s V. Kumar Lotterywala was not a reliable and suitable party and that the next highest tenderer M/s Swastik Distributor had withdrawn and M/s Om Prakash & Co. is the next highest tenderer who has been running a lottery currently and therefore
- B the contract may be finalised with M/s Om Prakash & Co. The file was marked to the President who approved the proposal of the Vice-President Shri B.R. Bajaj. The file went to the Council and reached there on 29.10.1985. In the meanwhile M/s. Jasmine & Co., one of the tenderers who offered a lower quotation also withdrew and M/s Om Prakash & Co. whom
- C the contract was ordered to be given, also withdrew on the ground that due to inordinate delay in deciding the issue they were no longer in a position to organise the lottery. In the circumstances the Committee recommended to offer the lottery to the next highest tenderer M/s H.K. Chugh & Co. Thereafter a note was made by Shri B.R. Bajaj to the effect that he had discussed the matter with the President and he had approved the proposal
- D and thus the contract of lottery came to be ordered to be awarded to M/s H.K. Chugh & Co. The officers of the Delhi Special Police Establishment, Chandigarh gathered information that M/s Om Prakash & Co., M/s Jasmine & Co. and M/s H.K. Chugh & Co. are all sister concerns and that Shri H.K. Chugh is also a partner in the firm M/s Om Prakash & Co. and
- E that Shri Om Prakash is also a partner in the firm M/s Jasmine & Co. and Shri H.K. Chugh is no other than the son of Shri Om Prakash and that the accused persons entered into a conspiracy with a view to causing undue pecuniary benefit to themselves including private parties namely M/s Om Prakash & Co. and its sister concerns and corresponding loss to the
- F Council and that Shri B.R. Bajaj with this object in view recorded a false note on 21.10.1985 *inter alia* to the effect that on verification from the Director, State Lotteries, Punjab, he was informed that M/s V. Kumar Lotterywala was not a reliable and suitable party and that in fact no such enquiries were made and that the Director of State Lotteries had no complaints against M/s V. Kumar Lotterywala, the highest tenderer and
- G that this false note was therefore recorded by Shri B.R. Bajaj with a view to ensure that the higher offer of M/s V. Kumar Lotterywala could be rejected and that in the process of this conspiracy delaying tactics were adopted at various levels resulting in the withdrawal of next highest tenderer M/s Swastik Distributor. Having ensured this withdrawal, Shri
- H B.R. Bajaj made an order for the award of the contract to M/s Om Prakash

& Co. On the basis of this information further investigation was carried on and an F.I.R. was registered against Shri B.R. Bajaj, M/s Om Prakash & Co., M/s Jasmine & Co., M/s H.K. Chugh & Co. and some unknown persons. In that F.I.R. all these details including the other omissions and commissions committed by the accused persons were mentioned and that they committed offences punishable under Section 120-B read with Sections 418, 468 I.P.C. and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act. On the basis of this F.I.R. the case was registered against the accused persons and the same was entrusted to the D.S.P., C.B.I., Chandigarh for investigation.

4. When the investigation was still in progress, Shri B.R. Bajaj filed a petition under Section 482 Cr.P.C. in the High Court against Union of India and others with a prayer for the quashing of the F.I.R. registered against him and others. The High Court by the impugned order quashed the same by a very lengthy order in so far as Shri B.R. Bajaj is concerned, holding *inter alia* that the allegations in the F.I.R. do not make out an offence against the petitioner.

5. Learned counsel appearing for the Union of India submitted that the High Court has erred in quashing the F.I.R. on the ground that the F.I.R. and other materials do not disclose any offence on the basis of some records produced for the first time by Shri B.R. Bajaj and the Union Territory of Chandigarh and that the High Court erred in relying upon the affidavit of Shri K. Banerjee and the letter of Mrs. Shant Bhupinder Singh, Director, State Lotteries Punjab. It is also his submission that cognizable offences are clearly made out which need to be further investigated and in support of this submission he relied on several documents which are yet to be examined during the investigation.

6. Learned counsel for the respondent Shri B.R. Bajaj, on the other hand, submitted that the High Court has power under Section 482 Cr.P.C. to interfere with an investigation and to stop the same to prevent any kind of uncalled for and unnecessary harassment to any individual and that the contents of the F.I.R. do not disclose any offence and that Shri B.R. Bajaj has not committed any culpable act attracting any penal consequences.

7. In *State of Haryana & Ors. v. Ch. Bhajan Lal and another*, [1992] Suppl. 1 S.C.C. 335 this Court has exhaustively considered after having referred to a number of decisions, the limitations in exercising the powers

A under Article 226 of the Constitution or under Section 482 Cr.P.C. to quash the criminal proceedings at the stage of F.I.R. with a view to prevent abuse of process of any court or otherwise to secure the ends of justice. It was held thus :

B "In the backgrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

E (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.

F (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.

G (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.

H (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 of the accused and with a view to spite him due to private and personal grudge."

To the same effect is the ratio laid down in *Janta Dal v. H.S. Chowdhary and others*, [1992] 4 S.C.C. 305. In the above case this Court has exhaustively dealt with the scope of inherent powers conferred by Section 482 Cr.P.C. and it was held thus :

"This inherent power conferred by Section 482 of the Code 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 premature decision in a case wherein the entire facts are extremely 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 great magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down

- A in regard to the cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage. This Court in *State of Haryana v. Ch. Bhajan Lal*, [1992] Supp. 1 S.C.C. 335 to which both of us were parties have dealt with this question at length and enunciated the law listing out the circumstances under which the High Court can exercise its jurisdiction in quashing proceedings."
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- C It is also further reiterated that at the stage of the FIR the courts should refrain from interfering when the FIR discloses the commission of a cognizable offence and statutory power of police to investigate can not be interfered with in exercise of the inherent power of the court.

- D 8. In the instant case the High Court while interfering at the stage of F.I.R. holding that the FIR did not disclose any offence, as a matter of fact, took into consideration several other records produced by respondent nos. 1 and 2 and also relied on the affidavit filed by Shri Banerjee and also on a letter written by the Director, State Lotteries. This approach of the High Court, to say the least, to some extent amounts to investigation by the court whether the offences alleged in the F.I.R. are made out or not. In the F.I.R. it is clearly mentioned that a false note was recorded by respondent no.1 with a view to help M/s Om Prakash & Co. and its sister concerns. It is also mentioned in the F.I.R. that the information so far received disclosed that before the agreement dated 7.11.1985 was signed between M/s H.K. Chugh & Co. and the Council, M/s V. Kumar Lotterywala sent a telegram and also complaint alleging mal-practices in the awarding of the contract and the same was also sent to the President and Shri B.R. Bajaj. However, even after receiving such a telegram, Shri B.R. Bajaj did not take any steps to stop the loss to the Council because of his deep involvement in the conspiracy and it is also clearly mentioned that the total loss caused to the Council and gain to the accused persons is to the tune of Rs.1,43,34,000 when compared to the offer made by the highest tenderer M/s Bharat & Co. or atleast Rs.1,13,34,000 when compared to the next highest tenderer M/s V. Kumar Lotterywala. These are some of the important allegations in the F.I.R. which make out a cognizable offence at that stage and the registration of an F.I.R. is only the beginning of the investigation. That being the case, the High Court has grossly erred in quashing the F.I.R. itself when several aspects of the allegations in the F.I.R. had still to be
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investigated. The learned Judge of the High Court while coming to the conclusion that the allegations in the F.I.R. do not disclose any offence, has taken into consideration several aspects including the guidelines, normal duty of Shri B.R. Bajaj etc. and went further and investigated whether the offences under Sections 120-B read with 418, 468 I.P.C. and Sections 5(2) read with 5(1)(d) of the Prevention of Corruption Act have been made out. Suffice it to say that the learned Judge has treated the whole matter as though it was an appeal against the order of conviction and that should never be the approach in exercising the inherent power under Section 482 Cr.P.C. particularly at the stage of F.I.R. when the same discloses commission of an cognizable offence which had still to be investigated thoroughly by police. We do not think that in this case we should make a further detailed consideration about the contents of the F.I.R. We are satisfied that this is not at all a fit case for quashing the F.I.R. under Section 482 Cr.P.C. Accordingly the appeal is allowed.

R.P.

Appeal allowed.