CASE NO.:
Appeal (crl.) 72 of 2002

PETITIONER:
STATE OF KARNATAKA

Vs.

RESPONDENT:
M. DEVENDRAPPA & ANR.

DATE OF JUDGMENT: 16/01/2002

BENCH:
M.B. Shah, B.N. Agrawal & Arijit Pasayat

JUDGMENT:

J U D G E M E N T

ARIJIT PASAYAT, J.

Leave granted.

Order of learned Single Judge by which proceedings initiated against the respondents in CC.No. 1613/1998 on the file of the CJM, Tumkur, were set aside is subject matter of challenge, in this appeal.

Background facts in nutshell essentially are as follows: -

The Inspector of Police, Fraud Squad, COD submitted a charge-sheet against the Respondents (hereinafter referred to as "accused") in the aforesaid case alleging commission of offences punishable under Sections 465, 468, 471 and 420 read with Section 120-B of Indian Penal Code 1860 (in short 'IPC'). The said charge-sheet was submitted after investigation, on receipt of complaint made by one Police Inspector attached to the Fraud Squad, COD, Bangalore. Cognizance was taken by the CJM. Respondents - accused nos. 1&2 filed application before the Karnataka High Court under Section 482 of the Code of Criminal Procedure, 1973 (in short the 'Code'). They inter alia contended that the allegations made have not been borne out by the materials/evidence collected during investigation and continuance of proceedings against them would be against the ends of justice. Learned single Judge noted that the substance of charge-sheet as stated in Form No. 7 was to the effect that for the year 1992-1993 and 1993-1994, the Excise Contractors Ranganatha Group were awarded the contract to act as excise contractors for the Tumkur District. The said Ranganatha Group sub-leased by way of General Power of Attorney (in short 'GPA') to accused no. 1 to act as Excise Contractor of Koratagere of Tumkur District. As a part of the arrangement, the said accused no. 1 M.Devendarappa was required to produce bank guarantee for the whole of Tumkur District at the rate of 1/10th amounting to Rs.39,06,000/- from Nationalized Bank for the year 1992-1993. Similar was the position for the year 1993-1994 except that the original contractors were Yallappa and Ramachandrappa and the Bank guarantee required to be furnished was for an amount of Rs.64,29,500/-. Allegations were to the effect that "Letter Heads" of Karnataka Bank Ltd., were removed surreptitiously and with fake

seals, fake bank guarantees were typed out on the "Stamp Papers" purchased from "Koratagere Stamp Vendor" and were signed by accused no. 2 posing to be the Manager of Karnataka Bank Ltd., Koratagere Branch. These bank guarantees were submitted as if they were genuine in the office of Deputy Commissioner of Excise, Tumkur. On 17.7.93, accused no. 1 took Excise Sub-Inspector to a house at Asok Nagar, Tumkur where he introduced accused no. 2 to be the Manager of the Bank and caused service of a notice which was addressed to the Manager of the Bank by the Deputy Commissioner of Excise. Under the above circumstances, it was alleged that with fraudulent intention, fake bank guarantees, confirmation letters, extension letters were submitted and there was impersonation. Therefore, it was stated that offences were punishable as noted above.

Learned Single Judge analysed the background facts and came to hold that the involvement of excise officials cannot be ruled out and when they have been indicated to be witnesses, likelihood of prejudice cannot be ruled out. It was also noted that there was no "definite evidence" to show that accused nos. 1&2 were directly involved. Finally, it was observed that there was no material to hold that the accused persons had committed theft of "Letter Heads" from Karnataka Bank Ltd., and/or they had committed forgery for the purpose of cheating or have used genuine forged documents or had cheated the government. Finally, it was observed that there was no evidence to infer common intention to commit such offences.

Aggrieved by the said Order directing quashing of the proceedings, this appeal has been filed. In support of the appeal, it is submitted by learned counsel for the State of Karnataka that the very approach of learned Single Judge is unjustified, illegal and erroneous. He was considering the desirability of continuing the proceeding. He has dealt with the matter as if he was holding a trial. The question whether there was any direct evidence or not is not really relevant at the stage of taking cognizance/framing of charges. Considering the limited scope of consideration in the background of powers exercisable under Section 482 of the Code, the order, it is submitted, is erroneous. Learned counsel for the respondents/accused persons, however, submitted that when there is no scope for conviction, the continuance of the proceedings would have been an abuse of the process of Court. Further, persons whose roles have been highlighted by learned Single Judge to show involvement having not been made accused persons, and having been only indicated to be witnesses, the trial, if any, would ultimately be of no consequence. In substance, it was, therefore, submitted that the order does not suffer from any infirmity to warrant any interference.

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 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 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. 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 recognizes and preserves inherent powers of 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 course of administration of justice on the principle "quande lex aliquid aliqui concedit, concedere videtur in sine que ipsa, 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 exdebite justitiae to do real and substantial justice for the administration of which alone 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 process of Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers Court would be justified to quash any proceeding if it finds initiation/continuance of it amounts to abuse of 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.

In R.P. Kapur. vs. State of Punjab (AIR 1960 SC 866), this Court summarized some categories of cases where inherent power can and should be exercised to quash proceedings.

(i) Where it manifestly appears that there is a legal bar against the institution or continuance, e.g. want of sanction;

(ii) Where the allegation in the first information report or complaint taken at its face value and accepted in 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.

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 function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. 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 private complainant as 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 and others vs. Ch. Bhajan Lal and others (AIR 1992 SC 604). A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases. The illustrative categories indicated by this Court 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 F.I.R do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the F.I.R. 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 F.I.R. 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.

As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. 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. 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. [See: The Janata Dal etc. vs. H.S. Chowdhary and Ors. etc. (AIR 1993 SC 892), Dr. Raghubir Saran vs. State of Bihar & Anr. (AIR 1964 SC 1)]. 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 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. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in Court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceeding. [See: Mrs. Dhanalakshmi vs. R. Prassnna Kumar and Ors. (AIR 1990 SC 494), State of Bihar & Anr. vs. P.P. Sharma I.A.S. & Anr. (1992 Suppl. (1) SCC 222), Rupan Deo Bajaj (Mrs.) & Anr. vs. Kanwar Pal Singh Gill & Anr. (1995 [6] SCC 194), State of Kerala & Ors. vs. O.C. Kuttan & Ors. (1999 [2] SCC 651), State of U.P. vs. O.P. Sharma (1996 [7] SCC 705), Rashmi Kumar (Smt.) vs. Mahesh Kumar Bhada (1997 [2] SCC 397), Satvinder Kaur vs. State (Govt. of NCT of Delhi) and Anr. (1999 [8] SCC 728), Rajesh Bajaj vs. State NCT of Delhi and Ors. (AIR 1999 SC 1216)].

The factual position highlighted above clearly shows commission of offences, and considered in the background of the legal principles enumerated above, the order of learned single Judge cannot be maintained. The same is set aside. The appeal is allowed. We, however, make it clear that whatever we have stated above should not be considered to be expression of opinion regarding the merits of the case, which it goes without saying, has to be considered by the concerned Court at an appropriate stage.

.J.
(M. B. SHAH)

....J.
(B. N. AGRAWAL)

...J.
(ARIJIT PASAYAT)

January 16, 2002