

CASE NO.:
Appeal (crl.) 425 of 2008

PETITIONER:
Reshma Bano

RESPONDENT:
State of Uttar Pradesh & Ors

DATE OF JUDGMENT: 03/03/2008

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM & AFTAB ALAM

JUDGMENT:
J U D G M E N T

CRIMINAL APPEAL NO 425 OF 2008
(Arising out of S.L.P. (Crl.) No. 7342 of 2007)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of Allahabad High Court dismissing the application filed by the appellant for exercise of power under Section 482 of the Code of Criminal Procedure, 1973 (in short 'the Code') and Article 226 of the Constitution of India, 1950 (in short the 'Constitution'). The prayer in the writ petition was to quash the proceedings initiated on the basis of FIR Crime No.316 of 2007, P.S. Phoolpur, Allahabad. It was submitted before the High Court that the FIR did not disclose any offence so far as the appellant is concerned. It was pointed out that the appellant was the sister of the accused no.1 Afzal who was alleged to have committed the offence of kidnapping etc. The High Court dismissed the application holding that on reading of the FIR, cognizable offence is made out.

3. In support of the appeal learned counsel for the appellant submitted that the only reference made to the appellant in the FIR reads as follows:

"Questioning from the sister of the boy,
Smt. Reshma Bano, might be advantageous".

4. This does not indicate commission of any offence rather puts the appellant in the position of a witness. Even if it is conceded for the sake of arguments but not admitted that commission of any cognizable offence is made out against others, so far as the appellant is concerned, there is not even a scarp of material and not even allegation of overt act.

5. There is no appearance on behalf of the respondent in spite of service of notice.

6. 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.

7. 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."

8. The case at hand falls within the category I of the illustrations given in Bhajan Lal's case (supra). Therefore, we quash the proceedings relatable to FIR no.316 of 2007 far as the appellant is concerned. In other words, on the basis of the existing materials the appellant shall not be treated to be accused. It is, however, open to the Investigating Agencies to examine her as a witness. It is, further made clear that we have quashed the proceedings vis-à-vis the appellant only on the basis of the existing material.

9. The appeal is allowed.