REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.766 OF 2011
(Arising out of SLP (Crl.) No.4531/2006)

Asmathunnisa ... Appellant

Versus

State of A.P. represented by the
Public Prosecutor, High Court of A.P.,
Hyderabad & Another ... Respondents

SUPREME COURT OF INDIA

J U D G M E N T

JUDGMENT

Dalveer Bhandari, J.

1. Leave granted.

2. The appellant is the Headmistress in the Little Star School located at Gayatri Hills, Yousufguda, Hyderabad has preferred this appeal against the impugned judgment and order passed by the High Court of Judicature of Andhra Pradesh at Hyderabad in Criminal Petition No.2127 of 2006.

3. It may be pertinent to mention that her husband Mohd. Samiuddin and the appellant are being prosecuted for an offence under section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the 1989 Act').

4. The appellant filed a petition before the Andhra Pradesh High Court under section 482 of the Code of Criminal Procedure for quashing the proceedings in Crime No.50 of 2006, Police Station Jubilee Hills, Hyderabad. The High Court, by the impugned judgment, has declined to quash the proceedings.

5. The brief facts which are necessary to dispose of this appeal are recapitulated as under:

A complaint was filed against the appellant and her husband Mohd. Samiuddin on 09.02.2006 before the Sub-Inspector of Police, Jubilee Hills Police Station, Hyderabad, which reads as under:

> "I am to inform you that just besides my house a building bearing No.8-2-293/82/B/60, in 1+3 storied building, a school is being run from 1 to 10th class. I have informed the management of the school with regard to sound pollution. I have also

> submitted representation to the DEO, Hyderabad. Since the authorities have not taken any action in this regard, I approached the Hon'ble High Court of A.P., and obtained an interim order on 03.10.1995. While the DEO trying to implement the interim orders, the Little Star School management, Gayathri Hills, has created more sound pollution. When we were not able to stay at our houses due to sound pollution, we invited the press people and expressed our grievances on 08.02.2006. The same news was published in the Newspapers on 09.02.2006. After reading the news, the School management, Smt. Asmatunnisa and her husband namely Md. Samiuddin came to my house at 9.00 a.m., when I was not there. Md. Samiuddin abused in filthy language by naming caste and asked my wife, R. Sridevi, without even looking that she is a lady, that where did she sent me and also said that "AA LAMBADODU", "let him come home today we will settle the matter with him." Smt. Asmatunnisa also abused my wife. Smt. Anuradha, who is staying opposite to my house was the eye witness for the incident."

The significant part of this complaint is that the offending words were admittedly spoken by Mohd. Samiuddin, the husband of the appellant. He abused Sridevi's husband in filthy language by naming caste and said that "AA LAMBADODU", "let him come home today we will settle the matter with him." At that time, admittedly Sridevi's husband was not present.

6. The appellant has also been implicated because she had accompanied her husband to the house of the complainant. Admittedly, the appellant did not utter offending words. It would be relevant to set out relevant provisions of law as under:

7. Section 3 sub-section (1) sub-section (x) of the 1989 Act is reproduced as under:

> "3. Punishments for offences of atrocities. – (1) Whoever, not being a member of a Scheuled Caste or a Scheduled Tribe,-
>
> xxx xxx xxx
>
> intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;"

8. Learned counsel for the appellant submitted that:

A. According to the complaint, no offence under the aforesaid section can be made out against the appellant because the ingredients of the offence are not made out. In the complaint so called offending words were not even attributed to the appellant. It is alleged that the appellant merely accompanied her husband and the offending words were spoken by the husband of the appellant, therefore, the

appellant in this appeal by no stretch of imagination can be held guilty of the offence under the section 3(1)(x) of the 1989 Act.

B. According to the section, any word which intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe is an offence under the 1989 Act. In the instant case, the husband of Sridevi was not present when the offending words, if any, were spoken by the husband of the appellant. In absence of real aggrieved person present at that point of time, no offence under the said section can be made out against the appellant.

C. It is not established that the words were spoken by a person who was not a member of Scheduled Caste or Scheduled Tribe.

D. The entire incident is alleged to have taken place at the residence of Sridevi and not in any place within public view.

E. None of the ingredients of this offence are present in the instant case. Even if the contents of the complaint in its entirety are taken as correct and true even then no offence is made out against the appellant.

9. In this connection, learned counsel for the appellant has placed reliance on a judgment of the Kerala High Court in ***E. Krishnan Nayanar v. Dr. M.A. Kuttappan & Others*** 1997 Crl. L.J. 2036. The relevant paragraphs of this judgment are paras 12, 13 and 18. The said paragraphs read as under:

> "12. A reading of Section 3 shows that two kinds of insults against the member of Scheduled Castes or Scheduled Tribes are made punishable – one as defined under sub-section (ii) and the other as defined under sub-section (x) of the said section. A combined reading of the two sub-sections shows that under section (ii) insult can be caused to a member of the Scheduled Castes or Scheduled Tribes by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood, and to cause such insult, the dumping of excreta etc. need not necessarily be done in the presence of the person insulted and whereas under sub-section (x) insult can be caused to the person insulted only if he is present in view of the expression "in any place within public view". The words "within public view", in my opinion, are referable only to the person insulted and not to the person who insulted him as the said expression is conspicuously absent in sub-section (ii) of Section 3 of Act 3/1989. By avoiding to use the expression "within public view" in sub-section (ii), the Legislature, I feel, has created two different kinds of offences an insult caused to a member of the Scheduled Castes or Scheduled Tribes, even in his absence, by dumping excreta etc. in his premises or neighbourhood and an insult by words caused to a member of the Scheduled Castes or Scheduled Tribes "within public view" which means at the time of the alleged insult the person insulted must be present as the expression "within public view" indicates or otherwise the Legislature would have

> avoided the use of the said expression which it avoided in sub-section (ii) or would have used the expression "in any public place".
>
> 13. Insult contemplated under sub-section (ii) is different from the insult contemplated under sub-section (x) as in the former a member of the Scheduled Castes or Scheduled Tribes gets insulted by the physical act and whereas is the latter he gets insulted in public view by the words uttered by the wrongdoer for which he must be present at the place.
>
> xxx xxx xxx
>
> 18. As stated by me earlier the words used in sub-section (x) are not "in public place", but "within public view" which means the public must view the person being insulted for which he must be present and no offence on the allegations under the said section gets attracted. In my view, the entire allegations contained in the complaint even if taken to be true do not make out any offence against the petitioner".

10. The aforesaid paragraphs clearly mean that the words used are "in any place but within public view", which means that the public must view the person being insulted for which he must be present and no offence on the allegations under the said section gets attracted if the person is not present.

11. Learned counsel for the appellant also submitted that, in any event, the words were not attributed to the appellant. She merely accompanied her husband to that place even according

to the allegation in the complaint and she did not utter offending words. According to appellant, in the facts and circumstances of this case, Section 3(1)(x) of the 1989 Act is not attracted.

12. Learned counsel for the appellant has also drawn our attention to a judgment of this Court ***Gorige Pentaiah*** *v.* ***State of Andhra Pradesh & Others*** (2008) 12 SCC 531. The relevant paragraph of this judgment is as under:

> "6. .. According to the basic ingredients of Section 3(1)(*x*) of the Act, the complainant ought to have alleged that the appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and he (Respondent 3) was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. In the entire complaint, nowhere it is mentioned that the appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate Respondent 3 in a place within public view. When the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law.

13. This Court, in a number of cases, has laid down the scope and ambit of the High Court's power under section 482 of the Code of Criminal Procedure. Inherent power under

section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.

14. The law has been crystallized more than half a century ago in the case of ***R.P. Kapur*** *v.* ***State of Punjab*** AIR 1960 SC 866 wherein this Court has summarized some categories of cases where inherent power can and should be exercised to quash the proceedings. This Court summarized the following three broad categories where the High Court would be justified in exercise of its powers under section 482:

(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;

(ii) where the allegations in the first information report or complaint taken at their 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."

15. In ***Smt. Nagawwa*** v. ***Veeranna Shivalingappa Konjalgi and Others*** (1976) 3 SCC 736, according to the court, the process against the accused can be quashed or set aside :

"(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like".

16. This court in ***State of Karnataka*** v. ***L. Muniswamy & Others*** (1977) 2 SCC 699, observed that the wholesome power under section 482 Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceedings to continue would be an abuse of the process of

the court or that the ends of justice requires that the proceedings ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In this case, the court observed that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the Legislature. This case has been followed in a large number of subsequent cases of this court and other courts.

17. In ***Janta Dal*** v. ***H.S. Chowdhary and Others*** (1992) 4 SCC 305 the court observed as under:

> "131. Section 482 which corresponds to Section 561-A of the old Code and to Section 151 of the Civil Procedure Code proceeds on the same principle and deals with the inherent power of the High Court. The rule of inherent powers has its source in the maxim "*Quadolex aliquid alicui concedit, concedere videtur id sine quo ipsa, ess uon potest*" which means that when the law gives anything to anyone, it gives also all those things without which the thing itself could not exist.
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> 132. The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, *ex debito justitiae* to do real and substantial justice for the

> administration of which alone the courts exist. 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. Courts must be careful to see that its decision in exercise of this power is based on sound principles."

18. In ***Dr Raghubir Sharan*** v. ***State of Bihar*** (1964) 2 SCR 336, this court observed as under

> "... Every High Court as the highest court exercising criminal jurisdiction in a State has inherent power to make any order for the purpose of securing the ends of justice .... Being an extraordinary power it will, however, not be pressed in aid except for remedying a flagrant abuse by a subordinate court of its powers ...."

19. In the said case, the court also observed that the inherent powers can be exercised under this section by the High Court (1) to give effect to any order passed under the Code; (2) to prevent abuse of the process of the court; (3) otherwise to secure the ends of justice.

20. In ***Connelly*** v. ***Director of Public Prosecutions*** 1964 AC 1254, Lord Ried at page 1296 expressed his view "there must always be a residual discretion to prevent anything which savours of abuse of process" with which view all the members

of the House of Lords agreed but differed as to whether this entitled a Court to stay a lawful prosecution.

21. In ***State of Haryana & Others*** v. ***Bhajan Lal & Others*** reported in (1992) Suppl.1 SCC p.335, this court had an occasion to examine the scope of the inherent power of the High Court in interfering with the investigation of an offence by the police and laid down the following rule: [SCC pp. 364-65, para 60: SCC (Cri) p. 456, para 60].

> "The sum and substance of the above deliberation results in a conclusion that the investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Code and the courts are not justified in obliterating the track of investigation when the investigating agencies are well within their legal bounds as aforementioned. Indeed, a noticeable feature of the scheme under Chapter XIV of the Code is that a Magistrate is kept in the picture at all stages of the police investigation but he is not authorised to interfere with the actual investigation or to direct the police how that investigation is to be conducted. But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the court on being approached by the person aggrieved for the redress of any grievance, has to consider the nature and extent of the breach and pass appropriate orders as

> may be called for without leaving the citizens to the mercy of police echelons since human dignity is a dear value of our Constitution."

22. In ***Bhajan Lal*** *(supra)*, this court in the backdrop of interpretation of various relevant provisions of the Code of Criminal Procedure 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 of the Constitution of India or the inherent powers under Section 482 Cr.P.C., gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this court made it clear that 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 to myriad kinds of cases wherein such power should be exercised:

> (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, on 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 grounds 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 proceedings 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."

23. This court in ***Zandu Pharmaceutical Works Ltd. & Others*** v. ***Mohd. Sharaful Haque & Another*** (2005) 1 SCC 122 observed thus:-

> "It would be an abuse of process of the 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 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."

24. A three-Judge Bench of this Court in ***Inder Mohan Goswami*** *v.* ***State of Uttaranchal*** (2007) 12 SCC 1 (wherein one of us, namely, Dalveer Bhandari, J. was the author of the judgment) has examined scope and ambit of Section 482 of the Criminal Procedure Code. The Court in the said case observed that inherent powers under Section 482 should be exercised for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be fully justified in preventing injustice by invoking inherent powers of the court.

25. In ***Devendra and Others*** v. ***State of Uttar Pradesh and Another*** (2009) 7 SCC 495, this court observed as under:-

> "There is no dispute with regard to the aforementioned propositions of law. However, it is now well settled that the High Court ordinarily would exercise its jurisdiction under Section 482 of the Code of Criminal Procedure if the allegations made in the first information report, even if given face value and taken to be correct in their entirety, do not make out any offence. When the allegations made in the first information report or the evidence collected during investigation do not satisfy the ingredients of an offence, the superior courts would not encourage harassment of a person in a criminal court for nothing."

26. In ***State of A.P.*** v. ***Gourishetty Mahesh and Others*** (2010) 11 SCC 226, this court observed that the power under section 482 of the Code of Criminal Procedure is wide but has to be exercised with great care and caution. The interference must be on sound principle and the inherent power should not be exercised to stifle the legitimate prosecution. The court further observed that if the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is up to the High Court to quash the same in exercise of its inherent power under section 482 of the Code.

27. In a recent decision in ***M. Mohan*** *v.* ***The State*** 2011 (3) SCALE 78 this Court again had an occasion to consider the case of similar nature and this court held that if all the facts mentioned in the complaint are accepted as correct in its entirety and even then the complaint does not disclose the essential ingredients of an offence, in such a case the High Court should ensure that such frivolous prosecutions are quashed under its inherent powers under section 482 of the Cr.P.C.

28. When we apply the ratio of the settled principles of law to the facts of this case, then, in our considered opinion, the High Court ought to have exercised its jurisdiction under section 482 of the Code of Criminal Procedure and quashed the complaint qua the appellant only to prevent abuse of the process of law.

29. Consequently, we set aside the impugned judgment passed by the High Court and quash the complaint qua the appellant in Crime No.50 of 2006, Police Station Jubilee Hills, Hyderabad, Andhra Pradesh.

30. This appeal is accordingly allowed and disposed of.

..J.
(DALVEER BHANDARI)

..J.
(DEEPAK VERMA)

New Delhi;
March 29, 2011