

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. _____ OF 2008
(Arising out of SLP(Crl.) No. 1707 of 2006)

M. Viswanathan

..Appellant

Versus

M/s. S.K. Tiles & Potteries P. Ltd. & Ors.

..Respondents

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Leave granted.
2. Challenge in this appeal is to the judgment of a learned Single Judge of the Madras High Court allowing the application filed under Section 482 of the Code of Criminal Procedure, 1973 (in short the 'Cr.P.C.'). Prayer in the petition was to call for the records in Crime No.576 of 2005 in the file of the Inspector of Police Team IV, Central Crime Branch, Chennai, and to

quash the same. The respondents 1 to 4 were booked for alleged commission of offences punishable under Sections 379, 468, 471, 420, 506 (ii) of the Indian Penal Code, 1860 (in short the 'IPC') based on the reference made by learned Additional Chief Metropolitan Magistrate, Egmore, on the complaint presented by the present appellant under Section 200 of the Cr.P.C.

3. In the complaint essentially it was stated as follows:

“3. The first accused is M/s. Sri Krishna Tiles and Potteries (Madras) Pvt. Ltd., the second accused is A.R. Santhanakrishnan, Director of the first accused-company, the third accused is Mrs. Radhika Santhanakrishnan, yet another Director of the first accused-company and the - fourth accused is Chandrasekaran, working as Commercial Manager of M/s. Sai Sri Krishna Properties and Facilitators (P) Ltd.

4. M/s. Sri Krishna Tiles and Potteries (Madras) Pvt. Ltd., is the owner of property to an extent of 34.04 acres in Thirumangalam Village, Anna Nagar (West), Chennai. The first accused-company

entered into a Memorandum of Understanding with the complainant on 2.7.2001, as per which the first accused-company entrusted the land for development with the complainant. The complainant started developing the properties through his partnership firm 'M/s. Sai Sri Krishna Properties'. 'M/s. Sai Sri Krishna Properties' was converted to a private limited company, in which the complainant was the Managing Director and the third accused was the Director. An agreement was entered into between the said 'M/s. Sai Sri Krishna Properties' and 'Sri Krishna Tiles and Potteries (Madras) Pvt. Ltd.' on 24.6.2002. The newly floated 'M/s. Sai Sri Krishna Properties' was appointed as a Facilitator by the accused Nos. 1 to 3 for developing the properties after obtaining approval from Chennai Metropolitan Development Authority (C.M.D.A.). Since the accused Nos.1 to 3 were not in a position to obtain approval from C.M.D.A., the project could not be completed at the earliest.

5. Pursuant to the, above agreements, the complainant entered into an agreement to sell and an agreement to construct with 146 purchasers and received a sum of Rs.2,54,67,091/- as sale advance. The complainant had invested a total sum of Rs.3 crores approximately

including the said sum of Rs.2,54,67,091/- for the purpose of developing the project and maintaining the property. The complainant had returned a sum of Rs.21,71,360/- to 47 allottees out of the 146 allottees. A sum of Rs.2,29,71,775/- has to be refunded by the complainant to the remaining 99 allottees. The accused Nos.1 to 3 are also negotiating with the allottees for refunding the advance sale consideration received from them. The purchasers informed the complainant that the agreement between the accused Nos.1 to 3 and the complainant's private limited company had been terminated by mutual consent. The complainant was shocked to see that the records and the accounts relating to the said private limited company were found missing at its office. The third accused had illegally taken away all the records and accounts relating to the said private limited company, including the originals of the aforesaid two agreements dated 24.6.2002. Refunds have also been made to few of the purchasers with a mala fide intention of cheating the complainant. The complainant never entered into any mutual agreement for termination of the aforesaid agreements. The accused Nos.1 to 3 have fabricated a termination agreement as if it had been signed by the complainant. On complainant's enquiry, the accused Nos.1 to 3 are

threatening to kill him.”

4. In seeking quashment of the proceedings stand of the respondents 1 to 4 was as follows:

(1) Though the complainant committed as per Memorandum of Understanding that he will deposit Rs.2.5 crores for development of the project, he did not do so. As per the terms and conditions of the Memorandum of Understanding, it will get rescinded if the said amount was not deposited by the complainant within one month from the date of Memorandum of Understanding. The Memorandum of Understanding has become a void agreement as the said amount was not deposited. By way of abundant caution, the Memorandum of Understanding was terminated as on 4.8.2001. As the Board of M/s. Sai Sri Krishna Properties and Facilitators (P) Ltd, decided to remove the complainant from his office as Managing Director, a resolution to that effect was passed on 7.7.2005 in a board meeting conducted to the effect that the complainant was ousted from his office as Managing Director.

(2) The accused with a good intention in order to avoid any unwanted complications, made arrangements for repayment of the funds collected by the complainant. The second and third accused also made arrangements by pledging their own personal properties and the advance received for allotment of flats was repaid. There cannot be a case of theft as against a partner or a director of the company with regard to its own property. The complainant will have to remedy his grievances invoking Sections 627 to 630 of the Companies Act. The allegations made by the complainant will not attract the penal provisions of the Indian Penal Code. Therefore the accused seek for quashment of the criminal proceedings.

5. The Inspector of Police, inter alia, stated as follows in the counter affidavit:

“The investigation reveals that the complainant had spent nearly a sum of Rs.3 crores for the development of the property by doing enormous earthwork, laying of roads etc. After the complainant asked for the records of the company, the accused have taken away all the records, books of accounts, returns, statutory registers, agreements etc. The complainant filed a petition before the Company Law Board in C.P.No. 44 of 2005 praying to set aside the allotment of shares and appointment of Additional Director. The accused filed a counter along

with two documents forging the signatures of the complainant and the Postal Authority. It is found that the postal seal on the document does not tally with the seal of the Postal Department. The Forensic Science Department has given a report that the writings of the complainant in the documents dated 29.1.2004 and 5.12.2004 are forged. The accused are also involved in several other cases pending before the Central Crime Branch (Economic Offences Wing), Chennai.”

6. Respondents 1 to 4 further submitted that the complainant was not a party to the termination agreement and his signature also did not find place in the agreement and, therefore, the question of manipulation of the said document does not arise. He was curious to allege that one of the directors of the company had taken away the original documents and records from the company. The amounts which had been received by the complainant from the intending purchasers had been completely accounted by the company. The complainant’s stand was that the complaint discloses commission of theft of document, forgery of certain records and criminal intimidation and, therefore, the police had rightly started the investigation.

7. Learned counsel for the State also submitted that during the course of investigation it was found that the seal of the postal department found a particular document did not tally with the postal seal. It was also submitted

that the alleged writing of the complainant in certain documents were not to be in his hand writing.

8. The High Court noted in para 12 as follows:

“In the complaint, four types of allegations have been made. The first allegation is that Mrs. Radhika Santhanakrishnan, the third accused in this case had illegally taken away all the records and accounts relating to M/s. Sai Sri Krishna Properties and Facilitators (P) Ltd. The Second allegation is that the accused have fabricated a termination agreement as if the same had been signed by the complainant. The third allegation is that the advance amount received from the prospective purchasers was returned behind the back of the complainant in order to cheat him and the last allegation is “on complainant’s enquiry, the accused 1 to 3 are threatening to kill him.”

9. After noticing the factual aspects the High Court referred to some judgments and came to an abrupt conclusion in the following words:

“Here in this case, there is no forgery of documents referred to in the complaint. The first respondent invents certain documents to show that those documents were not in the handwriting of the complainant. Further, there is no allegation that by using such forged document, the accused has acquired gains. Therefore the above authority will not apply to the facts and circumstances of this case.”

10. Accordingly, the prosecution was quashed holding that the grievance, if any, of the complainant will have to be redressed through the Civil Forum or the Company Law Board. He cannot prosecute the respondents on the basis of bald allegation without any basis. Accordingly, prosecution has quashed.

11. Learned counsel for the appellant submitted that while exercising powers conferred under Section 482 Cr.P.C. the parameters have not been kept in view by the High Court and matters which are essentially to be resolved during trial, have been quashed by a practically non-reasoned order.

12. Reading of the complaint clearly shows that the allegations are substantially made out. This is not a case where the jurisdiction under Section 482 Cr.P.C. was to be exercised. Per contra learned counsel for the respondents 1 to 4 supported the judgment placing strong reliance on a decision of this Court in Zandu Pharmaceutical Works Ltd. & Ors. v. Mohd. Sharaful Haque & Anr. [2005(1) SCC 122] contending that the parameters for exercising jurisdiction under Section 482 Cr.P.C. have been kept out and there is nothing illicit in the impugned judgment to warrant interference.

13. Learned counsel for the State supported the stand taken by the appellant.

14. 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. 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 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 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 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 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.

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

16. 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 the 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 a private complainant to 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 v. Bhajan Lal (1992 Supp (1) 335). 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 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 Act concerned (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 Act concerned, 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. The 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: Janata Dal v. H. S. Chowdhary (1992 (4) SCC 305), and Raghubir Saran (Dr.) v. State of Bihar (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 a 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 themselves be the basis for quashing the proceedings. (See: Dhanalakshmi v. R. Prasanna Kumar (1990

Supp SCC 686), State of Bihar v. P. P. Sharma (AIR 1996 SC 309), Rupan Deol Bajaj v. Kanwar Pal Singh Gill (1995 (6) SCC 194), State of Kerala v. O. C. Kuttan (AIR 1999 SC 1044), State of U.P. v. O. P. Sharma (1996 (7) SCC 705), Rashmi Kumar v. Mahesh Kumar Bhada (1997 (2) SCC 397), Satvinder Kaur v. State (Govt. of NCT of Delhi) (AIR 1996 SC 2983) and Rajesh Bajaj v. State NCT of Delhi (1999 (3) SCC 259).

17. The above position was recently highlighted in Zandu Pharmaceutical Works Ltd. & Ors. v. Mohd. Sharaful Haque and Another (2005 (1) SCC 122).

18. In the instant case the only conclusions arrived at by the High Court is in para 23 of the judgment which have been quoted above. The High Court has wrongly come to the conclusion that the matter in issue has to be decided by a Civil Court or the Company Law Board. The High Court had referred to the four types of allegations. Some of the allegations are certainly not adjudicable by the Civil Court or the Company Law Board. That being so the exercise of jurisdiction by the High Court in terms of Section 482 Cr.P.C. cannot be maintained. The impugned order is indefensible and is set aside.

19. The appeal is allowed.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(Dr. MUKUNDAKAM SHARMA)

New Delhi,
November 25, 2008