

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1120 OF 2008
(Arising out of S.L.P. (Crl.) No.25/2008)

Atif Iqbal Mansuri & Ors. ...Appellants

Versus

State of Maharashtra & Anr. ...Respondents

O R D E R

Leave granted.

This appeal is directed against the judgment and order dated 18.12.2007 passed by a Division Bench of the High Court of Bombay in Crl. Writ Petition No. 1961/2007 whereby and whereunder the writ petition filed by the appellants claiming, inter alia, the following reliefs:

" a) pass an order, direction or a Writ in the nature of Certiorari calling upon the records and proceedings of C.R.No.224 of 2007 registered by the Agripada Police Station.

b) pass an order, direction and writ in the nature of Certiorari to quash and set aside the proceedings under the C.R. No.224 of 2007 registered by the Agripada Police Station.

1. c) to issue direction or an order to stay all the proceedings in C.R.No.224 of 2007 registered by the Agripada Police Station till the final disposal of the present petition;

was dismissed, stating :

" The learned APP makes a statement on the basis of instructions from the investigating Officer that the investigation of the crime is completed and he states that charge sheet will be filed within one week. Therefore, after filing the charge sheet, appropriate reliefs of discharge etc. are open to the petitioners. At this stage, we refrain ourselves from entertaining the writ petition seeking quashing of FIR."

behalf of the appellants took us through the records of the dispute to submit that the High Court committed a serious error of law in passing the impugned judgment in so far as it failed to take into consideration the fact that the First Information Report was lodged by the second respondent herein mala fide and as a counter blast to the application for visitation rights granted in favour of appellant No.1 by interim orders dated 25.7.2007 and 4.9.2007 in a contempt petition filed by the appellant herein being Contempt Petition No. 293/2007 for non-compliance of orders dated 25.7.2007 and 7/8/2007 passed in writ petition No. 5703/2007.

It was, furthermore, contended that even otherwise the second respondent had made false and frivolous allegations which would be evident from the various documents filed before the High Court.

Mr.R.K. Adsure, learned counsel appearing on behalf of the State, when asked, very fairly stated that the charge sheet has not yet been filed.

Mr.Sunil Kumar, learned senior counsel appearing on behalf of the complainant-respondent,however, would submit that investigation pursuant to the First Information Report had been made and is almost complete and as such this Court should not exercise its discretionary jurisdiction under Article 136 of the Constitution of India, particularly, when in the event a charge sheet is filed and cognizance of the offence is taken, the appellant, in terms of the liberty granted by the High Court, would be entitled to raise all contentions at the time of framing of charge.

As at present advised, we are not inclined to consider the merit of the matter. There cannot be any doubt, whatsoever, that a person accused of commission of a

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cognizable offence is entitled to move the High Court in its writ jurisdiction with a prayer for quashing of the investigation undertaken in terms of a First Information Report and/or quashing the same.

It is one thing to say that the High Court would not ordinarily entertain such an application but it is another thing to say that the High Court has no jurisdiction in this respect at all.

The High Court in its impugned judgment, with respect, has

adopted a wrong approach. It is now evident that the investigation by the investigating officer is not yet complete. Investigation in the matter might have proceeded to a great extent but the same by itself may not be a ground for refusing to entertain a writ petition only because the accused will have another opportunity at the stage of framing of charge.

In *Suryalakshmi Cotton Mills Ltd. Vs. Rajvir Industries Ltd. & Ors.* - JT 2008(1) SC340, this Court has held that in the event the First Information Report even if given face value and taken to be correct in its entirety does not disclose an offence a writ petition would be maintainable. However, having regard to the allegations made therein it was held that the investigation could proceed in respect of an offence under Section 406 thereof. We have referred to this decision only for the purpose of showing that there are cases where the High Court and this Court had interfered even at that stage.

We, therefore, are of the opinion that the impugned judgment cannot be sustained. It is set aside accordingly. The High Court is requested to consider the matter on merit afresh. We would request the High Court to consider the desirability of disposing of the matter as expeditiously as possible.

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It is stated before us that the High Court had not stayed the investigation. Investigation, therefore, may continue.

There cannot be any doubt that all contentions of the parties shall remain open.

The appeal is allowed with the aforementioned observations.

[S.B. SINHA]J.

[CYRIAC JOSEPH]J.

New Delhi,
July 16, 2008.

