CASE NO.:
Appeal (crl.) 1197 of 2003

PETITIONER:
M. NARAYANDAS

RESPONDENT:
STATE OF KARNATAKA AND ORS.

DATE OF JUDGMENT: 19/09/2003

BENCH:
S.N. VARIAVA & H.K. SEMA

JUDGMENT:
JUDGMENT

2003 Supp(3) SCR 973

The Judgment of the Court was delivered by S.N. VARIAVA, J. : Leave granted. Heard parties.

This Appeal is against an Order dated 26th August, 2002 whereby an FIR has been quashed.

Briefly stated the facts are as follows :

The appellant is the owner of survey No. 66 in Sarakki village. He appears to have entered into an agreement to sell dated 18th February, 1988 with his sister one Nirmala. This agreement was for 25,188 sq. ft. in survey No. 66. Respondent No. 2 is the son of the said Nirmala. Respondent No. 4 is the daughter of the said Nirmala. Respondent No. 3 is a daughter-in-law, through a deceased son of Nirmala. It is the case of the Appellant that he had permitted his sister Nirmala to reside in the plot agreed to be sold to her as his licensee. On 7th September, 2000 Respondents 2 to 4 filed a suit for partition. Appellant claims that in this suit, partition was also claimed of the 25,188 sq ft. Respondents 2 to 4 deny that the claim in partition suit includes this piece of land. We are not concerned with this controversy, save and except to note that admittedly the documents set out hereunder were not produced or relied upon in this suit. The Appellant claims that he learnt that Respondents 2 to 4 were trying to get this piece of land transferred to their names on the basis of some partition deed. The Appellant thus filed as suit against Respondent 2 to 4 for a permanent injunction restraining change of name in the records. Respondents 2 to 4 filed a written statement wherein they relied upon three documents all dated 21st October, 1989. The documents are (a) a general power of attorney (b) a sale cum possession receipts (c) and affidavits purported to have been sworn by the Appellant. The Appellant claims that these documents were never executed by him. The Appellant claims that he also found some manipulations in the agreement to sell dated 18th February, 1988. The Appellant thus filed, on 27th May, 2002, a complaint with the police station at Ulsoor complaining that these documents were forged and fabricated. An FIR under Sections 468, 470, 471 and 120B Indian Penal Code came to be registered. Respondents 2 and 3 filed a Petition under Section 482 of the Criminal Procedure Code to quash the FIR. This has been allowed by the High Court. Hence this Appeal.

Before dealing with the High Court judgment, which has been impugned, it is first necessary to set out well settled law. The law has been very succinctly set out in the case of State of Haryana v. Bhajan Lal, reported in [1992] Supp. 1 SCC 335. In this case the High Court had quashed an FIR. While setting aside the High Court judgment this Court held as follows :

"31. At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate

of Section 154(1) of the Code, the concerned police officer can not embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered under Section 156 of the Code to investigate, subject to the proviso to section 157. (As we have proposed to make a detailed discussion about the power of a police officer in the field of investigation of a cognizable offence within the ambit of Sections 156 and 157 of the Code in the ensuing part of this judgment, we do not propose to deal with those sections in extenso in the present context.) In case, an officer in charge of a police station refuses to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by sub-section (3) of Section 154 of the Code.

32. Be it noted that in Section 154 (1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression "information" without qualifying the same as in Section 41(l)(a) or (g) of the Code wherein the expressions, "reasonable complaint" and "credible information" are used. Evidently, the non-qualification of the word "information" in Section 154 (1) unlike in Section 4 l(l)(a) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, 'reasonableness' or 'credibility' of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word "information" without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act 25 of 1861) passed by the Legislative Council of India read that 'every complaint or information' preferred to an officer in charge of a police station should be reduced into writing which provision was subsequently modified by Section 112 of the Code of 1872 (Act 10 of 1872) which thereafter read that 'every complaint' preferred to an officer in charge of a police station shall be reduced in writing. The word 'complaint' which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word 'information' was used in the Codes of 1882 and 1898 which word is now used in Sections 154, 155, 157 and 190(c) of the present Code of 1973 (Act 2 of 1974). An overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a first information report is that there must be an information and that information must disclose a cognizable offence.

33. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information.

(emphasis supplied)

xxx xxx xxx

40. The core of the above sections namely 156, 157 and 159 of the Code is that if a police officer has reason to suspect the commission of a

cognizable offence, he must either proceed with the investigation or cause an investigation to be proceeded with by his subordinate, that in a case where the police officer sees no sufficient ground for investigation, he can dispense with the investigation altogether; that the field of investigation of any cognizable offence is exclusively within the domain of the investigating agencies over which the court cannot have control and have no power to stifle or impinge upon the proceedings in the investigation so long as the investigation proceeds in compliance with the provisions relating to investigation and that it is only in a case wherein a police officer decides not to investigate an offence, the concerned Magistrate can intervene and either direct an investigation or in the alternative, if he thinks fit, he himself can, at once proceed or depute any Magistrate subordinate to him to proceed to hold a preliminary inquiry into or otherwise to dispose of the case in the manner provided in the Code.

(emphasis supplied)

xxx xxx xxx

102. In the backdrop of the interpretation of the various relevant provisions of the Code 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 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulate and to give an exhaustive list of 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 a 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 inves-tigation 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 of 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.

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 count 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."

It must also be mentioned that it is settled law that the power to quash must be exercised very sparingly and with circumspection. It must be exercised in the rarest of rare cases. It is also settled law that the Court would not be justified in embarking upon an Inquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR. The Court also cannot inquire whether the allegations in the complaint are likely to be established or not.

Keeping the above-mentioned principles in mind let us now see what the High Court has done in the impugned judgment. In the impugned judgment the High Court proceeds to consider the case of the Appellant in the complaint and the case made out by the Respondents. The High Court examines the documents, compare the signatures thereon and then proceeds to arrive at the conclusion that the documents are not false or fabricated. The High Court takes into consideration certain photographs and other material produced by the Respondents, and concludes that the complaint was vexatious, frivolous and false. On this basis the High Court proceeds to quash the complaint and impose cost of Rs. 10,000 on the appellant. The High Court does not conclude, as it could not have, that the allegations made in the complaint, if 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. The High Court does not conclude, as it could not have, that the allegations in the complaint do not disclose a cognizable offence justifying an investigation by the police officer. The conclusion of the High Court that the complaint was false, vexatious and frivolous is based on material produced by the Respondents. One fails to understand how without evidence the High Court could have relied on this material. It is clear that the impugned order is totally unsustainable. To the credit of Counsel, appearing for the Respondents, it must be stated that the impugned order was not sought to be supported for the reasons given by the High Court in quashing the complaint. It was fairly admitted that the reasons given by the High Court, in quashing the complaint, were unsustainable.

On behalf of the Respondents it was submitted that this was a case which fell under Section 195 of the Criminal Procedure Code. It was submitted that therefore the provisions of Chapter XXVI of the Criminal procedure Code would apply. It was submitted that once the provisions of Chapter XXVI applied, impliedly, the provisions of Chapter XII get excluded. It was submitted that in such a case the only procedure which could be followed was to make an application to the Court. It was submitted that by not following the procedure laid down under Chapter XXVI the right of the Respondents under Article 21 of the Constitution of India had been affected. It was submitted that if an application had been made to the Court and the Court had taken a decision then under Section 341 of the Criminal Procedure Code an appeal could have been filed. It was submitted that by making a complaint to the police, who would then make a report to a Court and the Court would take cognizance the Respondents were deprived of the right of appeal as provided under Section 341 of the Criminal procedure Code.

We are unable to accept the submissions made on behalf of the Respondents. Firstly it is to be seen that the High Court does not quash the complaint

on the ground that Section 195 applied and that the procedure under Chapter XXVI had not been followed. Thus such a ground could not be used to sustain the impugned judgment. Even otherwise there is no substance in the submission. The question whether Sections 195 and 340 of the Criminal Procedure Code affect the power of the police to investigate into a cognizable offence has already been considered by this Court in the case of State of Punjab v. Raj Singh, reported in [1998] 2 SCC 391. In this case it has been that as follows :

"2. We are unable to sustain the impugned order of the High Court quashing the FIR lodged against the respondents alleging commission of offences under Sections 419, 420, 467, and 468 IPC by them in course of the proceeding of a civil suit, on the ground that Section 195(l)(b)(ii) CrPC prohibited entertainment of and investigation into the same by the police. From a plain reading of Section 195 CrPC it is manifest that it comes into operation at the stage when the court intends to take cognizance of an offence under Section 190(1) Cr. PC; and it has nothing to do with the statutory power of the police to investigate into an FIR which discloses a cognizable offence, in accordance with Chapter XII of the Code even if the offence is alleged to have been committed in, or in relation to, any proceedings in court. In other words, the statutory power of the police to investigate under the Code is not in any way controlled or circumscribed by Section 195 Cr.PC. It is of course true that upon the charge-sheet (challan), if any, filed on completion of the investigation into such an offence the court would not be competent to take cognizance thereof in view of the embargo of Section 195(1)(b) CrPC, but nothing therein deters the court from filing a complaint for the offence on the basis of the FIR (filed by the aggrieved private party) and the materials collected during investigation, provided it forms the requisite opinion and follows the procedure laid down in Section 340 CrPC. The judgment of this Court in Gopalkrishna Menon v. Raja Reddy, [1983] 4 SCC 240 : [1983] SCC (Cri) 822 : AIR (1983) SC 1053 on which the High Court relied, has no manners of application to the facts of the instant case for there cognizance was taken on a private complaint even though the office of forgery was committed in respect of a money receipt produced in the civil court and hence it was held that the court could not take cognizance on such a complaint in view of Section 195 Cr.PC."

Not only are we bound by this judgment but we are also in complete agreement with the same. Sections 195 and 340 do not control or circumscribe the power of the police to investigate under the Criminal procedure Code. Once investigation is completed then the embargo in Section 195 would come into play and the Court would not be competent to take cognizance. However, that Court could then file a complaint for the offence on the basis of the FIR and the material collected during investigation provided that procedure laid down in Section 340 Criminal Procedure Code is followed. Thus no right of the Respondents, much less the right to file an appeal under Section 341, is affected.

It was next submitted that on the material placed before it the High Court was right in concluding that the complaint was false, frivolous and vexatious. It was to be noted that the High Court arrived at this conclusion on the basis of unsubstantiated allegations made by the Respondents. How Courts should deal with such allegations is set out in para 108 of Bhajan Lai’s case (supra). Para 108 read as follows :

"108. No doubt, there was no love lost between Shri Bhajan Lal and Dharam Pal. Based on this strained relationship, it has been then emphatically urged by Mr. K. Parasaran that the entire allegations made in the complaint due to political vendetta are not only scurrilous and scandalous but also tainted with mala fides, vitiating the entire proceedings. As it has been repeatedly pointed out earlier the entire matter is only at a premature stage and the investigation is not yet proceeded with except some preliminary effort taken on the date of the registration of the case, that is on November 21, 1987. The evidence has to be gathered after a thorough

investigation and placed before the court on the basis of which alone the court can come to a conclusion one way or the other on the plea of mala fides. If the allegations are bereft of truth and made maliciously, we are sure, the investigation will say so. At this stage, when there are only allegations and recriminations but on evidence, this court cannot anticipate the result of the investigation and render a finding on the question of mala fides on the materials at present available. Therefore, we are unable to see any force in the contention that the complaint should be thrown overboard on the mere unsubstantiated plea of mala fides. Even assuming that Dharam Pal has laid the complaint only on account of his personal animosity, that by itself, will not be a ground to discard the complaint containing serious allegations which have to be tested and weighed after the evidence is collected. In this connection, the following view expressed by Bhagwati, C.J.in Sheonandan Paswan v. State of Bihar, [1987] 1 SCC 288, 318 : [1987] SCC (Cri) 82 may be referred to : (SCC p. 318, para 16)"

"It is a well established proposition of law that a criminal prosecution, if otherwise justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta of the first informant or the complaintant."

For this reason the submission cannot be accepted. If as claimed there is no substance in the complaint the investigation will say so. At this stage there were only allegations and recriminations. The High Court could not have anticipated the result of the investigation or rendered a finding on question of malafides. Even if the Appellant had made the complaint on account of personal vendetta that by itself was not a ground to discard the complaint which had to be tested and weighed after the evidence was collected.

It was lastly submitted that the question whether Section 195 Criminal Procedure Code applied or not had not been considered by the High Court and therefore the case should be sent back to the High Court for consideration thereof. It was submitted that in the petition it has been squarely urged that Section 195 applied. It was submitted that the High Court should have considered this aspect. It was pointed out that the question whether Section 195 applies to documents forged prior to the proceedings in which they are tendered has, due to conflict of decisions, been referred to a 5 Judge bench. We see no substance in this submission. The law on the point is clear. At the stage of investigation Section 195 has’ no application. We are therefore not concerned with the question whether Section 195 applies to documents forged/fabricated prior to their being produced in Court. That question only arises after the Court takes cognizance. At this stage the only question is whether the investigation should be permitted to proceed or not. As stated above there is no ground or reason on which the complaint/FIR can be quashed.

For the above reasons the impugned order needs to be and is accordingly set-aside. The petition for quashing will stand dismissed. The Appeal is allowed accordingly. There will be no order as to costs.