

CASE NO.:
Appeal (crl.) 1643 of 2007

PETITIONER:
Didigam Bikshapathi & Anr

RESPONDENT:
State of A.P.

DATE OF JUDGMENT: 29/11/2007

BENCH:
Dr. ARIJIT PASAYAT & TARUN CHATTERJEE

JUDGMENT:
J U D G M E N T

CRIMINAL APPEAL NO. 1643 OF 2007
(Arising out of S.L.P. (Crl.) No. 2205 of 2006)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment rendered by a learned Single Judge of the Andhra Pradesh High Court, dismissing the petition filed by the appellants under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code'). Prayer was to quash the proceedings in SC No.498 of 2001 on the file of VII Additional Metropolitan Sessions Judge, Hyderabad, initiated against them for commission of offence punishable under Section 306 of the Indian Penal Code, 1860 (in short 'IPC').

3. Accusations which led to the institution of the proceedings are essentially are as follows:

Budida Krishnamurthy (hereinafter referred to as the 'deceased') had close friendship with the appellant (A1). About four years back he appointed deceased and others as field officers in his finance firm namely; Uma Hire Purchase and Finance. While so, the appellant no.1 joined as a partner in Kanaka Mahalaxmi Real Estate Ventures run by Mekala Ravi and Mekala Venu. The deceased and two other field officers namely; Budida Laxmaiah (L.W.7) and Thandra Mallaiah (L.W.8) sold about 15 plots in that group to Kommaipalli villagers and collected various amounts from them and handed over the same to the appellant no.1. As he did not pay the money to the Kanaka Mahalaxmi Real Estate Ventures, the other partners did not register the plots in favour of the persons, who paid the money to the deceased. Since the deceased demanded for registration of the plots in favour of the prospective purchasers, he (appellant no.1) escaped with his family from Jangaon and was staying at his in-laws house. The deceased went there and demanded registration of the plots, but the appellants abused him in filthy language and the accused neither registered the plots nor returned the amount. Due to the mental harassment and unable to bear the pressure from the purchasers of the plots, the deceased committed suicide by falling under an un-known train in the night of 17.4.2001 leaving a suicide note narrating the reasons

for his committing suicide.

4. Before the High Court the stand was that the ingredients necessary to constitute offence under Section 306 IPC are absent. There is no element of abetment. The High Court did not accept the contention taking note of the statement made in the suicide note. The High Court felt that this was not a fit case where the jurisdiction under Section 482 of the Code is to be exercised.

5. In support of the appeal learned counsel for the appellant submitted that there was no question of abetment. Merely because the person committed suicide having been insulted and humiliated due to the comments or utterances made by the accused, that does not constitute an offence punishable under Section 306 IPC. Therefore, the High Court ought to have quashed the proceedings. Strong reliance was placed on a decision of this Court in *Netai Dutta v. State of West Bengal* (2005 AIR SCW 1326). Further it was submitted that there was only a vague reference to appellant no.2 wife of appellant no.1, and on that score, the appeal deserves to be allowed so far as she is concerned.

6. In response, learned counsel for the respondent submitted that the suicide note clearly refers to various acts of the appellants due to which the unfortunate step of committing suicide was taken by the victim and in any event it is not a fit case where jurisdiction under Section 482 is to be exercised.

7. Section 482 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 aliauid 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, for 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 report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto.

8. 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.

9. In dealing with the last category, 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."

10. 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 State of Orissa v. Saroj Kumar Sahoo (2005) 13 SCC 540 and Minu Kumari v. State of Bihar AIR 2006 SC 1937)

11. The suicide note clearly refers to the background in which the victim took the extreme step of taking away his own life by committing suicide. It is not a case where there is no reference to any act by the accused. In Netai Dutta's case (supra) para 6 it was observed as follows:

"6. In the suicide note, except referring to the name of the appellant at two places, there is no reference of any act or incidence whereby the appellant herein is alleged to have committed any willful act or omission or intentionally aided or instigated the deceased Pranab Kumar Nag in committing the act of suicide. There is no case that the appellant has played any part or any role in any conspiracy, which ultimately instigated or resulted in the commission of suicide by deceased Pranab Kumar Nag."

12. In the instant case the suicide note clearly refers to the acts of the accused-appellant and the roles played by them. Therefore, the High Court rightly rejected the prayer of exercise of power under Section 482 of the Code. We make it clear that any observation made by the High Court and by us while dismissing of the present appeal shall be construed to be determinative factor in the trial.

JUDIS