Supreme Court of India Preeti Gupta & Anr vs State Of Jharkhand & Anr on 13 August, 2010 Author: D Bhandari Bench: Dalveer Bhandari, K.S. Radhakrishnan REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1512 OF 2010
(Arising out of SLP (Crl.) No.4684 of 2009)

Preeti Gupta & Another ... Appellants

Versus

State of Jharkhand & Another ....Respondents

JUDGMENT

Dalveer Bhandari, J. 1. Leave granted. 2. This appeal has been filed by Preeti Gupta the married sister-in-law and a permanent resident of Navasari, Surat, Gujarat with her husband and Gaurav Poddar, a permanent resident of Goregaon, Maharashtra, who is the unmarried brother-in-law of the complainant, Manisha Poddar, against the impugned judgment of the High Court of Jharkhand at Ranchi, Jharkhand dated 27.4.2009 passed in Criminal Miscellaneous Petition Nos.304 of 2009. 3. Brief facts which are necessary to dispose of this appeal are recapitulated as under: The Complainant Manisha was married to Kamal Poddar at Kanpur on 10.12.2006. Immediately after the marriage, the complainant who is respondent no.2 in this appeal left for Mumbai along with her husband Kamal Poddar who was working with the Tata Consultancy Services (for short "TCS") and was permanently residing at Mumbai. The complainant also joined the TCS at Mumbai on 23.12.2006. Respondent no.2 visited Ranchi to participate in "Gangaur" festival (an important Hindu festival widely celebrated in Northern India) on 16.3.2007. After staying there for a week, she returned to Mumbai on 24.03.2007. 4. Respondent no.2, Manisha Poddar filed a complaint on 08.07.2007 before the Chief Judicial Magistrate, Ranchi under sections 498-A, 406, 341, 323 and 120-B of the Indian Penal Code read with sections 3 and 4 of the Dowry Prohibition Act against all immediate relations of her husband, namely, Pyarelal Poddar (father-in-law), Kamal Poddar (husband), Sushila Devi (mother-in-law), Gaurav Poddar (unmarried brother-in-law) and Preeti Gupta @ Preeti Agrawal (married sister-in-law). The complaint was transferred to the court of the Judicial Magistrate, Ranchi. Statements of Respondent no.2 and other witnesses were recorded and on 10.10.2008 the Judicial Magistrate took cognizance and passed the summoning order of the appellants.

The appellants are aggrieved by the said summoning order. 5. In the criminal complaint, it was alleged that a luxury car was demanded by all the accused named in the complaint. It was also alleged that respondent no.2 was physically assaulted at Mumbai. According to the said allegations of the complainant, it appears that the alleged incidents had taken place either at Kanpur or Mumbai. According to the averments of the complaint, except for the demand of the luxury car no incident of harassment took place at Ranchi. 6. According to the appellants, there was no specific allegation against both the appellants in the complaint. Appellant no.1 had been permanently residing with her husband at Navasari, Surat (Gujarat) for the last more than seven years. She had never visited Mumbai during the year 2007 and never stayed with respondent no.2 or her husband. Similarly, appellant no.2, unmarried brother-in-law of the complainant has also been permanently residing at Goregaon, Maharashtra. 7. It was asserted that there is no specific allegation in the entire complaint against both the appellants. The statements of prosecution witnesses PW1 to PW4 were also recorded along with the statement of the complainant. None of the prosecution witnesses had stated anything against the appellants. These appellants had very clearly stated in this appeal that they had never visited Ranchi. The appellants also stated that they had never interfered with the internal affairs of the complainant and her husband. According to them, there was no question of any interference because the appellants had been living in different cities for a number of years. 8. It was clearly alleged by the appellants that they had been falsely implicated in this case. It was further stated that the complaint against the appellants was totally without any basis or foundation. The appellants also asserted that even if all the allegations incorporated in the complaint were taken to be true, even then no offence could be made out against them. 9. The appellants had submitted that the High Court ought to have quashed this complaint as far as both the appellants are concerned because there were no specific allegations against the appellants and they ought not have been summoned. In the impugned judgment, while declining to exercise its inherent powers, the High Court observed as under: “In this context, I may again reiterate that the acts relating to demand or subjecting to cruelty, as per the complaint petition, have been committed at the place where the complainant was living with her husband. However, the complainant in her statement made under solemn affirmation has stated that when she came to Ranchi on the occasion of Holi, all the accused persons came and passed sarcastic remarks which in absence of actual wordings, according to the learned counsel appearing for the petitioner could never be presumed to be an act constituting offence under section 498A of the Indian Penal Code.” 10. In this appeal, both the appellants specifically asserted that they had never visited Ranchi, therefore, the allegations that they made any sarcastic remarks to the complainant had no basis or foundation as far as the appellants are concerned. 11. The complainant could not dispute that appellant no.1 was a permanent resident living with her husband at Navasari, Surat, Gujarat for the last more than seven years and the appellant no.2 was permanent resident of Goregaon, Maharashtra. They had never spent any time with respondent no.2. 12. According to the appellants,

they are not the residents of Ranchi and if they are compelled to attend the Ranchi Court repeatedly then that would lead to insurmountable harassment and inconvenience to the appellants as well as to the complainant. 13. The complaint in this case under section 498-A IPC has led to several other cases. It is mentioned that a divorce petition has been filed by the husband of respondent no.2. Both respondent no.2 and her husband are highly qualified and are working with reputed organization like Tata Consultancy Service. If because of temperamental incompatibility they cannot live with each other then it is proper that they should jointly get a decree of divorce by mutual consent. Both respondent no.2 and her husband are in such age group that if proper efforts are made, their re- settlement may not be impossible. 14. The main question which falls for consideration in this case is whether the High Court was justified in not exercising its inherent powers under section 482 of the Code of Criminal Procedure in the facts and circumstances of this case? 15. This court in a number of cases has laid down the scope and ambit of courts' powers under section 482 Cr.P.C. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under section 482 Cr.P.C. can be exercised: (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. 16. Reference to the following cases would reveal that the courts have consistently taken the view that they must use this extraordinary power to prevent injustice and secure the ends of justice. The English courts have also used inherent power to achieve the same objective. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. In Connelly v. Director of Public Prosecutions [1964] AC 1254, Lord Devlin stated that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial. Lord Salmon in Director of Public Prosecutions v. Humphrys [1977] AC 1 stressed the importance of the inherent power when he observed that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the judge has the power to intervene. He further mentioned that the court's power to prevent such abuse is of great constitutional importance and should be jealously preserved. 17. 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. The 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 but court's failing to use the power for advancement of justice can also lead to grave injustice. The High Court should normally refrain from giving a prima facie decision in a case where all the 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 such magnitude that they 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 proceedings at any stage. 18. This

court had occasion to examine the legal position in a large number of cases. 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 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. 19. 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 proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding 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. 20. In Madhu Limaye v. The State of Maharashtra (1977) 4 SCC 551, a three-Judge Bench of this court held as under:- ".....In case the impugned order clearly brings out a situation which is an abuse of the process of the court, or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. Such cases would necessarily be few and far between. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. The present case would undoubtedly fall for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, that the invoking of the revisional power of the High Court is impermissible." 21. This court in Madhavrao Jiwajirao Scindia & Others v. Sambhajirao Chandrojirao Angre & Others (1988) 1 SCC 692 observed in para 7 as under: "7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage." 22. In State of Haryana & Others v. Bhajan Lal & Others 1992 Supp. (1) SCC 335, this court in the backdrop of interpretation of various relevant provisions

of the Code of Criminal Procedure (for short, Cr.P.C.) 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, 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 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." 23. In G. Sagar Suri & Another v. State of UP & Others (2000) 2 SCC 636, this court observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process particularly when matters are essentially of civil nature. 24. 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." 25. A three-Judge Bench (of which one of us, Bhandari, J. was the author of the judgment) of this Court in Inder Mohan Goswami and Another v. State of Uttaranchal & Others (2007) 12 SCC 1 comprehensively examined the legal position. The court came to a definite conclusion and the relevant observations of the court are reproduced in para 24 of the said judgment as under:- "Inherent powers 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." 26. We have very carefully considered the averments of the complaint and the statements of all the witnesses recorded at the time of the filing of the complaint. There are no specific allegations against the appellants in the complaint and none of the witnesses have alleged any role of both the appellants. 27. Admittedly, appellant no.1 is a permanent resident of Navasari, Surat, Gujarat and has been living with her husband for more than seven years. Similarly, appellant no.2 is a permanent resident of Goregaon, Maharasthra. They have never visited the place where the alleged incident had taken place. They had never lived with respondent no.2 and her husband. Their implication in the complaint is meant to harass and humiliate the husband's relatives. This seems to be the only basis to file this complaint against the appellants. Permitting the complainant to pursue this complaint would be an abuse of the process of law. 28. It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society. 29. The courts are receiving a large number of cases emanating from section 498-A of the Indian Penal Code which reads as under:- "498-A. Husband or relative of husband of a woman subjecting her to cruelty.–Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.–For the purposes of this section, 'cruelty' means:- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand." 30. It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern. 31. The

learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases. 32. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations. 33. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful. 34. Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases. 35. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law. We direct the Registry to send a copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India

who may place it before the Hon'ble Minister for Law & Justice to take appropriate steps in the larger interest of the society. 36. When the facts and circumstances of the case are considered in the background of legal principles set out in preceding paragraphs, then it would be unfair to compel the appellants to undergo the rigmarole of a criminal trial. In the interest of justice, we deem it appropriate to quash the complaint against the appellants. As a result, the impugned judgment of the High Court is set aside. Consequently, this appeal is allowed. .....J. (Dalveer Bhandari) .....J. (K.S. Radhakrishnan) New Delhi; August 13, 2010