Supreme Court of India M/S Zandu Pharmaceutical Works ... vs Md Sharaful Haque & Anr on 1 November, 2004 Author: A Pasayat Bench: Arijit Pasayat, C.K. Thakker CASE NO.: Appeal (crl.) 1241 of 2004

PETITIONER: M/s Zandu Pharmaceutical Works Ltd.& Ors.

RESPONDENT: MD Sharaful Haque & Anr.

DATE OF JUDGMENT: 01/11/2004

BENCH: ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT: J U D G M E N T (Arising out of SLP (Crl.) No. 4870 of 2003) ARIJIT PASAYAT, J. Leave granted. Appellants call in question legality of the judgment rendered by a learned Single Judge of the Patna High Court holding that the issuance of summons to the appellants by learned Judicial Magistrate, 1st Class, Patna in complaint case no.1613 (C) of 2002 filed by the respondent no.1 is proper. Factual background in nutshell is as follows: Respondent no.1 (hereinafter referred to as the 'complainant') filed a complaint on 9.8.2002 alleging that the appellants had committed offences punishable under Sections 406 and 409 of the Indian Penal Code, 1860 (in short the 'IPC'). The date of occurrence was indicated to be between 12.7.1995 to 8.5.2002. The basic allegations in the complaint were that an advertisement was issued by the appellant no.1 seeking applications for appointment to the post of Area Manager. The complainant, who was then working in another concern applied for the post, was called to the interview on 14.7.1995 and was asked to report at the Bombay office of the appellant no.1-company on 1.8.1995 for training. After completion of the training period the complainant was asked to report to the Patna depot. He was given appointment from 9.9.1995 by letter dated 1.9.1995 wherein it was indicated that he was appointed as Field Officer and not Area Manager. According to the respondent, on receipt of the appointment letter the complainant asked the concerned officials i.e. the other accused persons as to how he was being appointed as Field Officer when he had appeared at the interview for the post of Area Manager. He was assured that the letter for the post of Area Manager will be issued in the first week of April, 1996. But no such letter came to be issued and he was not appointed as Area Manager. Grievance was, therefore, made that the accused persons had initially deceived him by appointing as Field Officer and not as Area Manager, though he was assured that the appointment letter in that regard will be issued. Therefore, they were liable to face trial for offences punishable under Sections 406 and 409 IPC. Statement of complainant was recorded on 13.2.2002. By order dated 8.10.2002 the learned Judicial Magistrate held that sufficient material existed to proceed under Section 418 IPC against the appellants and, therefore, summons were issued for their appearance. An application under Section 482 of the Code of Criminal Procedure, 1973 (in short the 'Code') was filed before the High Court challenging legality of the order and summons. It was, inter alia, submitted that complaint was mis-conceived; the complainant had not come to Court with clean hands and had suppressed material facts. It was stated that the complainant had filed a

Title Suit no.178/2002 before the learned Sub- Judge claiming his transfer order was mala fide. The prayer for interim protection was rejected. Case no.11/99 has been filed before the Labour Court in which complainant claimed certain payments and compensation. There was no grievance made of any cheating neither in the civil suit nor in the matter pending before the Labour Court. The complaint was stale, and in any event, beyond the prescribed period of limitation as provided in Section 468 of the Code. It was pointed out that there was no proof of the complainant having resigned from his previous employment. There was no material to show commission of any offence even if complaint petition is considered in its entirety. No foundation for proceeding under Section 418 of the Code was made out. For the first time in 2002 the alleged breaches were agitated. Stand of the complainant on the other hand was that finally his claim was rejected on 15.12.2001 and subsequently his services were terminated on 29.4.2002. That being so, the plea of complainant having been filed beyond the period of limitation cannot be maintained. The petition was, as noted above, rejected by the High Court. In support of the appeal, Mr. R.F. Nariman, learned senior counsel submitted that the High Court has missed the essential features of the case. In the complaint petition there is no reference to the letter dated 5.12.2001 which forms foundation for the High Court's conclusion to hold that the application was not belated. In the complaint petition a clearly wrong statement was made that the complainant had never accepted appointment as Field Officer. On the contrary, in his endorsement below the letter of appointment on 9.9.1995 he has in his own signature stated as follows: "I have gone through the terms and conditions stated hereinabove in my appointment letter and I accept them in toto. I will join your company with effect from 1st August, 1995. I declare that my date of birth is 1.3.1959 and in support I submit my documentary evidence." Another interesting feature is that a letter is purported to have been written on 9.9.1995, the existence of which is very much in doubt. The complainant claims to have written that he was unable to send copy of the joining letter. As noted above, he has clearly done so. Therefore, complainant has fabricated documents to suit his own purpose. In the matter pending before the Labour Court which was filed on 6.7.1999 also the complainant has not made any reference to the so called illegality in his appointment as Field Officer, and on the other hand he has clearly stated that he was employed with the company and posted as Field Officer. Similar is the position in the suit filed in 2002, challenging the order of transfer. There is no explanation for the silence between 1995 to 2001. Therefore, it is submitted that the High Court was not justified in rejecting the application. Further offence in terms of Section 418 IPC is clearly not made out. Therefore, the learned Magistrate was not justified in directing issuance of summons. In response, learned senior counsel for complainant-respondent no.1 submitted that based on the assurance held out that he will be appointed as Area Manager, the complainant had resigned from the job he was holding on the date of joining. He raised his protest when he was appointed as Field Officer. He continuously made grievances and finally when his claim was rejected by letter dated 5.12.2001, he filed a complaint and, therefore, the same is within time. 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. 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. 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. The above position was recently highlighted in State of Karnataka v. M. Devendrappa and Another (2002 (3) SCC 89). The factual position as highlighted above clearly goes to show that the complainant had not come to Court with clean hands. There was no explanation whatsoever for the inaction between 1995 and 2001. The High Court seems to have been swayed by the fact that the appellants have rejected claim of the complainant on 5.12.2001. It failed to notice that the communication dated 5.12.2001 was in response to the letter of the complainant dated 24.11.2001. Section 468 of the Code deals with delay in taking cognizance after lapse of the period of limitation. It reads as follows: “468. BAR TO TAK-

ING COGNIZANCE AFTER LAPSE OF THE PERIOD OF LIMITATION: (1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation. (2) The period of limitation shall be - (a) six months, if the offence is punishable with fine only; (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year; (c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. (3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment." The learned Magistrate has issued process in respect of offence under Section 418 IPC. The punishment provided for said offence is imprisonment for three years. The period of limitation in terms of Section 468(2)(c) is 3 years. That being so, the Court could not have taken cognizance of the offence. Section 473 of the Code provides for extension of period in certain cases. This power can be exercised only when the Court is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary to do so in the interest of justice. Order of learned Magistrate does not even refer to either Section 468 or Section 473 of the Code. High Court clearly erred in holding that the complaint was not hit by limitation. As noted above, there was not even a reference that the letter dated 5.12.2001 was in response to the letter of complainant dated 24.11.2001. The factual position clearly shows that the complaint was nothing but a sheer abuse of the process of law and this is a case where the power under Section 482 should have been exercised. The High Court unfortunately did not take note of the guiding principles as laid down in Bhajan Singh's case (supra), thereby rendering the judgment indefensible. The judgment of the High Court is set aside, the proceedings initiated by the complaint lodged are quashed. The appeal is allowed.