State Of Madhya Pradesh vs Awadh Kishore Gupta And Ors on 18 November, 2003

Equivalent citations: AIR 2004 SUPREME COURT 517, 2004 (1) SCC 691, 2003 AIR SCW 6501, (2004) 13 ALLINDCAS 735 (SC), 2003 (7) SLT 323, 2003 (9) SCALE 704, 2004 CALCRILR 127, 2004 CRILR(SC&MP) 120, 2004 (1) SRJ 309, 2004 ALL MR(CRI) 824, 2004 SCC(CRI) 353, 2004 (1) ALL CJ 665, 2004 (13) ALLINDCAS 735, (2003) 9 JT 284 (SC), 2004 (1) UJ (SC) 165, (2004) 14 INDLD 261, (2003) 4 CURCRIR 455, (2003) 3 CHANDCRIC 196, (2004) 2 CRIMES 310, (2004) 2 JAB LJ 234, (2004) 27 OCR 395, (2004) 1 PAT LJR 165, (2004) 1 RECCRIR 233, (2004) 2 SUPREME 501, (2004) 2 ALLCRIR 1738, (2003) 9 SCALE 704, (2004) 1 UC 561, (2004) 1 JLJR 165, (2004) 1 BOMCR(CRI) 875, (2004) 48 ALLCRIC 206, (2004) 1 ALLCRILR 333, 2004 (1) ALD(CRL) 690

Author: Arijit Pasayat

Bench: Doraiswamy Raju, Arijit Pasayat

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           CASE NO.:
Appeal (crl.)  292 of 1997

PETITIONER:
State of Madhya Pradesh.

RESPONDENT:
Awadh Kishore Gupta and Ors.

DATE OF JUDGMENT: 18/11/2003

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT.

JUDGMENT:
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J U D G M E N T ARIJIT PASAYAT, J The State of Madhya Pradesh questions legality of judgment rendered by a learned Single Judge of the Madhya Pradesh High Court, Gwalior Bench accepting the prayer made in terms of Section 482 of the Code of Criminal Procedure, 1973 (in short 'the Code') to quash the investigation and proceedings under Prevention of Corruption Act, 1988 (in short the 'Act') in a case (crime no. 116/94) registered by the Special Police Establishment, Lokayukt, Gwalior. Seven petitioners, who are the respondents herein, had filed the petition to quash the investigation and the proceedings on the ground that while investigating into the alleged acquisition of disproportionate assets by present respondent no. 1 Awadh Kishore Gupta (petitioner no.1 before the High Court and described as accused hereinafter), the income of the other respondents were not

taken note of. Several documents were annexed to the petition to contend that there was no undisclosed income of and/or acquisition of assets disproportionate to the known sources of income by the respondent No. 1 who at the relevant time was working as Executive Engineer in the Public Health Engineering Department of the Government of Madhya Pradesh. Before the High Court his wife was the petitioner no. 2; and his sons and daughter were petitioner nos. 3 to 6 respectively and petitioner no.7 was his father. It was their basic stand that the proceedings were continuing without grant of proper opportunity to them to explain their income and there was non-compliance with the requirements of the Act. The basic allegation against the accused was that he had acquired property beyond his known source of income thereby rendering him punishable under Section 13(1)(e) of the Act.

Stand of the appellant State who was respondent before the High Court was that the matter was still under investigation and the investigating agency was examining the articles seized and the assets claimed by the accused and his relatives. As the matter was still under examination by the investigating agency, no case for quashing the investigation/ further proceedings was made out. The High Court came to hold that the documents annexed to the petition, more particularly, the income-tax returns indicate that all the properties shown in the returns were fully explained to have been acquired from the known sources of income of the accused and his relatives and nothing has been found to have been acquired disproportionately to the income of accused. Properties acquired by his relatives could not have been taken for constituting the offence so far as accused is concerned. Reference was also made to a Will executed by accused's mother and it was concluded that there was nothing to show that the Will had taints of benami. It was held that the onus to prove a transaction as benami is on the person who asserts and has to be discharged by adducing legal evidence of a definite character. It was also held that the requirements of Section 13(1)(e) clearly stipulated that an opportunity has to be given, and a government servant cannot be said to have failed to satisfactorily account the pecuniary resources and properties disproportionate to his known sources of income in the absence of such opportunity. Accordingly it was held that nothing substantial had been collected though considerable time had elapsed to collect evidence to suggest that if prosecuted, the public servant would be liable to be convicted as there has been little progress in the investigation. With these observations, the investigation and further proceedings in the case registered were quashed. Properties seized from the accused were directed to be returned to him.

Learned counsel for the appellant submitted that the whole approach of the High Court was erroneous. At the stage of considering an application for quashing the investigation or further proceedings, it is not permissible to proceed as if the court was holding a trial and trying to sift evidence. The parameter for exercise of jurisdiction under Section 482 of the Code is very limited. Without keeping in view the parameters and relying on documents and materials which were yet to be tested, the High Court has quashed the investigation and the proceedings.

In response, learned counsel for the respondents submitted that the investigation and further proceedings would have been an exercise in futility. When the materials considered by the High Court are taken into account, nothing more remains to be done and without first granting an opportunity to explain, the investigating agency could not have alleged commission of offence punishable under Section 13(1)(e) of the Act. The judgment, according to learned counsel, does not

warrant interference.

Section 13 deals with various situations when a public servant can be said to have committed criminal misconduct. Clause

(e) of sub-section (1) of the Section is pressed into service against the accused. The same is applicable when the public servant or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession, for which the public servant cannot satisfactorily account pecuniary resources or property disproportionate to his known sources of income. Clause (e) of sub-section (1) of section 13 corresponds to clause (e) of sub-section (1) of section 5 of the Prevention of Corruption Act, 1947 (referred to as 'Old Act'). But there has been drastical amendments. Under the new clause, the earlier concept of "known sources of income" has undergone a radical change. As per the explanation appended, the prosecution is relieved of the burden of investigating into "source of income"

> of an accused to a large extent, as it is stated in the explanation that "known sources of income" mean income received from any lawful source, the receipt of which has been intimated in accordance with the provisions of any law, rules orders for the time being applicable to a public servant. The expression "known sources of income" has reference to sources known to the prosecution after thorough investigation of the case. It is not, and cannot be contended that "known sources of income" means sources known to the accused. The prosecution cannot, in the very nature of things, be expected to know the affairs of an accused person. Those will be matters "specially within the knowledge"

of the accused, within the meaning of Section 106 of the Indian Evidence Act, 1872 (in short the 'Evidence Act').

The phrase "known sources of income" in section 13(1)(e) {old section 5(1)(e)} has clearly the emphasis on the word "income". It would be primary to observe that qua the public servant, the income would be what is attached to his office or post, commonly known as remuneration or salary. The term "income" by itself, is elastic and has a wide connotation. Whatever comes in or is received, is income. But, however, wide the import and connotation of the term "income", it is incapable of being understood as meaning receipt having no nexus to one's labour, or expertise, or property, or investment, and having further a source which may or may not yield a regular revenue. These essential characteristics are vital in understanding the term "income". Therefore, it can be said that, though "income" is receipt in the hand of its recipient, every receipt would not partake into the character of income. Qua the public servant, whatever return he gets of his service, will be the primary item of his income. Other incomes which can conceivably are income qua the public servant, will be in the regular receipt from (a) his property, or (b) his investment. A receipt from windfall, or gains of graft, crime, or immoral secretions by persons prima facie would not be receipt from the "known sources of income" of a public servant.

The legislature has advisedly used the expression "satisfactorily account". The emphasis must be on the word "satisfactorily" and the legislature has, thus, deliberately cast a burden on the accused not only to offer a plausible explanation as to how he came by his large wealth, but also to satisfy the Court that his explanation was worthy of acceptance.

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 alique concedit, conceditur et id sine quo res ipsa 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 such 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 exercises 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 no doubt 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) SCC 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.
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> (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.
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> (3) Where the uncontroverted allegations made in the F.I.R. 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.
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> (4) Where the allegations in the F.I.R. 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 S. 155(2) of the Code.
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> (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.

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. 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 : The Janata Dal etc. v. H.S. Chowdhary and others, etc. (AIR 1993 SC 892), Dr. Raghubir Saran v. State of Bihar and another (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 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 itself be the basis for quashing the proceeding. (See : Mrs. Dhanalakshmi v. R. Prasanna Kumar and others (AIR 1990 SC 494), State of Bihar and another v. P. P. Sharma, I.A.S. and another (1992 Suppl (1) SCC

222), Rupan Deol Bajaj (Mrs.) and another v. Kanwar Pal Singh Gill and another (1995 (6) SCC 194), State of Kerala and others v. O.C. Kuttan and others (1999 (2) SCC 651), State of U.P. v. O. P. Sharma (1996 (7) SCC 705), Rashmi Kumar (Smt.) v. Mahesh Kumar Bhada (1997 (2) SCC 397), Satvinder Kaur v. State (Govt. of NCT of Delhi) and another (1999 (8) SCC 728), Rajesh Bajaj v. State NCT of Delhi and others AIR 1999 SC 1216).

These aspects were also highlighted in State of Karnataka v. M. Devendrappa and another (2002 (3) SCC 89).

It is to be noted that the investigation was not complete and at that stage it was impermissible for the High Court to look into materials, the acceptability of which is essentially a matter for trial. While exercising jurisdiction under Section 482 of the Code, it is not permissible for the Court to act as if it was a trial Judge. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. In Chand Dhawan (Smt.) v. Jawahar Lal and Ors. (1992 (3) SCC 317), it was observed that when the materials relied upon by a party are required to be proved, no inference can be drawn on the basis of those materials to conclude the complaint to be unacceptable. The Court should not act on annexures to the petitions under Section 482 of the Code, which cannot be termed as evidence without being tested and proved. When the factual position of the case at hand is considered in the light of principles of law highlighted, the inevitable conclusion is that the High Court was not justified in quashing the investigation and proceedings in the connected case (Crime No. 116/94) registered by the Special Police Establishment, Lokayukt, Gwalior. We set aside the impugned judgment. The State shall be at liberty to proceed in the matter further.

By interfering with the impugned order, it shall not be construed as if we have expressed any opinion on the merits of the case.

The appeal is allowed accordingly.

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