M/S Jk International vs State, Govt Of Nct Of Delhi And Others on 23 February, 2001

Equivalent citations: AIR 2001 SUPREME COURT 1142, 2001 (3) SCC 462, 2001 AIR SCW 907, 2001 (1) RAJLW 172, 2001 SCC(CRI) 547, 2001 (3) COM LJ 23 SC, 2001 (2) LRI 157, 2001 CALCRILR 298, 2001 (2) SCALE 216, (2001) 3 COMLJ 23, 2001 CRILR(SC&MP) 243, 2001 CRILR(SC MAH GUJ) 243, (2001) 3 JT 130 (SC), 2001 (4) SRJ 32, (2000) 2 RAJ LR 650, (2001) 1 DMC 94, (2001) 1 SCJ 481, (2001) SC CR R 417, 2001 CHANDLR(CIV&CRI) 629, (2000) 2 RAJ CRI C 794, (2001) 1 EASTCRIC 281, (2001) 2 GUJ LH 795, (2001) 1 KER LT 870, (2002) 1 MADLW(CRI) 131, (2001) MAD LJ(CRI) 618, (2001) 20 OCR 716, (2001) 2 RECCRIR 106, (2001) 1 CURCRIR 267, (2001) 3 SUPREME 214, (2001) 1 ALLCRIR 859, (2001) 2 SCALE 216, (2001) 1 UC 593, (2001) 42 ALLCRIC 719, (2001) 2 BLJ 164, (2001) 2 CRIMES 182, (2001) 90 DLT 157, (2001) 1 CHANDCRIC 203, (2001) 5 BOM CR 845

Bench: K.T. Thomas, R.P. Sethi, B.N. Agarwal

CASE NO.:
Appeal (crl.) 222 of 2001

PETITIONER:
M/S JK INTERNATIONAL

Vs.

RESPONDENT:
STATE, GOVT OF NCT OF DELHI AND OTHERS

DATE OF JUDGMENT: 23/02/2001

BENCH:
K.T. Thomas, R.P. Sethi & B.N. Agarwal

JUDGMENT:

THOMAS, J.

Leave granted.

L...I...T.....T.....T.....T.....T.....T.....T..J The grievance of the appellant is simple and apparently innocuous that he too may be heard by the court. But the High Court rolled down the shutters before him saying he has no right to be heard and the court has no power to permit him to be heard. As his grievance was compounded by such denial he has filed this appeal by special leave.

A person accused of certain offences moved the High Court of Delhi for quashing the criminal proceedings pending against him in a magistrates court. Appellant informed the High Court that the criminal proceedings were initiated at his behest and hence he too may be heard before the criminal proceedings are to be quashed. A learned single judge of the High Court of Delhi, while foreclosing the appellant from doing so, observed that the Court is of the considered opinion that the right of the complainant to be heard ceases once cognizance is taken and he cannot thereafter continue to participate in the proceedings as if he were the aggrieved party who must have his say in proceedings.

The background is the following. Appellant filed a complaint before the police alleging that respondents 2 & 3 committed offences of criminal breach of trust and cheating. As he felt that no action was taken by the police on the complaint he filed a writ petition before the high Court for a direction to register FIR. However, before the writ petition was disposed of, the police informed the court that the FIR was already registered on the complaint filed by the appellant. Respondents then moved the High Court in a writ petition for quashing the FIR, and the appellant was also allowed to be impleaded in that writ petition. For some reasons the said writ petition was not followed up by the respondents and it was subsequently withdrawn.

The police, after investigation, filed a charge sheet against respondents for offences under Section 420, 406 and 120B of the IPC and the court issued process to the respondents requiring them to appear before the Court on 31.5.2000. At that stage respondents filed the present petition before the High Court praying for quashing the criminal proceedings pending before the magistrate court pursuant to the aforesaid charge-sheet filed by the police. In the writ petition the appellant was not made a party and therefore a petition was filed in the High Court for impleading the appellant as a party. The main plank of the appellant before the High Court was the decision of this court in Bhagwant Singh vs. Commissioner of Police [1985 (2) SCC 537]. The learned single judge of the High Court of Delhi felt that the observations made by this Court in an earlier decision (Thakur Ram vs. State of Bihar [AIR 1966 SC 911]) are more appropriate to the fact situation and basing on those observations learned single judge rejected the petition filed by the appellant before the High Court.

The observations of this court in Thakur Ram which persuaded the learned single judge to shut the door before the appellant are the following:

> In a case which has proceeded on a police report a private party has really no locus standi. No doubt the terms of Section 435 (old Cr.P.C.) are very wide and he can even take up the matter suo motu. The criminal law is not, however, to be used as an instrument of wrecking private vengeance by an aggrieved party against the person who, according to that party, has caused injury to it. Barring a few exceptions, in criminal matters the party who is treated as aggrieved party is the State which is the

custodian of the social interests of the community at large and so it is for the State to take all the steps necessary for bringing the person who has acted against the social interests of the community to book.

That was a case in which the Public Prosecutor filed an application before a magistrate in a pending trial for amending the charge by incorporating two more offences which are exclusively triable by the court of sessions and prayed for the case to be committed by the magistrate to the sessions court. The magistrate dismissed the application, but prosecution did not challenge the order passed by the magistrate. However, the informant in that case filed a revision before the sessions court under Section 435 of the Code of Criminal Procedure 1898 (old Code). The sessions judge directed the magistrate to commit the case to the court of sessions. The said order of the sessions court was challenged by the accused before the High Court, but that challenge was unsuccessful. Then the accused moved this court by special leave. In the above background a three-judge bench of this court considered the scope of Sections 435 and 437 of the old Code. In the said context this Court made the observation which has been quoted by the learned single judge as extracted above. When the Public prosecutor is in management of the prosecution of a case a private person trying to interject in the case to re- channelise the course of the prosecution has been disapproved by this Court.

But the situation here is different, as the accused approached the High Court for quashing the criminal proceedings initiated by the appellant. It may not be that the complainant should have been made a party by the accused himself in the petition for quashing the criminal proceedings, as the accused has no such obligation when the case was charge-sheeted by the police. It is predominantly the concern of the State to continue the prosecution. But when the complainant wishes to be heard when the criminal proceedings are sought to be quashed, it would be a negation of justice to him if he is foreclosed from being heard even after he makes a request to the court in that behalf. What is the advantage of the court in telling him that he would not be heard at all even at the risk of the criminal proceedings initiated by him being quashed. It is no solace to him to be told that if the criminal proceedings are quashed he may have the right to challenge it before the higher forums.

The scheme envisaged in the Code of Criminal procedure (for short the Code) indicates that a person who is aggrieved by the offence committed, is not altogether wiped out from the scenario of the trial merely because the investigation was taken over by the police and the charge sheet was laid by them. Even the fact that the court had taken cognizance of the offence is not sufficient to debar him from reaching the court for ventilating his grievance. Even in the sessions court, where the Public Prosecutor is the only authority empowered to conduct the prosecution as per Section 225 of the Code, a private person who is aggrieved by the offence involved in the case is not altogether debarred from participating in the trial. This can be discerned from Section 301(2) of the Code which reads thus:

If in any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the public Prosecutor or Assistant Public prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case.

The said provision falls within the Chapter titled General Provisions as to Inquiries and Trials. When such a role is permitted to be played by a private person, though it is a limited role, even in the sessions courts, that is enough to show that the private person, if he is aggrieved, is not wiped off from the proceedings in the criminal Court merely because the case was charge sheeted by the police. It has to be stated further, that the Court is given power to permit even such private person to submit his written arguments in the Court including the sessions court. If he submits any such written arguments the Court has a duty to consider such arguments before taking a decision.

In view of such a scheme as delineated above how can it be said that the aggrieved private person must keep himself outside the corridors of the Court when the case involving his grievance regarding the offence alleged to have been committed by the persons arrayed as accused is tried or considered by the Court. In this context it is appropriate to mention that when the trial is before a magistrate court the scope of any other private person intending to participate in the conduct of the prosecution is still wider. This can be noticed from Section 302 of the Code which reads thus:

(1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of Inspector; but no person, other than the Advocate-General or Government Advocate or a public prosecutor or Assistant Public prosecutor, shall be entitled to do so without such permission:

Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.

(2) Any person conducting the prosecution may do so personally or by a pleader.

The private person who is permitted to conduct prosecution in the magistrates court can engage a counsel to do the needful in the Court in his behalf. It further amplifies the position that if a private person is aggrieved by the offence committed against him or against any one in whom he is interested he can approach the magistrate and seek permission to conduct the prosecution by himself. It is open to the Court to consider his request. If the court thinks that the cause of justice would be served better by granting such permission the courts would generally grant such permission. Of course, this wider amplitude is limited to Magistrates courts, as the right of such private individual to participate in the conduct of prosecution in the sessions court is very much

restricted and is made subject to the control of the Public Prosecutor. The limited role which a private person can be permitted to play for prosecution in the Sessions Court has been adverted to above. All these would show that an aggrieved private person is not altogether to be eclipsed from the scenario when the criminal court takes cognizance of the offences based on the report submitted by the police. The reality cannot be overlooked that the genesis in almost all such cases is the grievance of one or more individual that they were wronged by the accused by committing offences against them.

We may now proceed to point out the usefulness of the observations made by the three-judge bench in Bhagwant Singh vs. Commissioner of Police (supra). Bhagwati J. (as he then was) who spoke for the bench pointed out that the informant having taken the initiative in lodging the First Information Report with a view to initiate investigation by the police for the purpose of ascertaining whether any offence has been committed (if so by whom) is vitally interested in the result of the investigation and hence the law requires that the action taken by the officer-in- charge of the police station on such FIR should be communicated to him. The bench said this with reference to Section 173(2)(i) of the Code.

This Court further said in the decision that if the magistrate finds that there is no sufficient ground for proceeding further the informant would certainly be prejudiced because the FIR was lodged by him. After adverting to different clauses of Section 173 of the Code learned judges laid down the legal proposition in paragraph 5 of the said judgment. The law so laid down is that though there is no obligation on the magistrate to issue notice to the injured person or to a relative of the deceased in order to provide him an opportunity to be heard at the time of consideration of the final report of the police (except when the final report is to the effect that no offence had been made out in the case) the informant who lodged the FIR is entitled to a notice from the magistrate. In other instances, the injured or any relative of the accused can appear before the magistrate at the time of consideration of the police report if such person otherwise comes to know that the magistrate is going to consider the report. If such person appears before the magistrate it is the duty of the magistrate to hear him. It is profitable to extract the relevant portion of that ratio:

> The injured person or any relative of the deceased, though not entitled to notice from the Magistrate, has locus to appear before the Magistrate at the time of consideration of the report, if he otherwise comes to know that the report is going to be considered by the Magistrate and if he wants to make his submissions in regard to the report, the Magistrate is bound to hear him. We may also observe that even though the Magistrate is not bound to give notice of the hearing fixed for consideration of the report to the injured person or to any relative of the deceased, he may, in the exercise of his discretion, if he so thinks fit, give such notice to the injured person or to any particular relative or relatives of the deceased, but not giving of such notice will not have any invalidating effect on the order which may be made by the Magistrate on a consideration of the report.
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> In the above view of the matter learned single judge has done wrong to the appellant when he closed the door of the High Court before him by saying that the High Court

is going to consider whether the criminal proceedings initiated at his behest should be quashed completely and that the complainant would not be heard at all even if he wants to be heard.

We, therefore, allow this appeal and set aside the impugned order. The petition filed by the respondents for quashing the criminal proceedings can now be disposed of by the High Court after affording a reasonable opportunity to this appellant also to be heard in the matter.

The appeal is accordingly disposed of.

K.T. Thomas R.P. Sethi.

B.N. Agarwal February 23, 2001.