

Shri Ganesh Narayan Hegde vs Shri S. Bangarappa And Ors on 20 April, 1995

Equivalent citations: 1995 SCC (4) 41, JT 1995 (4) 124, 1995 AIR SCW 2364, 1995 (4) SCC 41, 1995 CRI. L. J. 2935, 1995 CRILR(SC MAH GUJ) 533, (1995) 3 SCR 549 (SC), 1995 CALCRILR 291, (1995) 2 RAJ LW 98, 1995 CRILR(SC&MP) 533, (1995) 4 JT 124 (SC), 1995 (4) JT 124, 1995 SCC(CRI) 634, (1995) 2 SCJ 583, (1995) 4 CURCRIR 20, (1995) SC CR R 511, (1996) 1 EASTCRIC 507, (1995) 2 GUJ LH 296, (1995) 2 OCR 185, (1995) 2 RECCRIR 373, (1995) 2 CRICJ 136, (1995) 32 ALLCRIC 447, (1995) 2 CHANDCRIC 152, (1995) 2 ALLCRILR 211, (1995) 2 CRIMES 306, 1995 (2) KLT SN 26 (SC)

Author: B.P. Jeevan Reddy

Bench: B.P. Jeevan Reddy, S.B Majmudar

PETITIONER:

SHRI GANESH NARAYAN HEGDE

Vs.

RESPONDENT:

SHRI S. BANGARAPPA AND ORS.

DATE OF JUDGMENT 20/04/1995

BENCH:

JEEVAN REDDY, B.P. (J)

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JEEVAN REDDY, B.P. (J)

MAJMUDAR S.B. (J)

CITATION:

1995 SCC (4) 41 JT 1995 (4) 124

1995 SCALE (2) 748

ACT:

HEADNOTE:

JUDGMENT:

B.P. JEEVAN REDDY, J.:

1. Leave granted. Heard counsel for both the parties.
2. The appeal arises from the judgment and order of a learned Single Judge of the Karnataka High Court quashing the charge framed by the learned Magistrate.
3. A complaint was filed by the appellant against the three respondents herein under Section 500 of the Indian Penal Code. After receiving the evidence of the prosecution as contemplated by Section 244, the learned Magistrate framed the charge against the respondent-, under Section 500 of the Indian Penal Code. While framing the charge, the learned Magistrate has recorded his reasons therefor. In this order, he referred to the objections raised by the accused and his reasons for rejecting the same. The learned Magistrate observed: "(O)n going through the evidence adduced before court by the complainant at this stage, I am of the considered opinion that there exist grounds to frame charge against A. 1 to 3 for the offence punishable U/S. 500 I.P.C." The first respondent preferred a Revision (Criminal Revision Petition No.104 of 1989) before the First Additional Sessions Judge, Hubli against the order of the learned Magistrate. The learned Sessions Judge dismissed the Revision observing that inasmuch as the learned Magistrate has framed the charge on a consideration of the evidence adduced by the complainant, oral and documentary, and on being satisfied that there was a prima facie case made out against the accused, his order is not liable to be interfered with in Revision. He observed that a Revisional Court can interfere with the order of the trial magistrate framing charges only where it finds that the order of the trial magistrate is illegal, capricious or perverse. There-

upon the first respondent approached the High Court under Section 482 of the Criminal Procedure Code praying for the quashing of the charge. The learned Single Judge allowed the petition on the following basis:

"From the discussion made above, it has to be said that the approach of the Courts below in ordering to frame charge against the petitioner and the other two accused for an offence punishable under Section 500 IPC is the resultant of non- application of mind to the material available on record and also resultant of incorrect exercise of jurisdiction conferred. The Courts below should have borne in mind that a person can be charged only when the allegations alleged against him are established prima facie and not otherwise, because in criminal cases the Courts must be very cautious and careful before proceeding to frame charge as unnecessary framing of charge on the one hand may result in affecting the persons liberty and on the other hand cause continuous and unnecessary harassment, as it has happened in the instant case.

From the allegations made in the complaint and the intention to prosecute the accused by pursuing the complaint the material placed on record and the information gathered at the trial it is clear that it is a matter of mere prestige for both the parties

who according to their own version belong to different political faiths. It is not a genuine case of one making any imputation against the other or the other being defamed or his reputation lowered in the estimation of the public. This prolonged and protracted litigation and harassment to both the parties would have been ended in the beginning itself if the courts below had taken into consideration the effect of Section 245 Cr.P.C. and its applicability to the necessary material on record keeping in mind the basis of the complaint, the admissibility of the documents in evidence and the circumstances and context in which the alleged imputations were made by the petitioner."

4. The learned Judge quashed the charge not only with respect to the first respondent-accused, who alone was the petitioner before him, but also with respect to Respondents 2 and 3 (Accused 2 and 3 respectively), who had neither filed a Revision before the Sessions Judge nor had applied to the High Court for quashing the charge.

5. The complainant-appellant, Shri Ganesh Narayan Hegde, says that he belongs to a highly reputed and well-known family of North Kanara district whose main occupation is agriculture and sericulture. Some members of the family are running a rice mill and one of the sons of the complainant is running a chemical factory. The complainant says that he is the founder and President of various cooperative and educational institutions and that he is also the founder-President of Sahakari Shikshan Prasarak Samithi, Siddapur and is connected with certain other educational societies and banks. He says that by sincere and selfless work done in these institutions he has acquired a high status and position in the society and that though he is the cousin of Shri Ramakrishna Hegde, the former Chief Minister of Karnataka, he is not associated with his political party. According to the complainant, the first respondent-accused is an active politician. During the relevant period, he was the President of a political party -called 'Kranthiranga'. The first respondent aspired to become the Chief Minister of Karnataka but he was frustrated in his efforts by Shri Ramakrishna Hegde who became the Chief Minister. The first respondent was, therefore, waiting for an opportunity to tarnish the image of Shri Ramakrishna Hegde. Shri Ramakrishna Hegde contested to the Legislative Assembly from Kanakapura Constituency. The first respondent set-up his candidate against Shri Hegde. In the course of the election campaign, the first respondent held a press conference on April 28, 1983 at his residence at Bangalore. Respondents 2 and 3 who are the Editor and Chief Reporter respectively of the newspaper "Samyukta Karnataka", a daily, also attended the press conference. The first respondent made scandalous and false imputations against the complainant during the said press conference and requested the correspondents to publish the same in their newspapers. The news item as published in "Samyukta Karnataka" daily (in its Hubli edition) reads thus:

"Involvement of Hegde's Brother in Rice smuggling'?"

"Bangalore - 28, Sri S.Bangarappa the President of Kanriataka Krantiranga, has accused to day that Sri Ganesh Hegde the brother of the Chief Minister Sri Ramakrishna hegde is involving in smuggling of rice to Goa. Talking at a press conference, he said that the authorities are not dared to take action against the mill

owner Sri Ganesh Hegde."

(Translation from Kannada)

6. The complainant submitted that the said imputation is false to the knowledge of the first respondent and was made with intention to defame and harm the reputation of the complainant. The allegation of smuggling of rice leveled against the complainant is absolutely false and that the said false news item has lowered the prestige and reputation of the complainant and his family in the eyes of the public. His case is that he is not the brother of Shri Ramakrishna Hegde as made out in the news item but only a cousin.

7. The learned counsel for the appellants submitted that the framing of charge by the Magistrate is neither misdirected in law nor can it be said that there was no evidence before him upon which he could have formed an opinion that there is ground for presuming that the accused has committed the offence within the meaning of Section 246(1). The learned Magistrate, it is submitted, considered the oral and documentary evidence, the decisions cited by both the sides and under a reasoned order rejected the objections raised by the first respondent and framed the charge. The learned Sessions Judge dismissed the Revision filed by the first respondent holding that the learned Magistrate has acted properly and in accordance with law in framing the charge and that there are no grounds for interfering with his orders. A second Revision does not lie under the code, and though an application under Section 482 of the Code of Criminal Procedure is not barred, the High Court cannot sit and act as the second Revisional Court while exercising the powers under Section 482. This provision can be invoked only where there is an abuse of process of Court or otherwise to secure the ends of justice. Learned counsel complained that the learned Single Judge has examined the matter as if he were an appellate court and quashed the charge on that approach and that he has exceeded his jurisdiction in doing so and in interfering at an interlocutory stage.

8. Shri Sheshagiri Rao, the learned counsel for the first respondent justified the reasoning and conclusion of the learned Single Judge. He submitted that the complaint is the result of political vendetta, that it is not a genuine grievance and that the first respondent was not acting out of any extraneous motives in making the statement complained of. Learned counsel submitted that the first respondent is an active politician, that subsequently he has also become the Chief Minister of Karnataka and that he made the said- statement under the bonafide belief that it is true. He made the said statement, submitted the learned counsel, in good faith and in public interest. The first respondent was not actuated by any motives of personal gain or personal animosity. Learned counsel further submitted that the said publication was in the year 1983, that twelve years have passed by since then and that any interference at this distance of time may not be called for in the interests of justice.

9. the complaint has been tried, it is stated, according to the warrant procedure, at the request of the first respondent. Section 244(1) provides that "(W)hen, in any warrant-case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the MagistratE shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution." SeCtion 245(1) says that "(1)f, upon taking all the evidence referred to in section 244,

the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him." Section 246(1) then says "(1)f, when such evidence has been taken, or at any previous stage of the case, the magistrate is of opinion that there is ground for presuming that the accused has committed an offence tri- able under this Chapter, which such magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused. "

10. Section 399 of the Code of Criminal Procedure confers upon the Sessions Judge the power to revise any order made by the Magistrate but sub-section (3) thereof declares at the same time that "(W)here any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceedings by way of revision at the instance of such person shall be entertained by the High Court or any other Court."

11. Section 482 of the Code saves the inherent powers of the High Court. It reads:

"482. Saving of inherent powers of High Court

- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

12. While it is true that availing of the remedy of the revision to the Sessions Judge under Section 399 does not bar a person from invoking the power of the High Court under Section 482, it is equally true that the High Court should not act as a second Revisional Court under the garb of exercising inherent powers. While exercising its inherent powers in such a matter it must be conscious of the fact that the learned Sessions Judge has declined to exercise his revisory power in the matter. The High Court should interfere only where it is satisfied that if the complaint is allowed to be proceeded with, it would amount to abuse of process of Court or that the interests of justice otherwise call for quashing of the charges. A few decisions of this Court may usefully be referred at this stage. In *Mrs. Dhanalakshmi v. R. Prasanna Kumar & Ors.* (AIR 1990 S.C.494) this Court stated in a case of similar nature:

"Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases 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 is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The

complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/ 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.

The High Court without proper application of the principles that have been laid down by this Court in *Sharda Prasad Sinha v. State of Bihar*, (1977) 2 SCR 357 : (AIR 1977 SC 1754), *Trilok Singh v. Satya Deo Tripathi*, 1980 Cri LJ 822: AIR 1979 SC 850 and *Municipal Corpn. of Delhi v. Purshotam Dass Jhunjunwala*, (1983) 1 SCR 895: (AIR 1983 SC 158) proceeded to analyse the case of the complainant in the light of all the probabilities in order to determine whether a conviction would be sustainable and on such premises arrived at a conclusion that the proceedings are to be quashed against all the respondents. The High Court was clearly in error in assessing the material before it and concluding that the complaint cannot be proceeded with. We find there are specific allegations in the complaint disclosing the ingredients of the offence taken cognizance of. It is for the complainant to substantiate the allegations by evidence at a later stage. In the absence of circumstances to hold prima facie that the complaint is frivolous when the complaint does disclose the commission of an offence there is no justification for the High Court to interfere. "

13. To the same effect is the holding in another decision in *State of Bihar v. Murad Ali Khan & Ors.* (1988 (4) S.C.C.655). This Court said:

"It is trite that jurisdiction under Section 482, Cr.P.C., which saves the inherent power of the High Court, to make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice, has to be exercised sparingly and with circumspection. In exercising that jurisdiction the High Court should not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not. That is the function of the trial Magistrate when the evidence comes before him, Though it is neither possible nor advisable to lay down any inflexible rules to regulate that jurisdiction, one thing, however, appears clear and it is that when the High Court is called upon to exercise this jurisdiction to quash a proceeding at the stage of the Magistrate taking cognizance of an offence the High Court is guided by the allegations, whether those allegations, set out in the complaint or the charge-sheet, do not in law constitute or spell out any offence and that resort to criminal proceedings would, in the circumstances amount to an abuse of the process of the court or not. "

14. Examined from the above stand point, it would be evident that the learned Single Judge of the High Court has really gone beyond the purview of Section 482 in quashing the charge. He has not held that the evidence adduced by the complainant, oral and documentary, if unrebutted, would not have warranted the conviction of the accused within the meaning of Section 245(1) nor has he held that on the evidence adduced, the learned Magistrate could not have reasonably formed an opinion

that there is ground for presuming that the accused has committed an offence, as contemplated by Section 246(1). The learned counsel for the respondent has laid great stress upon the observations of the learned Magistrate in para 26 of his order, which reads:

"A. 1 has challenged the evidence of all these witnesses generally and more particularly of the evidence of P.W. 1 the complainant. In my opinion, at this stage, the evidentiary value of the documents and creditability of witnesses cannot be considered in view of the settled principles by Supreme Court of India in the decisions cited supra. All the contentions advanced on behalf of accused persons, could be weighed at the time of final disposal of the matter. Therefore I am rather constrained to refrain from examining any of the contentions canvassed for the accused or considering the repercussions made of cross examination of witnesses, lest any observations made by me may prejudice either of the parties at the time of trial. Further the evidence referred to in Section 245, relates to evidence before charge. Therefore I do not propose to examine any of the contentions urged for accused No. 1 during the course of arguments and about the decisions cited at the Bar on behalf of accused persons."

15. The learned counsel contended that the above observations indicate that the learned Magistrate has not applied his mind to the evidence before him at all and that he has mechanically framed the charge. We do not think that the learned counsel is right. The said observations were made by the learned Magistrate with reference to the decision of the Supreme Court in Akbar Dar v. State of Jammu and Kashmir (1982 SCC (Criminal) 148) referred to in preceding para 21 and should not be read in isolation. A reading of the order does show that the learned Magistrate has considered the oral and documentary evidence at length and finally expressed his opinion in paragraph 30 thus:

"On going through the evidence adduced before court by the complainant at this stage. I am of the considered opinion that there exist grounds to frame charge against A.1 to 3 for the offence punishable U/S. 500 I.P.C. In coming to conclusion that charge should be framed against A- 1 to 3, I should not be understood that I have expressed any opinion if made by me during the course of discussions will not come in the way of either parties at the final disposal of the case on merits. Therefore, for these reasons, I answer the point in the 'AFFIRMATIVE'."

16. The learned Sessions Judge who examined the order of the learned Magistrate has also expressed the opinion that since the magistrate has framed the charge on a proper consideration of oral and documentary evidence and on forming the requisite opinion, no interference is called for. As against this, the judgment of the High Court shows that it has entered into the merits of the case and pronounced upon the truth and correctness of the complaint and the defence, as would be evident from the following observations:

In Para 23 the learned Judge states that the oral evidence should have been considered alongwith the documentary evidence and that if that had been done, the learned magistrate would have come to the conclusion that the imputation made by

the accused is "neither intentional nor it amounted in lowering the reputation of the complainant in the estimation of general public and the context in which such a statement was made." In Para 24 the learned Judge states that the courts below