

Supriya Jain vs The State Of Haryana on 4 July, 2023

Author: Dipankar Datta

Bench: Dipankar Datta, S. Ravindra Bhat

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRL) NO. 3662 OF 2023

SUPRIYA JAIN

... APPELLANT

VS.

STATE OF HARYANA AND ANR.

... RESPONDENTS

JUDGMENT

DIPANKAR DATTA, J.

Leave granted.

2. Based on a complaint lodged by the second respondent, Thanesar city Police Station FIR No.658 dated 2 nd August, 2020 was registered under sections 406, 420, 506 and 120B, Indian Penal Code (“IPC”, hereafter) against 7 (seven) accused which, inter alia, included the petitioner.

3. Investigation of the FIR culminated in submission of a police report dated 14th February, 2022 in terms of section 173(2) of the Code of Criminal Procedure (“Cr. PC”, hereafter) under sections 420, 406, 506, 379, 120B and 180 of the IPC, inter alia, against the petitioner.

4. Perusal of the charge-sheet, however, does not reveal any role of the petitioner in respect of the offence under section 379 of the IPC which was added in the FIR, on the complaint of the second respondent, as far Reason:

back as on 4th August, 2020.

5. To put it briefly, the FIR stems from allegations levelled by the second respondent of she being allured by the principal accused (who happens to be the sister of the petitioner) to part with Rs. 45

lakh in all (paid partly in cash and partly by RTGS) for the purpose of establishment of a pharma company which would be engaged in the manufacture of Ayurvedic medicines. Mainly, allegations of cheating and of fraud practiced on her have been levelled by the second respondent against the principal accused, her husband and various other co-accused. It was also alleged that all the accused including the petitioner had assured the second respondent, with the objective of carrying out the criminal conspiracy, that the principal accused was a very hard working and business savvy woman. Insofar as the role of the petitioner is concerned, the second respondent alleged that the petitioner was introduced to her by the principal accused and that she is a member of the gang which cheated and defrauded her. Apart from the above, the FIR contains no other allegation against the petitioner; otherwise, it is replete with allegations levelled against the principal accused, her husband and the other co-accused.

6. We have noticed that the charge-sheet that came to be submitted before the criminal court does not also specify with clarity the role of the petitioner in either cheating or defrauding the second respondent but refers to her, at best, as a conspirator. What is also highlighted in the charge-sheet is that after securing anticipatory bail, the petitioner had joined the investigation on 30th July, 2021 and in course thereof she had made a confessional statement which, ultimately, she declined to sign; hence, she was also charged for having committed an offence punishable under section 180 of the IPC.

7. Upon the charge-sheet being received, the criminal court took cognizance of the offence and thereafter charges were framed against the accused by the Chief Judicial Magistrate, Kurukshetra ("CJM", hereafter) by an order dated 18th July, 2022. Such order was challenged by the petitioner under section 397, Cr. PC. The Additional Sessions Judge, Kurukshetra, ("ASJ", hereafter), by an order dated 27 th September, 2022, dismissed the revision as lacking in merit.

8. At this stage, the High Court's jurisdiction under section 482, Cr. PC was invoked by the petitioner subjecting the charge-sheet dated 14 th February, 2022, the order of the CJM framing charges dated 18 th July, 2022 and the revisional order of the ASJ 27 th September, 2022 to challenge. The High Court referred to various judicial precedents outlining the contours of exercise of jurisdiction by the high courts while they are approached for quashing an FIR / a complaint and / or criminal proceedings. Relying on such precedents and based on formation of opinion that there was sufficient material found against the petitioner in course of investigation, the High Court by its impugned judgment and order dated 11 th November, 2022 spurned the challenge and declined interference resulting in dismissal of the proceedings initiated by the petitioner.

9. Aggrieved thereby, the unsuccessful petitioner before the High Court is in appeal before us.

10. We have heard the parties as well as perused the charge-sheet and the other materials on record.

11. The charge-sheet sets out the contents of the FIR and refers to the materials that were collected in course of investigation. The Investigating Officer obtained the Call Details Record (CDR) and Customer Acquisition Form (CAF) of the cell phones of the second respondent and the petitioner and had also attempted to obtain certificate under section 65B of the Indian Evidence Act by

approaching the relevant service providers but failed in his attempt. He was informed that the conversations were quite old, hence, the requisite certificate could not be issued. The charge-sheet also recorded that the principal accused and the co-accused were yet to be arrested and after their arrest, separate supplementary challan would be prepared and presented before the court; nevertheless, sufficient evidence on the file to prepare challan against the petitioner was available.

12. In the course of hearing of this appeal, the petitioner sought for and was granted permission to file additional documents. Soon thereafter, the first respondent / State filed a reply affidavit dated 24th April, 2023.

13. The application for additional documents contains several documents. The first purports to be the translated copy of an agreement dated 23rd June, 2020 entered into by and between the principal accused and the second respondent in the presence of two witnesses, whereby the principal accused undertook responsibility of the entire amount (Rs. 45 lakh) received by her from the second respondent and also promised to refund to the second respondent the entire amount if, for any reason, the work to set up the proposed company did not materialize. The second document is purportedly a statement of even date (23 rd June, 2020) made by the principal accused undertaking to pay Rs. 47 lakh, which she had received for business purpose from the second respondent, to the latter within a year from date. The third document also purports to be the true translation of a statement of the principal accused admitting that there were discussions with the second respondent to promote and set up an ayurvedic factory for which the parties met several times and that the principal accused received such amount of money as indicated therein.

14. All these documents which the petitioner seeks to rely on, if genuine, could be helpful for her defence at the trial but the same are not material at the stage of deciding whether quashing as prayed by her before the High Court was warranted or not. We, therefore, see no reason to place any reliance on these three documents.

15. The fourth document which has been brought on record in support of the petitioner's claim for quashing of the proceedings against her is the statement of the second respondent under section 161 of the Cr. PC. Therein, inter alia, it was stated by the second respondent that Rs. 9.50 lakh was paid in cash by her to the principal accused at a particular house (House No. 620 in Sector-4, Kurukshetra) where the principal accused, the petitioner and their mother were present and that on receipt of such sum of money in cash, "those" (meaning thereby the principal accused, the petitioner and their mother) ... "counted the money" which was ultimately kept with the principal accused. This, the second respondent said, happened in the presence of her sister-in-law, Indu. It was also said by the second respondent in such statement that the principal accused, her husband, the petitioner and the other accused together have cheated her in a sum of Rs. 45 lakh in the manner described therein.

16. The charge-sheet contains a list of 27 (twenty-seven) witnesses who are proposed to be examined by the prosecution in support of the charges framed against several accused including the petitioner. Apart from the second respondent and others, this particular list includes Indu, the sister- in-law of the second respondent, who is said to have been present at House No. 620 when allegedly the

money changed hands.

17. This is a case where the charges have been framed and the accused are awaiting trial. Having regard to the totality of the facts and circumstances, noticed above, we are of the considered opinion that the investigation and the follow-up steps are not so patently and unobtrusively defective or erroneous (except to the extent we propose to mention before concluding our judgment) that allowing the trial to progress might cause a miscarriage of justice. This is also not an appropriate stage to delve deep into the records. It is no part of the business of any of the courts to ascertain what the outcome of the trial could be, ~ conviction or acquittal of the accused. The small window that the law, through judicial precedents, provides is to look at the allegations in the FIR and the materials collected in course of investigation, without a rebuttal thereof by the accused, and to form an opinion upon consideration thereof that an offence is indeed not disclosed from it. Unless the prosecution is shown to be illegitimate so as to result in an abuse of the process of law, it would not be proper to scuttle it. The principles to be borne in mind with regard to quashing of a charge / proceedings either in exercise of jurisdiction under section 397, Cr. PC or section 482, Cr. PC or together, as the case may be, has engaged the attention of this Court many a time. Reference to each and every precedent is unnecessary. However, we may profitably refer to only one decision of this Court where upon a survey of almost all the precedents on the point, the principles have been summarized by this Court succinctly. In *Amit Kapoor vs. Ramesh Chandra*¹, this Court laid down the following guiding principles:

“27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. 27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith *prima facie* establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

1 (2012) 9 SCC 460 27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution

and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused. 27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence. 27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice. 27.10. It is neither necessary nor is the court called upon to hold a full-

fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained. 27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie. 27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae i.e. to do real and substantial justice for administration of which alone, the courts exist.

*** 27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction

under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence.”

18. Applying the broad principles as enunciated by this Court, we hold that it is not one of those rare cases where the uncontroverted allegations appearing from the materials on record notwithstanding, it can successfully be contended that even no prima facie opinion can be formed pointing to commission of any offence by the petitioner. It is trite that the conspiracy to commit an offence is by itself distinct from the offence to do which the conspiracy is entered into and that such an offence, if actually committed, would be the subject-matter of a separate charge. The allegations that the petitioner was found counting the cash received by the principal accused from the second respondent in the presence of a listed witness and that she conspired with her sister, the principal accused, to cheat and defraud the second respondent, persuade us to record that involvement of the petitioner, howsoever limited, cannot be ruled out at this stage and, therefore, the trial ought to be permitted to proceed and she obliged to stand trial.

19. For the reasons aforesaid, we uphold the impugned judgment and order of the High Court dismissing the petition under section 482, Cr. PC. The trial court may proceed with the trial uninfluenced by any observation made in this judgment and order which is for the purpose of a decision on the appeal.

20. Before parting, we consider it necessary to advert to one aspect which though not referred to by the parties to us has been noticed from the reply affidavit of the first respondent / State.

21. The deponent of such reply affidavit happens to be holding the post of Deputy Superintendent of Police (“DSP”, hereafter). He has, in paragraph 5 thereof, audaciously averred as follows:

“It is further submitted that present petitioner recorded her confession statement dated 30.07.2021 in which she admitted to the fact that she had met the complainant along with other accused persons and received a sum of Rs. 9 Lakhs from the complainant, which was later handed over to her sister & co-accused Priyanka Mittal. She further admitted that she received a sum of Rs. 2 Lakhs as her share which she had spent on personal expenses. It is pertinent to mention that after getting her statement dated 30.07.2021 recorded, petitioner refused to sign her statement for which she was also charge sheeted for commission of an offence under section 180 IPC.”

22. We are aghast to note that an officer of the rank of DSP could be so irresponsible while swearing an affidavit which is proposed to be filed before this Court. An officer, who is a DSP, ought to know that in terms of section 162, Cr. PC, no statement made by a person to a police officer in the course of any investigation under Chapter XII of the Cr. PC, which is reduced to writing, is required to be signed by the person making the statement and that section 180 of the IPC gets attracted only if a statement is refused to be signed which a public servant is legally competent to require the person

making the statement to sign. That is not the case here. Since the deponent has not been heard by us, we do not propose to take the issue further but warn him to be cautious in future.

23. It does not appear from the order dated 18 th July, 2022 of the CJM that any charge has been framed against the petitioner under section 180 of the IPC; however, if any charge thereunder by any separate order has been framed against the petitioner, she will be at liberty to pursue her remedy in accordance with law.

24. Except to the extent mentioned above, the appeal stands dismissed without any order for costs.

25. A copy of this judgment shall be forwarded by the Registry to the Director General of Police, Uttar Pradesh not for the purpose of initiating any action adverse to the interest of the deponent of the reply affidavit but for the purpose of ensuring that police officers at all levels are made aware of the legal provisions and the impact that ignorance of legal provisions could have on pending criminal proceedings adversely affecting the rights of accused, so that there is no recurrence of similar such incident.

.....J (S. RAVINDRA BHAT)J (DIPANKAR DATTA)
NEW DELHI;

JULY 04, 2023.