Ashabai Machindra Adhagale vs State Of Maharashtra & Ors on 12 February, 2009

Equivalent citations: AIR 2009 SUPREME COURT 1973, 2009 (3) SCC 789, 2009 AIR SCW 1605, 2009 (3) AIR BOM R 119, 2009 (3) AIR JHAR R 1066, (2009) 2 GUJ LR 1341, (2009) 2 KER LJ 189, (2009) 42 OCR 938, (2009) 2 SCALE 697, (2009) 1 CRIMES 304, 2009 ALLMR(CRI) 1806, (2009) 1 ALD(CRL) 507, (2009) 76 ALLINDCAS 218 (SC), (2009) 1 BOMCR(CRI) 779, (2009) 1 RAJ LW 817, (2009) 2 RECCRIR 86, (2009) 2 JCR 10 (SC), (2009) 1 DLT(CRL) 779, (2009) 65 ALLCRIC 179, 2009 CALCRILR 1 878, (2009) 2 CHANDCRIC 293, 2009 (2) SCC (CRI) 20, 2009 (2) KCCR SN 72 (SC)

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Bench: H.L. Dattu, Mukundakam Sharma, Arijit Pasayat

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 287 OF 2009
(Arising out of S.L.P. (Crl.) No. 838 of 2007)

Ashabai Machindra Adhagale .....Appellant

Versus

State of Maharashtra and Ors. ....Respondents

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. An interesting question of law arises in this appeal. Background facts in a nutshell are as follows:

> Appellant filed First Information Report (in short the `FIR') under Section 154 of the Code of Criminal Procedure, 1973 (in short the `Code') at Newasa Police Station,

> District Ahmednagar, alleging commission of offence punishable under Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short the `Act').
>
> A petition under Section 482 of Code was filed by respondent No.3 (hereinafter referred to as the `accused'). The basic stand was that in the FIR the caste of accused was not mentioned and therefore the proceedings cannot be continued and deserved to be quashed. The High Court placing reliance on earlier decisions of the High Court allowed the petition.

3. In support of the appeal, learned counsel for the appellant submitted that the view taken by the Bombay High Court is contrary to one taken by the Orissa High Court. It is submitted that the offence primarily relates to purported perpetration of crime on the victim because of his or her caste. It is for the accused to show that he does not belong to higher caste and that is a matter of evidence. It is not that in the instant case there was no reference to the caste of an accused as it is clearly mentioned in the FIR that the offence is relatable to Section 3(1)(xi) of the Act. Therefore, there is a reference though indirectly to the caste of the accused. Even otherwise it is submitted that the non-mention of the caste of the accused cannot be a ground to quash the proceedings. At the framing of charge or in case the charge sheet is filed and/or during trial the accused can establish that he does not belong to higher caste. It is submitted that FIR is not an encyclopedia of all events and basic ingredients of offence are clearly made out.

4. Learned counsel for respondent No.3, on the other hand, submitted that Section 3(1) itself provides that the offence should have been committed by a person who is not a member of the Scheduled Caste or Scheduled Tribe, unless that specific mention is made no offence is disclosed.

5. Learned counsel for the respondent referred to various judgments of Bombay High Court in this regard supporting his stand. e.g. Manohar S/o Martandrao Kulkarni and Anr. v. State of Maharashtra and Ors. (2005 (4) Mh.L.J. 588)

6. It is also submitted that the complainant i.e. the appellant is harassing people by filing frivolous petitions taking shelter of the fact that she belongs to scheduled caste. Therefore, placing strong reliance on the observations of this Court in State of Haryana v. Bhajan Lal (1992 Supp (1) SCC 335), it is submitted that the proceedings deserved to be quashed which according to him the High Court rightly did.

7. In Superintendent of Police, CBI and Ors. v. Tapan Kumar Singh (2003 (6) SCC 175) this Court elaborately dealt with the need of an FIR. It was inter-alia observed as follows:

> "20. It is well settled that a first information report is not an encyclopaedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eyewitness so as to be able to disclose in

great detail all aspects of the offence committed. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all the details he must find out those details in the course of investigation and collect all the necessary evidence. The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the police officer concerned is empowered under Section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not give full details regarding these matters, the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can.

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22. The High Court has also quashed the GD entry and the investigation on the ground that the information did not disclose all the ingredients of the offence, as if the informant is obliged to reproduce the language of the section, which defines "criminal misconduct" in the Prevention of Corruption Act. In our view the law does not require the mentioning of all the ingredients of the offence in the first information report. It is only after a complete investigation that it may be possible to say whether any offence is made out on the basis of evidence collected by the investigating agency."

8. Similarly, in Masumsha Hasanasha Musalman v. State of Maharashtra (2000 (3) SCC 557), this Court noted that with reference to Section 3(2)(v) of the Act that to attract the provisions of said section the sine qua non is that the victim should be a person who belongs to a Scheduled Caste or a Scheduled Tribe and that the offence under the Indian Penal Code, 1860 (in short `IPC') is committed against him on the basis that such a person belongs to a Scheduled Caste or a Schedule

Tribe. In the absence of such ingredients no offence under Section 3(2)(v) of the Act arises. The view in Masumsha's case (supra) was reported in Dinesh @ Buddha v. State of Rajasthan (2006 (3) SCC 771).

9. The scope for interference on the basis of an application under Section 482 of Code is well known.

10. Section 482 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 aliauid alicui concedit, concedere videtur et id sine guo 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, on 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 report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto.

11. 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.

12. In dealing with the last category, 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."

13. 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 State of Orissa v. Saroj Kumar Sahoo (2005) 13 SCC 540 and Minu Kumari v. State of Bihar AIR 2006 SC 1937).

14. It needs no reiteration that the FIR is not expected to be an encyclopedia. As rightly contended by learned counsel for the appellant whether the accused belongs to scheduled caste or scheduled tribe can be gone into when the matter is being investigated. It is to be noted that under Section 23(1) of the Act, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (in short the `Rules') have been framed.

15. Rule 7 deals with the investigating officer. Under Rule 7 investigation has to be done by an officer not below the rank of Deputy Superintendent of Police.

16. After ascertaining the facts during the course of investigation it is open to the investigating officer to record that the accused either belongs to or does not belongs to scheduled caste or scheduled tribe. After final opinion is formed, it is open to the Court to either accept the same or take cognizance. Even if the charge sheet is filed at the time of consideration of the charge, it is open to the accused to bring to the notice of the Court that the materials do not show that the accused does not belong to scheduled caste or scheduled tribe. Even if charge is framed at the time of trial materials can be placed to show that the accused either belongs or does not belong to scheduled caste or scheduled tribe.

17. So far as the scope for investigation is concerned it is relevant to note that sub-Section (2) of Section 156 of the Code provides that no proceedings of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not

empowered under the section to investigate. (underlined for emphasis).

18. Above being the position, the view taken by the Bombay High Court does not appear to be the correct view while that of the Orissa High Court is the correct view. Accordingly, we allow this appeal. Needless to say during investigation or at the time of framing of charge or at the time of trial it is open to respondent No.3 to show that he either belongs to scheduled caste or scheduled tribe so that applicability of Section 3(1)(xi) of the Act is ruled out.

.....J. (Dr. ARIJIT PASAYAT) .....J. (Dr. MUKUNDAKAM SHARMA) .....J. (H.L. DATTU) New Delhi, February 12, 2009