

Kim Wansoo vs State Of Uttar Pradesh on 2 January, 2025

Author: C.T. Ravikumar

Bench: C.T. Ravikumar

2025 INSC 8

Report

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
Criminal Appeal No. _____ of 2025
(@ SLP (Crl.) No.4849 of 2020)

Kim Wansoo

...Appellant(

Versus

State of Uttar Pradesh & Ors.

...Respondent(

JUDGMENT

C.T. RAVIKUMAR, J.

1. Leave granted.

2. This appeal by special leave is directed against the judgment dated 26.08.2020 in Criminal Misc. Writ Petition No.8063 of 2020 passed by the High Court of Judicature at Allahabad, refusing to quash FIR No.64/2020 registered at Police Station, Sadar Bazar, District Meerut. Furthermore, it was ordered thereunder thus: -

“However, considering the allegations made in the FIR, the provisions of Section 157, Cr. P.C. and the view taken by the Apex Court in the case of Joginder 16:40:41 IST Reason:

Kumar v. State of U.P. 1994, Cr.L.J. 1981, it is directed that the petitioner shall not be arrested in the above case, till the credible evidence is not available against him during the investigation or till the submission of Police Report under Section 173(2), Cr. P.C., whichever is earlier.”

3. On 14.10.2020, this Court issued notice and also stayed further proceedings based on the subject FIR. The said order is still in force.

4. The facts leading to the impugned judgment read as under: -

Hyundai Motor India Limited (for brevity, 'HMIL' only) awarded a contract for construction and development of a project work namely, Gurgaon, HMI Project, R.C. Works (hereafter referred to as, 'the project') to Hyundai Engineering & Construction India LLP (for short, 'HEC India LLP'). Agreement dated 20.10.2017 was executed therefor, between the said companies and the appellant herein was the Project Manager of HEC India LLP. He is a foreign national. HEC India LLP, sub-contracted the work to KOTEC Automotive Services India Private Limited (for short, 'KOTEC') which in turn sub-contracted the RC constructions work to M/s. YSSS India Construction (for short, 'YSSS') and 'YSSS' further sub-contracted with M/s R.T. Construction, which is the complainant's (respondent No.4 herein) entity, to obtain manpower. It is alleged in the subject FIR that 'YSSS' in connivance with the other accused defaulted payment to the complainant's company. The subject FIR was registered under Sections 406, 420, 323, 504, 506 and 120-B of the Indian Penal Code, 1860 (hereafter, 'the IPC') against the accused, including the appellant herein on the allegation that 'YSSS', in connivance with the other accused defaulted payment to the company to the tune of Rs.9 Crores. Pursuant to the lodgement of the FIR, the appellant received notices dated nil, on 06.08.2020 and 09.09.2020, issued under Section 91 of the Code of Criminal Procedure, 1973 (hereafter, 'the Cr.P.C.') calling upon him to produce certain documents. Though, the appellant produced documents in his possession before the Investigating Officer, he got further notices insisting for production of more documents which, according to him, are not in his possession. It is in the aforesaid circumstances and raising various contentions that the appellant approached the High Court seeking quashment of the FIR, which is produced in these proceedings as Annexure P-9.

5. Multifarious contentions have been raised, unsuccessfully, by the appellant to support his prayer for quashment of the subject FIR before the High Court. He reiterated such contentions before us, as well. But before dealing with such contentions, as also the challenge against the impugned judgment it is only apposite to refer to the relevant recitals from the subject FIR, which read as follows: -

"About all aforementioned people conniving with intention to cause loss to the Applicant and to make gain for themselves, hatching criminal conspiracy, committing cheating, fraud and. forgery against the Applicant and misappropriating Applicant's money - Hon'ble Sir, This is to submit that Applicant Tahir, Partner M/s RT Construction, 202 B/9, Ground Floor, Thatwari Complex, Westend Road, Near Meerut Public School, Meerut ant, Meerut has been doing his) business from a long time. The Applicant has been doing business of construction for approximately the last 30 years. Applicant's brother Nasir and Partner Ravindra to look after the said business along with the Applicant. Applicant has been providing various services in construction including providing services of skilled and unskilled labourers to other companies. Aforementioned No. -

6 SEUNG HWI, HER (Managing Director) YOU SEUNG SANG SA INDIA CONSTRUOTION PVT LTD (YSSS), which is a subsidiary company of the main company MS HUNDAI MOTOR INDIA GROUP, had issued a work order to the Applicant on 15.06.2018 because the Applicant has been providing labourers to Korean company for long time. Therefore, on basis of Applicant's good will, aforementioned people sent work order on Applicant's mail ID, photo copy of which was sent to the Applicant at bis. house at Meerut by the aforementioned person) through their employee. Applicant finalized final rates after discussing with all aforementioned persons and after the officers of aforementioned company agreed to it, contract was drafted in Meerut and work was assigned. Applicant's company provided labourers as per requirements of the aforementioned company from August 2018 till 2019, for which the Applicant made bills on time to time and gave to the aforementioned persons. The Bill was to the tune of approximately Rs 9 crore, of which the aforementioned company paid Rs.1, 70,51,000/- to the Applicant from time to time. Thereafter, while misleading the Applicant, additional work to the tune of Rs 8,31,94,200/- was done. The Applicant gave good performance because the Applicant felt that it was a foreign company and India should not be maligned. After the work was completed, M/S YOU SEUNG SANG SA JNDIA CONSTRUCTION PVT LTD (YSSS) issued cheques of approximately Rs.8,31,94,200/- in favour of Applicant's partnership firm, all of which were dishonoured. The Applicant complained to M/S HUNDAI MOTQR INDIA, which is the main company, on which M/S YOU SEUNG SANG SA INDIA CONSTRUCTION PVT LTD (YSSS) was summoned and a reconciliation was made not to file any case and now our other company. MS KOTEC AUTOMOTIVE SERVICE INDIA (P) LTD shall make payment to you because M/S YOU SEUNG SANG SA INDIA CONSTRUCTION PVT LTD (YSSS) had largest liability towards the Applicant, which was to the tune of approximately Rs 8,31,94,200/- aforementioned company M/S HUNDAI MOTOR INDIA settled payments of 16 persons along with the Applicant and while accepting its responsibility nominated M/S Khaan OTEC AUTOMOTIVE SERRVICE INDIA (P) LTD, which is a part of aforementioned company, to handle moneys. Officers of aforementioned company agreed that now payment of only Rs. 7,67,30,826/- shall be done to Applicant, to which the Applicant agreed. Of this, 40 per cent payment was to be done by the aforementioned company immediately and the remaining payment was to be made after two months. Officers of aforementioned companies reduced this reconciliation in writing and gave a copy of it to the Applicant and also gave two cheques of Rs. 61,38,446/- and Rs 2,45,53,864/- on 30.11.2019, of which cheque of Rs 61,38,446/- was encashed and the remaining cheque of Rs.2,45,53,864/- was dishonoured. The Applicant kept on visiting the aforementioned persons repeatedly but all aforementioned persons kept on giving excuses and avoiding the Applicant. Applicant and Applicant's brother Nasir went to the. office of aforementioned persons on 03.10.2019 to demand payment but the aforementioned persons misbehaved with Applicant, his brother and partner Ravindra Kumar, subjected them to obscenities and issued threat to kill them if they went there again.

Also, there was no reply to several phone calls made.

Applicant's brother Nasir Ali Khan kept on visiting the office of aforementioned persons for remaining amount but "the aforementioned persons did not give any money to Applicant and his brother Nasir Ali Khan. Instead, on last visit to the office of aforementioned persons, aforementioned persons assaulted and abused Applicant's brother, as; result of which applicant's

brother suffered serious trauma and because of which Applicant's brother Nasir Ali Khan passed away on 30.01.2020. Applicant has proof of acts 'of aforementioned persons in the form of documents in his safe custody, all of which are enclosed to the Application. All aforementioned persons have indulged in criminal conspiracy and forged documents through their company to commit cheating, fraud and misappropriation against Applicant-and other persons. Applicant has lodged complaint in aforementioned matter at Sadar Bazar Police Station but no action has been taken till this date. Therefore, request is being made to Hon'ble Sir to kindly order Officer In-Charge of Sadar Bazar Police Station to register case against aforementioned persons under aforementioned sections and take stringent legal action against them and to help the Applicant to recover aforementioned amount from the aforementioned persons.” (underline supplied)

6. It is worthwhile to refer to some of the decisions of this Court in regard to the power of the High Court to quash criminal proceedings before considering the rival contentions with reference to the allegations made in the subject FIR, as extracted above. It is true that normally, quashing of criminal proceedings would be sought and would be done in exercise of the inherent power of the High Court under Section 482, Cr. P.C. But certainly, that does not mean that it could not be done only in invocation of the extraordinary power under Article 226 of the Constitution of India. This position was made clear by this Court in *State of Haryana and Ors. v. Bhajan Lal and Ors.*¹. After considering the statutory provisions of Cr. P.C. and the earlier decisions of this Court, in the said decision this Court held that in the following categories of cases, the extraordinary power under Article 226 or the inherent power under Section 482, Cr. P.C. could be exercised by the High Court, either to prevent abuse of AIR 1992 SC 604; 1990 INSC 363 process of any Court or otherwise to secure the ends of justice. This Court went on to observe and hold that it might not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formula and exhaustive list of myriad kinds of cases wherein such power should be exercised and encapsulate the following cases falling under such categories: -

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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 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.

7. The said position was reiterated by this Court in *Pepsi Foods Ltd. and Anr. v. Special Judicial Magistrate and Ors.*² This Court held therein that the AIR 1998 SC 128; 1997 INSC 714 High Court could exercise its power of judicial review in criminal matters and it could exercise this power either under Article 226 of the Constitution or under Section 482, Cr. P.C. to prevent abuse of the process of the Court or to secure the ends of justice. Furthermore, it was held that exercise of that power would depend upon the facts and circumstances of each case.

8. In regard to quashing of criminal proceedings at the investigation stage itself, this Court in *Eastern Spg. Mills v. Rajiv Poddar*³, held that the High Court could interfere with the investigation, if non-interference would result in miscarriage of justice.

9. In *State of A.P. v. Golconda Linga Swamy*⁴, this Court again held that where an FIR did not disclose the commission of an offence without anything being added or subtracted from the recitals thereof, the said FIR could be quashed.

10. We have already extracted the relevant recitals in the subject FIR. Despite our microscopic examination of the allegations raised thereunder, except some vague allegations, no specific allegation could be seen made against the appellant herein or against the company by name 'HEC India LLP' wherein he was the Project AIR 1985 SC 1668 (2004) 6 SCC 522; 2004 INSC 404 Manager. That apart, a scanning of the subject FIR would reveal that after making some allegations,

the complainant viz., the 4th respondent herein sought for registration of a case against the persons named therein, including the appellant herein to help the complainant/appellant herein to recover the amount mentioned therein. In this context, it is to be seen that the allegations therein would reveal that the complaint of committing default in payment of an amount around Rs.9 Crores was not made against the appellant herein or against the company in which he was the Project Manager, whereas it was made against a different company/different companies.

11. In the contextual situation, it is also relevant to refer to the decision of this Court in Mohammad Wajid and Another. v. State of U.P. and Anr.⁵, whereunder this Court, in so far as it is relevant, held thus: -

“34.....it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many 2023 SCC Online SC 951; 2023 INSC 683 other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation....”

12. On judging the case on hand with reference to the allegations extracted hereinbefore, in the light of the decisions referred supra, we have absolutely no hesitation to hold that the High Court clearly erred in refusing to exercise the extraordinary power under Article 226 of the Constitution of India to quash the subject FIR No.64/2020 and all further proceedings in pursuance thereof, qua the appellant.

13. A perusal of the subject FIR would reveal that the same did not disclose commission of offence(s) as alleged without anything being added to the recitals thereof. That apart, besides the vague allegations, the rest of them, even if taken as true, would not disclose the commission of any offence and make out a case against, the appellant. In such circumstances, asking the appellant to stand the trial will be nothing but an abuse of process of law and as such, non-interference by refusing to exercise the power to quash the FIR and further proceedings based thereon, would result in miscarriage of justice.

14. In such circumstances, this appeal is liable to be allowed and resultantly it is allowed and the judgment dated 26.08.2020 in Criminal Misc. Writ Petition No.8063 of 2020 is set aside. As a necessary sequel, the subject FIR No.64/2020 registered at Police Station, Sadar Bazar, District Meerut and all further proceedings pursuant thereto, qua the appellant stand quashed and set aside.

15. Pending application(s), if any, shall stand dispose of.

....., J.

(C.T. Ravikumar), J.

(Sanjay Kumar) New Delhi;

January 02, 2025.