Sonu Gupta vs Deepak Gupta & Ors on 11 February, 2015

Equivalent citations: 2015 AIR SCW 1199, 2015 (3) SCC 424, AIR 2015 SC (SUPP) 684, (2016) 1 MADLW(CRI) 70, (2015) 1 ALLCRIR 1049, (2015) 2 DLT(CRL) 737, (2015) 1 CURCRIR 426, (2015) 2 KCCR 159, (2015) 2 JLJR 56, (2015) 60 OCR 993, (2015) 2 SCALE 295, 2015 ALLMR(CRI) 1192, 2015 CRILR(SC MAH GUJ) 287, (2015) 2 ALLCRILR 325, (2015) 89 ALLCRIC 706, (2015) 1 UC 460, (2015) 1 CRILR(RAJ) 287, 2015 (2) SCC (CRI) 265, (2015) 2 RAJ LW 1544, (2015) 148 ALLINDCAS 113 (SC), (2015) 1 MAD LJ(CRI) 598, (2015) 2 RECCRIR 32, (2015) 2 CRIMES 1, 2015 CRILR(SC&MP) NIL 287, (2015) 2 PAT LJR 321, (2015) 2 CAL LJ 49

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Bench: Shiva Kirti Singh, Kurian Joseph, Anil R. Dave

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 285-287 OF 2015
[Arising out of S.L.P.(Crl.)Nos.300-302 of 2013]

Sonu Gupta .....Appellant

Versus

Deepak Gupta & Ors. .....Respondents

J U D G M E N T

SHIVA KIRTI SINGH, J.

Leave granted.

The parties have been heard in detail and they have also filed written submissions. Appellant is wife of respondent no.1 and is complainant in Criminal Complaint No.1213/2011 before Court of Judicial Magistrate, First Class, Raipur. The respondents are accused in this Complaint Case which was filed on 07.12.2010 for alleged offences under Section 464, 468 and 471 of the Indian Penal Code (IPC).

The appellant and respondent no.1 are undergoing a protracted matrimonial dispute. It is the case of appellant as well as respondent no.1 that they were married in February 1997. A girl child was born to the appellant in May 1998 and in 2001 the appellant gave informations on various dates to several police authorities regarding alleged torture and harassment inflicted on her by respondent nos.1 to 8 for dowry as well as for giving birth to a girl child. It is appellant's case that in April 2001 itself there was pressure by the common relatives and friends leading to appellant withdrawing her allegations against respondent no.1 who in turn withdrew Divorce Petition No.496/2000 and the same was dismissed as withdrawn by order of Additional District Judge, Delhi dated 30th April 2001. The differences between the spouses got settled amicably in April-May 2001. The appellant gave birth to another girl child in August 2002 much to the dislike of accused persons.

The substance of the accusation in the instant complaint case is that anticipating legal action by the appellant against renewed mental torture and harassment by the respondent no.1 and his other relations named as accused, as a stratagem and outcome of a conspiracy, one of her earlier letters of complaint to some police officials which had been withdrawn by the appellant in April-May 2001, was changed and tampered as per convenience and a photocopy of such undated complaint making out a weak case against the respondents which was bound to fail, was got registered at the instance of the accused persons themselves with the help of some police officials as Criminal Case (FIR No.73/2002) on 06.10.2002 in the Mahila Thana, Raipur by the Town Inspector of this Thana under pressure of accused no.9, Additional Director General of Police, PHQ, Raipur. According to the complaint petition, the appellant informed the concerned court that the FIR No.73/2002 was neither filed by her nor signed by her and this FIR facilitated her husband and his relations who were accused to obtain anticipatory bail not only in FIR No.73/2002 but also in the case genuinely filed by the appellant against accused nos.1 to 8 under Sections 498A and 406, IPC in Women's Cell, Kirti Nagar, Delhi registered as Complaint No.372/2004 on 15.06.2004. The appellant was also surprised to receive in July 2003 a notice of Divorce Petition filed by respondent no.1 in a Delhi court on 19.5.2003. The appellant approached various authorities and tried to get an investigation into her allegations that FIR No.73/2002 was fraudulently registered to benefit the accused nos.1 to 8 and the appellant had no role in registering the same. Ultimately, even after a CID investigation in favour of appellant's case, when no action was taken against the culprits and no copy of the CID report was made available to the appellant, she filed a Writ Petition No.1488/2005 before the High Court of Chhattisgarh at Bilaspur seeking the record of investigation report of CID and registration of a criminal case against the accused as well as investigation by CBI. In terms of directions of the High Court issued while disposing of the writ petition on 24.06.2010, the appellant was provided with copy of the CID investigation report and was also permitted to inspect the entire connected record. Thereafter appellant could find that the Station House Officer of Mahila Thana, Raipur as well as accused no.9, Additional Director General of Police, PHQ, Raipur also had played a role in fraudulent registration of FIR No.73/2002 and hence she filed the instant criminal complaint before the Court of Judicial Magistrate, First Class, Raipur on 07.12.2010.

The learned Judicial Magistrate recorded the statement of the appellant and also called for record of CID investigation in the matter of FIR No.73/2002 for the purpose of perusal and evaluation. On receipt of the record, the learned Judicial Magistrate passed a speaking order on 02.05.2011 whereby he issued summons against accused nos.1 to 9 after finding a prima facie case on the basis

of complaint petition, statement of complainant (appellant) as well as records of CID investigation on which the complainant had placed reliance. Accused nos.1 to 8 preferred one set of criminal revision and accused no.9 preferred another criminal revision before the Sessions Court at Raipur. By two separate orders passed on same date, i.e., 30.11.2011, the Sessions Court upheld the summoning order in respect of accused nos.1 to 5 but set it aside in respect of accused nos.6 to 8 and accused no.9. Against these two orders the appellant preferred criminal revision petitions whereas accused nos.1 to 5 also preferred a Criminal Miscellaneous Petition bearing No.45/2012 before the High Court. The High Court, by common judgment and order dated 07.09.2012 which is under appeal, dismissed both the criminal revision petitions preferred by the appellant against grant of relief to accused nos.6 to 9 and allowed criminal miscellaneous petition of accused nos.1 to 5 by setting aside the summoning order of the Magistrate and directing the appellant to appear before the Court of Judicial Magistrate for adducing further evidence, if any, to support her allegation in the complaint petition. The High Court thus remitted back the matter with various observations requiring the appellant to produce alleged documents which could prove forgery and also to send the same to expert for examination of the document and signature of the complainant/appellant.

Considering the stage at which the criminal complaint is pending and the nature of proposed order, this Court would not like to express any definite opinion on the merits of the allegations made in the complaint petition or upon the defence taken by the accused persons before the courts below or in this Court lest it prejudices one or the other party in future. Having considered the details of allegations made in the complaint petition, the statement of the complainant on solemn affirmation as well as materials on which the appellant placed reliance which were called for by the learned Magistrate, the learned Magistrate, in our considered opinion, committed no error in summoning the accused persons. At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence, or, in other words, to find out whether prima facie case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor he is required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not. It is also well settled that cognizance is taken of the offence and not the offender. Hence at the stage of framing of charge an individual accused may seek discharge if he or she can show that the materials are absolutely insufficient for framing of charge against that particular accused. But such exercise is required only at a later stage, as indicated above and not at the stage of taking cognizance and summoning the accused on the basis of prima facie case. Even at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not the requirement and a prayer for discharge can be allowed only if the court finds that the materials are wholly insufficient for the purpose of trial. It is also a settled proposition of law that even when there are materials raising strong suspicion against an accused, the court will be justified in rejecting a prayer for discharge and in granting an opportunity to the prosecution to bring on record the entire evidence in accordance with law so that case of both the sides may be considered appropriately on conclusion of trial.

Learned senior advocate for the appellant Mr. Aman Lekhi has relied upon a catena of judgments such as :-

Bhim Lal Shah vs. Bisa Singh & Ors. [17 CWN 290];

State of Orissa & Anr. vs. Saroj Kumar Sahoo [(2005) 13 SCC 540];

Riyasat Ali vs. State of U.P. [1992 Crl.L.J. 1217];

Nupur Talwar vs. Central Bureau of Investigation & Anr. [(2012) 11 SCC 465];

Amit Kapoor vs. Ramesh Chander & Anr. [(2012) 9 SCC 460];

Asmathunnisa vs. State of Andhra Pradesh & Anr. [(2011) 11 SCC 259];

MEDCHL Chemicals & Pharma (P) Ltd. vs. Biological E. Ltd. & Ors. [(2000) 3 SCC 269];

State of Uttar Pradesh vs. Paras Nath Singh [(2009) 6 SCC 372];

B. Saha & Ors. vs. M.S. Kochar [(1979) 4 SCC 177];

Matajog Dobey vs. H.C. Bhari [AIR 1956 SC 44];

P.K. Pradhan vs. State of Sikkim [(2001) 6 SCC 704].

These need no discussion because settled propositions of law reiterated therein have already been noticed earlier.

In the present case, on going through the order of the learned Magistrate, we are satisfied that the same suffers from no illegality. The specific case of the appellant that FIR was registered on an undated photocopy of a petition attributed to the appellant but not bearing her original signature could not have been rejected by the learned Magistrate at the present stage especially in view of the report of investigation by the CID which was also called for and there being no dispute that the FIR No.73/2002 was registered only on the basis of a photocopy on which the signature is not in original and hence in our considered view the Hon'ble High Court grossly erred in exercise of its jurisdiction by directing the appellant/complainant to lead further evidence and produce the original documents to show forgery. If the FIR is admittedly on the basis of only a photocopy of a document allegedly brought into existence by the accused persons, the High Court erred in directing the appellant to produce the original and get the signatures compared.

In our considered view, the High Court fell into error of evaluating the merits of the defence case and other submissions advanced on behalf of the accused which were not appropriate for consideration at the stage of taking cognizance and issuing summons.

Learned advocate for the accused persons, Mr. D.N. Goburdhan has placed reliance upon judgment in the case of Pepsi Foods Ltd. & Anr. v. Special Judicial Magistrate & Ors. (1998) 5 SCC 749 to highlight that summoning of an accused is a serious matter and, therefore, the order of the Magistrate must reflect that he has applied his mind to the facts of the case and the relevant law, as highlighted in paragraph 28 of the Report. In that case emphasis was laid upon power available with the High Court either under Articles 226 and 227 of the Constitution or under Section 482 of the Cr.P.C. to quash a criminal proceeding even at initial stage to prevent the abuse of process of law by the inferior courts. But this Court cautioned that since the powers conferred on the High Court under aforesaid provisions have no limits, hence more/due care and caution is required while invoking these powers. In paragraph 29 it was emphasized that the accused can approach the High Court "to have the proceeding quashed against him when the complaint does not make out any case against him". The facts in the present case are otherwise and required the High Court to exercise more caution in view of clear allegations in the complaint petition. The High Court erred in evaluating the merit of evidence for interfering with a summoning order. Learned counsel also placed reliance upon judgments in the case of State of Haryana & Ors. v. Bhajan Lal & Ors. 1992 Supp. (1) SCC 335 and also in the case of Thermax Ltd. & Ors. v. K.M. Johny & Ors. (2011) 13 SCC 412 in support of the proposition that power to quash criminal prosecution is justified where a criminal proceeding is instituted with malafide or ulterior motives. In the case of Bhajan Lal (supra) this Court did indicate in para 102, seven kinds of cases where court may exercise power to quash criminal prosecution but in respect of the 7th category relating to malafide, this Court used the expression - "manifestly attended with malafide" and further explained in paragraphs 103 and 104 that the power of quashing should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. Paragraphs 103 and 104 are reproduced hereunder :

"103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

104. It may be true, as repeatedly pointed out by Mr. Parasaran, that in a given situation, false and vexatious charges of corruption and venality may be maliciously attributed against any person holding a high office and enjoying a respectable status thereby sullying his character, injuring his reputation and exposing him to social ridicule with a view to spite him on account of some personal rancour, predilections and past prejudices of the complainant. In such a piquant situation, the question is what would be the remedy that would redress the grievance of the verily affected party? The answer would be that the person who dishonestly makes such false

> allegations is liable to be proceeded against under the relevant provisions of the Indian Penal Code - namely under Section 182 or 211 or 500 besides becoming liable to be sued for damages."

The facts in the case of Thermax Ltd. (supra) were quite different and there was a clear situation showing that the complainant was trying to circumvent period of limitation for moving the Civil Court, by filing a delayed criminal case.

On behalf of accused persons reliance has also been placed upon judgment in the case of M.N. Ojha & Ors. v. Alok Kumar Srivastav & Anr. (2009) 9 SCC

682. In that case a complaint filed against the appellants who were bank officials was quashed because the Court found that it was a counter-blast to action taken by them in their official capacity for realizing the loan amount due from the complainant. On facts of that case, it was easy to hold that the complaint was clearly an abuse of judicial process and it was also found that averments and allegations in complaint did not disclose commission of any offence by appellants. The Magistrate had failed to apply his mind to the case of the appellants and the High Court had erred in not even adverting to the basic facts. The factual situation in the present case is quite otherwise. Reliance was also placed on behalf of respondents upon judgment in the case of State of Karnataka v. Muniswamy & Ors. (1977) 2 SCC 699. In that case, the accused persons pleaded for discharge before the Sessions Court which was not accepted but the High Court quashed the proceedings on the ground that there was no material on the record on the basis of which any tribunal could reasonably come to the conclusion that the accused were in any manner connected with the incident leading to the prosecution. This Court agreed with the views of the High Court on the basis of peculiar facts of that case showing lack of any data or material which could create a reasonable likelihood of conviction for any offence in connection with attempted murder of the complainant. That judgment also is of no help to the respondents herein in the light of allegations made in the complaint, the statement of the complainant on solemn affirmation and the CID Report of investigation on which the complainant placed reliance and which was perused by the learned Magistrate.

These appeals are therefore allowed, the judgment and order under appeal passed by the High Court is set aside. We also set aside the orders passed by the learned Sessions Court dated 30.11.2011 whereby summoning order was set aside in respect of accused nos.6 to 8 and accused no.9. In other words, the order of summoning passed by learned Magistrate dated 02.05.2011 is restored. Before parting with the order we make it clear that any observations in this order shall not prejudice the case of either of the parties before the court below and the criminal complaint case of the appellant must proceed on its own merits strictly in accordance with law. Although we have set aside the order granting relief to accused nos.6 to 9 by the Sessions Court, in the interest of justice, we direct that in the facts of the case accused nos.6 to 9 shall be granted benefit of bail by the learned Magistrate if they appear within 10 weeks and apply for same. The Magistrate shall of course be at liberty to set reasonable conditions for such grant.

.....J. [ANIL R. DAVE] .....J. [KURIAN JOSEPH] .....J. [SHIVA KIRTI SINGH] New Delhi.

February 11, 2015.
