Hashmukhlal D Vora vs State Of Tamilnadu on 16 December, 2022

Author: Krishna Murari

Bench: S. Ravindra Bhat, Krishna Murari

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2310 OF 2022
(Arising out of Special Leave Petition (Criminal) No. 8488 of 2022)

HASMUKHLAL D. VORA & ANR. … APPELLANT (S)

VERSUS

THE STATE OF TAMIL NADU … RESPONDENT (S)

JUDGMENT

KRISHNA MURARI, J.

Leave Granted.

2. The present appeal is directed against the final order dated 23.08.2021 passed by the High Court of Madras (hereinafter referred to as "High Court") in Criminal O.P. No. 6445 of 2018, where the Appellants' plea under Section 482 of the Cr.PC to quash the criminal complaint against them was dismissed.

3. Briefly, the facts relevant for the purpose of this Appeal are as follows:

> I. Appellant No.1 is the proprietor of an established company under the name of M/s. Chem Pharm, a trader of raw material chemicals used in food, food supplements, medicinal preparations etc. Appellant No.2 is the son and employee of Appellant No. 1.

II. During the course of their business, the Appellants purchased 75 Kg of pyridoxal-5-phosphate (as 3 x 25Kg packs) from one M/s Antoine & Becouerel Organic Chemical Co., vide invoice dated 19.03.2013.

III. On 19.11.2013, the then Drug Inspector, Kodambakkam Range, inspected the Appellants' premises and alleged contravention of S.18(c) of the Drugs and Cosmetics Act 1940 read with Rule 65(5)(1)(b) of the Drugs and Cosmetics Rules 1945. It was claimed that the Appellants broke up the bulk quantity of pyridoxal-5-phosphate and sold it to different distributors.

IV. It is alleged that the Appellant had broken up the bulk quantity of raw materials into various pack sizes containing quantities 0.5kg, 1kg, 10kg and 15kg and had sold the same to various drug manufacturers.

V. On 30.03.2016, the Drug Inspector issued a show cause memo to the Appellants after nearly three years. The Appellants, after the show cause memo on 02.04.2016, submitted their reply to the same.

VI. On 11.08.2017, after a further lapse of one year and four months, the Respondent, filed a complaint against the Appellants.

4. The Appellants, in the High Court of Madras, sought for quashing of the above-mentioned complaint, and the same was dismissed vide impugned order dated 23.08.2021 on the grounds that a trial was necessary to ascertain the facts of the case, and an order was passed to expedite the trial. The relevant part of the order is extracted below:

"Though several grounds have been raised by the learned counsel for the Appellants, however, this Court is of the opinion the issue is a triable issue and the grounds raised by the counsel for the Appellants are all factual in nature, and it requires an appreciation of evidence, and this Court cannot decide the same in exercise of its jurisdiction under Section 482 of Criminal Procedure Code. It is left open to the Appellants to raise all the grounds before the Court, and the same shall be considered on its own merits and in accordance with the law. This Court is not inclined to interfere with the proceedings pending before the Court below."

5. Being aggrieved by the same, the Appellants filed the present Appeal, seeking to quash the criminal complaint against them. ARGUMENTS ON BEHALF OF THE APPELLANTS

6. The Ld. Counsel Appearing on behalf of the Appellants contended that:

a) The Respondent/ Drugs Inspector has prima facie failed to give any evidence indicating that the substance "Pyridoxal 5 Phosphate" (Hereinafter referred to as Impugned Substance) is a drug only falling under the Drugs and Cosmetics Act, 1940.

b) The impugned substance is a bulk food substance falling under the definition of "food" as per Section 3(1)(j) of the Food Safety and Standards Act, 2006 Rules and Regulations thereunder, and not a drug under Section 3(b) of the Drugs and Cosmetics Act, 1940.

c) The Respondent/ Drugs Inspector cannot exercise powers under Section 22 of the Drugs and Cosmetics Act, 1940, as it is subject to Section 23 of the same Act.

d) Schedule K and Rule 123 of the Drugs and Cosmetics Act, 1940 exempt all substances that are capable of being used both in food manufacture and drug manufacture from all the requirements of Chapter IV of the Drugs and Cosmetics Act, 1940.

e) Even if the impugned substance is assumed to be a drug, the Appellants have a valid Wholesale Drug License in forms 20B and 21 B of the Drugs and Cosmetics Rules, 1945.

f) The Respondent has provided no evidence to prima facie establish that the Appellants broke open and repackaged the items, causing the nature of the Act to become manufacturing.

ANALYSIS

7. We have heard the counsels appearing on behalf of the Appellants and the Respondents in great detail.

8. For the quashing of a criminal complaint, the Court, when it exercises its power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the complaint disclose the commission of a cognizable offence.

9. This Court, in State Of Haryana & Ors. Vs Bhajan Lal & Ors.1, has laid down broad guidelines for quashing a criminal complaint as under:-

"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 channelized 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 1 1992 Supp 1 SCC 335 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."

10. In State of Andhra Pradesh Vs. Golconda Linga Swamy & Anr.2, this Court elaborated on what evidence and material the High Court can get into in cases where a prayer for quashing a complaint has been made. The Court held:

> ".....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 such abuse. It would be an abuse of the process of the Court to allow any action which would result in injustice and prevent promotion of 2 (2004) 6 SCC 522 justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or 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 complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

11. In R.P. Kapur Vs. State of Punjab3, this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings:

> "It is well-established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High 3 (1960) 3 SCR 388 Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases 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 manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question."

12. The Respondent, in the impugned complaint, stated that during the inspection of the Appellants' premises, it was found that the Appellants had purchased 75 kg (as 3 x 25kg packets) of the impugned substance. However, no stock of the impugned substance was found on the premise of the Appellants.

13. Subsequently, on verification of the sale invoices of the Appellants' company, it was found that the Appellants had broken up the impugned substance and packaged it into various smaller packs. These smaller packs were then sold to various other drug manufacturers.

14. This alleged breaking up of the impugned substance into smaller packages and further distribution of the same is being classified by the Respondent as “manufacturing”, and hence a case is being made out against the Appellants under Section 18(c) read with Section 3(f) of the Drugs and Cosmetics Act, 1940.

15. This Court in R.P. Kapur Vs State Of Punjab (Supra), as mentioned above, has clarified that the court can exercise its powers to quash a criminal complaint, provided that the evidence adduced is clearly inconsistent with the accusations made, or no legal evidence has been presented.

16. Upon perusal of the legal nature of the impugned substance, it can be seen that the impugned substance has been categorized as a bulk food substance falling under the definition of food as per Section 3(1)(j) of the Food Safety and Standards Act, 2006. The impugned substance has specifically been mentioned as a food ingredient in Serial No.4(ii) of the Schedule-I of the Food Safety and Standards Regulations, 2016.

17. From a bare perusal of the relevant laws and regulations, it can also be seen that the alleged substance is not included as a drug in the Indian Pharmacopoeia.

The fact that it is mentioned as "food” as per Section 3(1)(j) of the Food Safety and Standards Act, 2006, further only proves that the impugned substance does not require a specific license under the Drugs and Cosmetics Act, 1940.

18. The Appellants claim that the impugned substance is a dual-use substance, which can be used both for food and drug manufacture. For such dual-use substances, Schedule K and Rule 123 of the Drugs and Cosmetics Act, 1940, clearly state that such substances are exempt from the requirements of Chapter IV of the Drugs and Cosmetics Act, 1940.

19. It is also worth mentioning that the Respondent has made no effort to prove that the alleged substance is only a drug and not a food- manufacturing substance. No scientific evidence or otherwise has been furnished to prove that the alleged substance is solely used for manufacturing drug and not food items. Prima Facie, due to the lack of evidence adduced by the Respondent in the four-year period between the initial enquiry and the complaint, this court cannot presume that the alleged substance can only be classified as a “drug”.

20. If we were to go one step further and assume that the impugned substance is solely used for drug manufacture, even then, the Appellants would not be liable under the Drugs and Cosmetics Act, 1940 since the Appellants already have the necessary Wholesale Drug License as per form 20B and 21B of the Drugs and Cosmetics Rules, 1945. In such a scenario, even if the allegations made in the complaint are taken in toto, no case for an offence would still be made out, making the entire process frivolous.

21. Further, it is more than apparent from the record that even though the complaint was made by the Drug Inspector but no evidence has been provided by the officer to sustain the complaint. No recovery has been made from the premise of the Appellants, and no evidence has been provided to

sustain the argument that the impugned substance is categorized only as a drug and requires a specific license.

22. While the sale of the alleged substance is an admitted fact by the Appellants, no efforts have been made by the officer to prove that the alleged substance is a drug which comes only under the purview of the Drugs and Cosmetics Act, 1940. No efforts have also been made to show that the packaging of the impugned substance was broken up into various-size packets different from the original packaging from the original manufacturer. No recovery of the sold packets has been made to ascertain whether the original packaging was tampered with.

23. There has been a gap of more than four years between the initial investigation and the filing of the complaint, and even after lapse of substantial amount of time, no evidence has been provided to sustain the claims in the complaint. As held by this Court in Bijoy Singh & Anr. Vs State Of Bihar4, inordinate delay, if not reasonably explained, can be fatal to the case of the prosecution. The relevant extract from the judgment is extracted below:-

> 4 (2002) 9 SCC 147 “Delay wherever found is required to be explained by the prosecution. If the delay is reasonably explained, no adverse inference can be drawn, but failure to explain the delay would require the Court to minutely examine the prosecution version for ensuring itself as to whether any innocent person has been implicated in the crime or not. Insisting upon the accused to seek an explanation of the delay is not the requirement of law. It is always for the prosecution to explain such a delay and if reasonable, plausible and sufficient explanation is tendered, no adverse inference can be drawn against it.”

24. In the present case, the Respondent has provided no explanation for the extraordinary delay of more than four years between the initial site inspection, the show cause notice, and the complaint. In fact, the absence of such an explanation only prompts the Court to infer some sinister motive behind initiating the criminal proceedings.

25. While inordinate delay in itself may not be ground for quashing of a criminal complaint, in such cases, unexplained inordinate delay of such length must be taken into consideration as a very crucial factor as grounds for quashing a criminal complaint.

26. While this court does not expect a full-blown investigation at the stage of a criminal complaint, however, in such cases where the accused has been subjected to the anxiety of a potential initiation of criminal proceedings for such a length of time, it is only reasonable for the court to expect bare-minimum evidence from the Investigating Authorities.

27. At the cost of repetition, we again state that the purpose of filing a complaint and initiating criminal proceedings must exist solely to meet the ends of justice, and the law must not be used as a tool to harass the accused. The law, is meant to exist as a shield to protect the innocent, rather than it being used as a sword to threaten them. CONCLUSION

28. It must be noted that the High Court while passing the impugned judgment, has failed to take into consideration to the facts and circumstances of the case. While it is true that the quashing of a criminal complaint must be done only in the rarest of rare cases, it is still the duty of the High Court to look into each and every case with great detail to prevent miscarriage of justice. The law is a sacrosanct entity that exists to serve the ends of justice, and the courts, as protectors of the law and servants of the law, must always ensure that frivolous cases do not pervert the sacrosanct nature of the law.

29. In view of above facts and discussions, the impugned order dated 23.08.2021 passed by the High Court is not liable to be sustained and is hereby set aside. The proceedings of C.C. No. 6351 of 2017 pending in the Court of Metropolitan Magistrate-IV, Saidapet, Chennai stands quashed.

30. Accordingly, the appeal stands allowed.

.....,J.

(KRISHNA MURARI) .....,J.

(S. RAVINDRA BHAT) NEW DELHI;

16TH DECEMBER, 2022