Pratibha vs Rameshwari Devi & Ors on 17 September, 2007

Author: Tarun Chatterjee

Bench: A.K. Mathur, Tarun Chatterjee

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           CASE NO.:
Appeal (crl.)  1242 of 2007

PETITIONER:
Pratibha

RESPONDENT:
Rameshwari Devi & Ors

DATE OF JUDGMENT: 17/09/2007

BENCH:
A.K. MATHUR & TARUN CHATTERJEE

JUDGMENT:
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J U D G M E N T CRIMINAL APPEAL NO. 1242 OF 2007 [Arising out of SLP [Crl] No. 6334 of 2004] TARUN CHATTERJEE, J.

1. Leave granted.

2. This appeal by special leave is preferred against the judgment and order dated 14th September, 2004 of the High Court of Judicature for Rajasthan at Jaipur Bench, whereby the High Court had quashed an FIR dated 31st December, 2001 lodged at the instance of the appellant in the exercise of its inherent powers under Section 482 of Code of Criminal Procedure (hereinafter referred to as the Code). The said FIR was registered by the complainant/appellant (in short the appellant) against the accused/respondents (in short the respondents) for the alleged offences under Section 498-A and 406 of IPC.

3. Before we take up the questions that were posed before us by the learned counsel for the parties, it is necessary at this stage to state the facts giving rise to the filing of this appeal. Accordingly, the facts in a nutshell are stated below :

4. The appellant had entered into wedlock with the respondent No.2 on 25th January, 2000. The respondent Nos.1, 3, 4 and 5 are the mother-in-law, brother-in-law, maternal father-in-law and the father-in-law of the appellant respectively. The appellant left her matrimonial home on 25th May, 2001 with her father and brother. In the FIR, the appellant alleged that during her stay in her matrimonial home, she was subjected to harassment and cruelty by all the respondents as they were dissatisfied with the articles that the appellant had brought as stridhan. The respondents also forced her to bring Rs.5 lacs more in dowry from her father which she could not bring from her parents nor

could her parents afford to pay such a huge amount. The respondents also did not allow the appellant to take back her ornaments and other articles, which were gifted to her as stridhan when she left her matrimonial home. On 31st July, 2001, the husband, namely, respondent No.2 filed a petition before the Family Court praying for a decree for divorce on the ground of mental cruelty. On 31st December, 2001, the appellant lodged an FIR No.221 of 2001 against the respondents for the alleged offences under Section 498A and 406 of IPC. This FIR was challenged by way of a criminal miscellaneous petition under Section 482 of the Code in which the respondents prayed for quashing of the said FIR. The respondents had also obtained an order granting anticipatory bail from the Sessions Judge, Jhunjhunu, Rajasthan on 8th February, 2002. While the petition under Section 482 of the Code was pending, a final investigation report was submitted on 13th February, 2004 in the High Court. The High Court by the impugned order had quashed the FIR No.221 of 2001 on the basis of the report of the Investigating Officer submitted before it and concluded that no offence under Section 498A and 406 of the IPC was made out by the appellant against the respondents. The High Court also observed that the FIR must be quashed to avoid undue harassment and mental agony to the respondents, more so when the divorce petition was still pending before the Family Court. It is this order of the High Court, quashing the FIR in the exercise of its inherent power under Section 482 of the Code, which is now under challenge before us in this appeal.

5. Having heard the learned counsel for the parties and after considering the materials on record and the complaint filed by the appellant under Sections 498A and 406 of the IPC, we are of the view that the High Court had exceeded its jurisdiction by quashing the FIR No.221 of 2001 in the exercise of its inherent powers under Section 482 of the Code. Before we consider the scope and power of the High Court to quash an FIR in the exercise of its inherent powers under Section 482 of the Code even before the parties are permitted to adduce evidence in respect of the offences alleged to have been made under the aforesaid two sections (namely, Sections 498A and 406 of IPC), we may keep it on record that two questions merit our determination in the present case: -

> (i) whether the High Court while quashing the FIR in the exercise of its inherent powers under Section 482 of the Code was entitled to go beyond the complaint filed by the complainant; and (ii) whether the High Court was entitled to look into and consider the investigation report submitted by four officers of the rank of Dy.

Superintendent of Police for quashing the FIR even before the same could be filed before the concerned Magistrate. Before we do that, we may first consider how and when the High Court, in its inherent powers under Section 482 of the Code, would be justified in quashing an FIR. It is at this stage appropriate to refer Section 482 of the Code itself which runs as under:

> 82. Saving of inherent powers of High Court Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. A bare look at this provision would show that while exercising such inherent powers, the High Court must be satisfied that either:-

(i) An order passed under the Code would be rendered ineffective; or

(ii) The process of any court would be abused; or

(iii) The ends of justice would not be secured.

In State of West Bengal Vs. Swapan Kumar Guha [1982 [1] SCC 561] Chandrachud, C.J. [as His Lordship then was] had observed that if the FIR did not disclose the commission of a cognizable offence, the court would be justified in quashing the investigation on the basis of the information as laid or received. In the same judgment, Justice A.N. Sen [as His Lordship then was] who has written the main judgment, has laid down the legal propositions as follows:

> ...the legal position is well-settled. The legal position appears to be that if an offence is disclosed, the Court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed; if, however, the materials do not disclose an offence, no investigation should normally be permitted.... Once an offence is disclosed, an investigation into the offence must necessarily follow in the interests of justice. If, however, no offence is disclosed, an investigation cannot be permitted, as any investigation, in the absence of any offence being disclosed, will result in unnecessary harassment to a party, whose liberty and property may be put to jeopardy for nothing. The liberty and property of any individual are sacred and sacrosanct and the court zealously guards them and protects them. An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is disclosed. When an offence is disclosed, a proper investigation in the interests of justice becomes necessary to collect materials for establishing the offence, and for bringing the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequences and the offender may go unpunished to the detriment of the cause of justice and the society at large. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. If the court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of justice suffers. It is on the basis of this principle that the court normally does not interfere with the investigation of a case where an offence has been disclosed Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case.... If on a consideration of the relevant materials, the court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence .

In Pratibha Rani Vs. Suraj Kumar and Anr. [1985] 2 SCC 370, this Court at page 395 observed as follows:

It is well settled by a long course of decisions of this Court that for the purpose of exercising its power under Section 482 Cr PC to quash a FIR or a complaint the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se. It has no jurisdiction to examine the correctness or otherwise of the allegations . [emphasis supplied] In Madhavrao Jiwaji Rao Scindia and Ors. v. Sambhajirao Chandrojirao Angre and Ors. [1988 [1] SCC 692], this Court has reiterated the same principle and laid down that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence.

Again in the case of State of Bihar Vs. Murad Ali Khan & Ors. [1988 [4] SCC 655], Venkatachaliah, C.J. [as His Lordship then was] has laid down that the jurisdiction under Section 482 of the Code has to be exercised sparingly and with circumspection and has observed that in exercising that jurisdiction, the High Court should not embark upon an inquiry whether the allegations in the complaint are likely to be established by evidence or not.

6. From the principles laid down in the abovementioned decisions, it is clear that the Court is entitled to exercise its inherent jurisdiction for quashing a criminal proceeding or an FIR when the allegations made in the same do not disclose the commission of an offence and that it depends upon the facts and circumstances of each particular case. We also feel it just and proper to refer to a leading decision of this court reported in State of Haryana Vs. Bhajan Lal [1992 Suppl. {1} SCC 335] in which this court pointed out certain category of cases by way of illustrations wherein the inherent power under Section 482 of the Code can be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice. The same 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 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 malafide 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. Keeping the aforesaid principles in mind and considering the decisions as referred to hereinearlier, let us now apply them in the facts of the present case. But before we do that, it would be apt for us to consider the findings arrived at by the High Court for quashing the FIR which are as under: -

(i) The complainant-wife left the marital house with her father and brother on 25th May, 2001. The Divorce Petition was filed by the husband on the ground of mental cruelty on 31st July, 2001. It was only on 31st December, 2001 that the FIR for offences under Sections 498A and 406 of IPC was lodged by the complainant-wife;

(ii) A registered letter was sent to the appellant wife for receiving all her articles on 13th August, 2001 which was duly received by the father of the appellant;

(iii) The family court also issued directions to the appellant to receive her articles on 2nd February, 2002 and the same were declined by her;

(iv) In view of the above and also in view of the detailed report submitted by the investigating officer, even prima facie no offence under Section 498A and 406 IPC is made out against the respondent;

(v) The conduct of the appellant wife was depreciable and there had been a continuing effort by her of avoiding the proceedings before the Court;

(vi) The appellant wife leveled false allegations against the Court itself apart from adopting all sorts of unhealthy tactics by creating gimmicks and scenes in the Court;

(vii) Merely because one of the respondents is a judicial officer and others being his family members, it did not preclude them from seeking justice from a court of law;

(viii) The High Court is empowered to quash the FIR to avoid undue harassment and mental agony to the respondents, more so when the divorce petition is still pending before the Family Court.

8. From a plain reading of the findings arrived at by the High Court while quashing the FIR, it is apparent that the High Court had relied on extraneous considerations and acted beyond the allegations made in the FIR for quashing the same in the exercise of its inherent powers under Section 482 of the Code. We have already noted the illustrations enumerated in Bhajan Lal s case and from a careful reading of these illustrations, we are of the view that the allegations emerging from the FIR are not covered by any of the illustrations as noted hereinabove. For example, we may take up one of the findings of the High Court as noted herein above. The High Court has drawn an adverse inference on account of the FIR being lodged on 31st December, 2001 while the appellant was forced out of the matrimonial home on 25th May, 2001. In our view, in the facts and circumstance of the case, the High Court was not justified in drawing an adverse inference against the appellant- wife for lodging the FIR on 31st December, 2001 on the ground that she had left the matrimonial home atleast six months before that. This is because, in our view, the High Court had failed to appreciate that the appellant and her family members were, during this period, making all possible efforts to enter into a settlement so that the respondent No.2- husband would take her back to the matrimonial home. If any complaint was made during this period, there was every possibility of not entering into any settlement with the respondent No.2-husband. It is pertinent to note that the complaint was filed only when all efforts to return to the matrimonial home had failed and the respondent No.2-husband had filed a divorce petition under Section 13 of the Hindu Marriage Act, 1955. That apart, in our view, filing of a divorce petition in a Civil Court cannot be a ground to quash criminal proceedings under Section 482 of the Code as it is well settled that criminal and civil proceedings are separate and independent and the pendency of a civil proceeding cannot bring to an end a criminal proceeding even if they arise out of the same set of facts. Such being the position, we are, therefore, of the view that the High Court while exercising its powers under Section 482 of the Code has gone beyond the allegations made in the FIR and has acted in excess of its jurisdiction and, therefore, the High Court was not justified in quashing the FIR by going beyond the allegations made in the FIR or by relying on extraneous considerations.

9. This takes us to the second question which merits our determination, namely whether the High Court was entitled to consider the investigation report submitted before it by four officers of the rank of Dy. Superintendent of Police even before the same could be filed before the concerned Magistrate. As noted herein earlier, a bare perusal of the judgment of the High Court would also show that the High Court had relied on the investigation report in quashing the FIR. Now, the question is whether the High Court while exercising its powers under Section 482 of the Code was justified in relying on the investigation report which was neither filed before the Magistrate nor a copy of the same supplied to the appellant. In our view, the High Court has acted in excess of its jurisdiction by relying on the investigation report and the High Court was also wrong in directing the report to be submitted before it. It is now well settled that it is for the investigating agency to

submit the report to the Magistrate. In this connection, we may refer to sub- section (2) of Section 173 of the Code which runs as under :

> (i) As soon as it is completed the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report (not necessary therefore omitted). From a bare reading of this provision, it cannot be disputed that after completion of the investigation, the officer-in-charge of the police station shall forward the report not to the High Court where the proceedings under Section 482 of the Code is pending but to a Magistrate empowered to take cognizance of the offence on such police report. Therefore, the High Court had acted beyond its power to direct the investigating agency to file the said report before it in the exercise of power under Section 482 of the Code. The procedure for submitting an investigation report has been considered by this Court in the case of M.C. Abraham and Anr. Vs. State of Maharashtra [2003] 2 SCC 649. While considering the law on the question as to when the report of the investigating agency shall be submitted before the Magistrate where the case is pending, an observation made in the case of Abhinandan Jha Vs. Dinesh Mishra [AIR 1968 SC117] was quoted with approval by B.P.Singh, J. in M.C. Abraham s case (supra) with which we are also in full agreement and which is as follows:
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> Then the question is, what is the position, when the Magistrate is dealing with a report submitted by the police, under Section 173, that no case is made out for sending up an accused for trial, which report, as we have already indicated, is called, in the area in question, as a final report ? Even in those cases, if the Magistrate agrees with the said report, he may accept the final report and close the proceedings. But there may be instances when the Magistrate may take the view, on a consideration of the final report, that the opinion formed by the police is not based on a full and complete investigation, in which case, in our opinion, the Magistrate will have ample jurisdiction to give directions to the police, under Section 156(3), to make a further investigation. That is, if the Magistrate feels, after considering the final report, that the investigation is unsatisfactory, or incomplete, or that there is scope for further investigation, it will be open to the Magistrate to decline to accept the final report and direct the police to make further investigation under Section 156(3). The police, after such further investigation, may submit a charge-sheet, or, again submit a final report, depending upon the further investigation made by them. If ultimately, the Magistrate forms the opinion that the facts, set out in the final report, constitute an offence, he can take cognizance of the offence, under Section 190(1)(b), notwithstanding the contrary opinion of the police, expressed in the final report.
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> The function of the Magistracy and the police, are entirely different, and though, in the circumstances mentioned earlier, the Magistrate may or may not accept the report, and take suitable action, according to law, he cannot certainly infringe (sic impinge) upon the jurisdiction of the police, by compelling them to change their opinion, so as to accord with his view.

Therefore, to conclude, there is no power, expressly or impliedly conferred under the Code, on a Magistrate to call upon the police to submit a charge-sheet, when they have sent a report under Section 169 of the Code, that there is no case made out for sending up an accused for trial. This court in M.C. Abraham s case (supra) observed in para 17 as under:

The principle, therefore, is well settled that it is for the investigating agency to submit a report to the Magistrate after full and complete investigation. The investigating agency may submit a report finding the allegations substantiated. It is also open to the investigating agency to submit a report finding no material to support the allegations made in the first information report. It is open to the Magistrate concerned to accept the report or to order further enquiry. But what is clear is that the Magistrate cannot direct the investigating agency to submit a report that is in accord with his views. Even in a case where a report is submitted by the investigating agency finding that no case is made out for prosecution, it is open to the Magistrate to disagree with the report and to take cognizance, but what he cannot do is to direct the investigating agency to submit a report to the effect that the allegations have been supported by the material collected during the course of investigation. In our view, applying the principles laid down in the case of Abhinandan Jha (supra) and M.C.Abrahim (supra) as indicated herein above, using the report of the investigating agency for quashing the FIR or a criminal proceeding cannot be sustained. It was impermissible for the High Court to entertain the report of the investigating agency before the same could be forwarded and filed before the concerned Magistrate in compliance with Section 173(2) of the Code. In Union of India vs. Prakash P.Hinduja & Anr. [(2003) 6 SCC 195], this Court in para 20 observed as follows :

Thus the legal position is absolutely clear and also settled by judicial authorities that the court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the First Information Report till the submission of the report by the officer-in-charge of the police station in court under Section 173 (2) Code, this field being exclusively reserved for the investigating agency. Therefore, in view of our discussions made herein above, while exercising power under Section 482 of the Code, it is not open to the High Court to rely on the report of the investigating agency nor can it direct the report to be submitted before it as the law is very clear that the report of the investigating agency may be accepted by the Magistrate or the Magistrate may reject the same on consideration of the material on record. Such being the position, the report of the investigating agency cannot be relied on by the High Court while exercising powers under Section 482 of the Code. Accordingly, we are of the view that the High Court has erred in quashing the FIR on consideration of the investigation report submitted before it even before the same could be submitted before the Magistrate. For the reasons aforesaid, we are inclined to interfere with the order of the High Court and hold that the High Court in quashing the FIR in the exercise of its inherent powers

under Section 482 of the Code by relying on the investigation report and the findings made therein has acted beyond its jurisdiction. For the purpose of finding out the commission of a cognizable offence, the High Court was only required to look into the allegations made in the complaint or the FIR and to conclude whether a prima facie offence had been made out by the complainant in the FIR or the complaint or not.

10. Before parting with this judgment, we may also remind ourselves that the power under Section 482 of the Code has to be exercised sparingly and in the rarest of rare cases. In our view, the present case did not warrant such exercise by the High Court. For the reasons aforesaid, we are unable to sustain the order of the High Court and the impugned order is accordingly set aside.

The appeal is allowed to the extent indicated above. The learned Magistrate is directed to proceed with the case in accordance with law. It is expected that the Magistrate shall dispose of the criminal proceedings as expeditiously as possible preferably within six months from the date of communication of this judgment.