Som Mittal vs Government Of Karnataka on 21 February, 2008

Equivalent citations: AIR 2008 SUPREME COURT 1528, 2008 (3) SCC 574, 2008 AIR SCW 1640, 2008 (2) AIR JHAR R 691, 2008 (3) AIR KANT HCR 139, (2008) 63 ALLINDCAS 42 (SC), 2008 (2) SRJ 569, 2008 (63) ALLINDCAS 42, 2008 (2) CRI RJ 65, 2008 ALL MR(CRI) 1151, 2008 (2) SCALE 717, 2008 (2) SCC(CRI) 1, (2008) 2 CURCRIR 73, (2008) 1 ORISSA LR 605, (2008) 2 BOMCR(CRI) 301, (2008) 2 DLT(CRL) 161, (2008) 2 MADLW(CRI) 981, (2008) 40 OCR 135, (2008) 4 RAJ LW 3004, (2008) 2 RECCRIR 92, (2008) 2 SCALE 717, (2008) 2 CHANDCRIC 36, 2008 (2) ANDHLT(CRI) 439 SC

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Bench: K. G. Balakrishnan, R. V. Raveendran, J. M. Panchal

CASE NO.:
Appeal (crl.) 206 of 2008

PETITIONER:
Som Mittal

RESPONDENT:
Government of Karnataka

DATE OF JUDGMENT: 21/02/2008

BENCH:
K. G. Balakrishnan & R. V. Raveendran & J. M. Panchal

JUDGMENT:

JUDGMENT O R D E R CRIMINAL APPEAL NO.206/2008 K.G.BALAKRISHNAN, CJI Government of Karnataka represented by Senior Labour Inspector, 8th Circle, Bangalore, lodged a complaint under section 200 of the Code of Criminal Procedure against the appellant, who was the Managing Director of M/s. Hewlett Packard Global Soft Ltd., in the court of the Metropolitan Magistrate (TC-3), Bangalore, for taking cognizance of an offence punishable under section 30(3) of the Karnataka Shops & Commercial Establishments Act, 1961 ('Act' for short) for violation of section 25 of the said Act. Learned Magistrate took cognizance by order dated 30.12.2005 and directed issue of notice to the appellant. The appellant filed a petition under section 482 of Cr.P.C. for setting aside the said order dated 30.12.2005 and for quashing the complaint. The High Court, by order dated 28.3.2006, rejected the prayer for quashing the complaint, but altered the offence in respect of which cognizance was taken as one under section 30(1) read with section 25 of the said Act. The said order of the High Court was challenged by the appellant in this appeal.

2. The appeal was heard by a Bench consisting of H.K.Sema and Markandey Katju, JJ. By the main judgment dated 29.1.2008 Sema, J. dismissed the appeal, making it clear that the court was not expressing any opinion on the merits of the case and the learned Magistrate shall decide the maintainability of the complaint at the time of framing of the charge uninfluenced by any observations made by this Court or the High Court. In the course of his judgment, Sema, J. observed :

> "In a catena of decisions this Court has deprecated the interference by the High Court in exercise of its inherent powers under Section 482 of the Code in a routine manner. It has been consistently held that the power under Section 482 must be exercised sparingly, with circumspection and in rarest of rare cases. Exercise of inherent power under Section 482 of the Code of Criminal Procedure is not the rule but it is an exception. The exception is applied only when it brought to the notice of the Court that grave miscarriage of justice would be committed if the trial is allowed to proceed where the accused would be harassed unnecessarily if the trial is allowed to linger .."

3. In his concurring judgment, Katju, J. agreed that the appeal should be dismissed without expressing any opinion on merits. He stated that he was rendering a separate opinion as he was not in agreement with the view expressed by Sema, J. that the power under section 482 of Cr.P.C. should be used only in the "rarest of rare cases", though he agreed with the observation that the said power should be used sparingly. He was of the view that the words 'rarest of rare cases' are used only with reference to the death penalty for an offence under section 302 IPC (See Bachan Singh v. State of Punjab -

- AIR 1980 SC 898) and the use of the said words was inappropriate while referring to the scope of exercise of power under section 482. Paras 1 to 16 of his judgment related to the criminal appeal. However in paras 17 to 39 of his judgment, the learned Judge expressed concern over the situation prevailing in Uttar Pradesh on account of omission of section 438 Cr.P.C. relating to anticipatory bail by an amendment to the Code by section 9 of U.P.Act 16 of 1976 and the consequential hardship created for the public and difficulties caused to the Allahabad High Court. He made a recommendation to the U.P.Government to immediately issue an ordinance repealing section 9 of U.P.Act 16 of 1976 so as to restore section 438 Cr.P.C. in Uttar Pradesh empowering the High Court and Sessions Courts to grant anticipatory bail. He directed the Registry of this Court to send a copy of his judgment to the Chief Secretary, Home Secretary and Law Secretary of State of U.P. and also to the Registrar General of the Allahabad High Court and the President/Secretary of Allahabad Bar Association, Allahabad High Court Advocates' Association and Oudh Bar Association forthwith. He also referred to the prevailing practice of police arresting those suspected of involvement in a crime and the directions issued by this Court in Joginder Kumar v. State of U.P. -- 1994 (4) SCC 260 in regard to the procedure to be followed when arresting a person, and directed that copies of his judgment be sent to the Chief Secretaries, Home Secretaries and Law Secretaries of all State Governments and Union Territories with a direction to ensure strict compliance with said decision.

4. In view of the difference of opinion on legal issues, the appeal was directed to be placed before the Chief Justice of India for appropriate orders, though both learned Judges concurred that the appeal

should be dismissed. The matter is accordingly placed before the bench of three Judges.

5. When the matter came up, Mr. K.K.Venugopal, learned senior counsel for the appellant submitted that having regard to the exemption under section 3(h) of the Act in respect of persons in management of an establishment, the Act in entirety was inapplicable to the appellant who was the Managing Director of the establishment. He also submitted that the question of violation of section 25 of the Act did not arise as Appellant's establishment was exempted from the provisions of section 25 of Act by Government Order dated 9.2.2005 and therefore there was no question of violation of section 25 or commission of an offence punishable under section 31(1) of the Act by his establishment. He therefore submitted that the complaint ought to have been quashed when its establishment invoked the High Court to exercise its power under section 482 Cr.P.C. On the other hand the learned counsel for the respondent State submitted that the object of section 3(h) of the Act was to exclude persons in management from being considered as employees entitled to seek benefits and reliefs under the Act. He submitted that the intention of section 3(h) was not to exempt 'persons in management' from incurring liability under the Act. He also submitted that the complaint disclosed violation of the provisions of the proviso to section 25 of the Act and therefore the learned Magistrate rightly took cognizance. It is unnecessary to examine these contentions urged by the parties, on merits. As already noticed, both the learned Judges have concurred and dismissed the appeal. What is referred is only the legal issues which did not affect the final decision of the learned Judges that the appeal should be dismissed.

6. Though the learned Judges did not set down the legal issues, we discern the following two issues from their opinions :

> (i) Whether the power under section 482 Cr.P.C. should be exercised 'sparingly' or 'sparingly with circumspection and in the rarest of rare cases'?
>
> (ii) Whether the recommendations and directions relating to anticipatory bail and enforcement of the directions relating to arrest laid down in Joginder Kumar were warranted in this case?

7. When Sema, J. observed that the power under section 482 Cr.P.C. was to be used 'sparingly, with circumspection and in rarest of rare cases', he did not lay down any new proposition of law, but was merely reiterating what was stated by this Court in several cases, including Kurukshetra University v. State of Haryana 1977 (4) SCC 451 and State of Haryana v. Bhajan Lal [1992 Supp. (1) SCC 335]. In Kurukshetra University (supra), this Court observed "that the statutory power under section 482 has to be exercised sparingly with circumspection and "in rarest of rare cases". In Bhajan Lal, this Court reiterated the word of caution 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". It may not therefore be correct to say that the words 'rarest of rare cases' are appropriate only when considering death sentence for an offence under section 302 IPC or that those words are inappropriate when referring to the ambit of the power to be exercised under section 482 Cr.P.C.

8. Quashing of a complaint or criminal proceedings under section 482 Cr.P.C. depends on the facts and circumstances of each case. The scope and ambit of the power under section 482 has been explained by this Court in a series of decisions -- R.P.Kapur v. State of Punjab, AIR 1960 SC 866, State of Uttar Pradesh v. R.K.Srivastava, 1989 (4) SCC 59; State of Haryana v. Bhajan Lal 1992 Supp. (1) SCC 335, Mrs. Rupan Deol Bajaj v. Kanwar Pal Singh Gill, 1995 (6) SCC 194; Pepsi Foods Ltd. V. Special Judicial Magistrate, 1998 (5) SCC 749; Zandu Pharmaceutical Works v. Mohd. Sharaful Haque 2005 (1) SCC 122; Indian Oil Corporation v. NEPC India Ltd. 2006 (6) SCC 736, and Sonapareddy Maheedhar v. State of Andhra Pradesh, 2007 (14) SCALE 321. This Court in Bhajan Lal (supra) listed the following categories of cases where power under section 482 could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice :

> "(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.
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> (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 or a Magistrate within the purview of Section 155(2) of the Code.
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> (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."

It was also made clear that it was not possible to lay down precise and inflexible guidelines or any rigid formula or to give an exhaustive list of the circumstances in which such power could be exercised.

9. When the words 'rarest of rare cases' are used after the words 'sparingly and with circumspection' while describing the scope of section 482, those words merely emphasize and reiterate what is intended to be conveyed by the words 'sparingly and with circumspection'. They mean that the power under section 482 to quash proceedings should not be used mechanically or routinely, but with care and caution, only when a clear case for quashing is made out and failure to interfere would lead to a miscarriage of justice. The expression "rarest of rare cases" is not used in the sense in which it is used with reference to punishment for offences under section 302 IPC, but to emphasize that the power under section 482 Cr.P.C. to quash the FIR or criminal proceedings should be used sparingly and with circumspection. Judgments are not to be construed as statutes. Nor words or phrases in judgments to be interpreted like provisions of a statute. Some words used in a judgment should be read and understood contextually and are not intended to be taken literally. Many a time a Judge uses a phrase or expression with the intention of emphasizing a point or accentuating a principle or even by way of a flourish of writing style. Ratio decidendi of a judgment is not to be discerned from a stray word or phrase read in isolation.

10. The second issue involves the recommendations made to the Government of U.P. and directions issued to all States and Union Territories in paras 17 to 39 of the concurring judgment. The appeal related to the question whether the complaint against the appellant disclosed the ingredients of an offence under section 25 of the Karnataka Shops & Commercial Establishments Act, 1961. The appeal did not relate to grant of anticipatory bail nor did it relate to rights of arrested persons. This Court has repeatedly cautioned that while rendering judgments, courts should only deal with the subject matter of the case and issues involved therein. Courts should desist from issuing directions affecting executive or legislative policy, or general directions unconnected with the subject matter of the case. A court may express its views on a particular issue in appropriate cases only where it is relevant to the subject matter of the case.

11. The subject matter of an appeal, whether civil or criminal, is the correctness of the decision of the court below. There is no question of appellate court travelling beyond and making observations alien to the case. Any opinion, observation, comment or recommendation de hors the subject of the appeal, may lead to confusion in the minds of litigants, members of public and authorities as they will not know how to regulate their affairs, or whether to act upon it. Another aspect that requires to be kept in view is the fact that even when it becomes necessary for a court for whatsoever reason, to decide or comment upon an issue not raised by the parties, it may do so only after notifying the parties concerned so that they can put forth their views on such issue.

12. When this Court renders judgments, it does so with great care and responsibility. The law declared by this Court is binding on all courts. All authorities in the territory of India are required to act in aid of it. Any interpretation of a law or a judgment, by this Court, is a law declared by this Court. The wider the power, more onerous is the responsibility to ensure that nothing is stated or directed in excess of what is required or relevant for the case, and to ensure that the Court's orders

and decisions do not create any doubt or confusion in regard to a legal position in the minds of any authority or citizen, and also to ensure that they do not conflict with any other decision or existing law. Be that as it may.

13. In so far as the observations, recommendations, and directions in paras 17 to 39 of the concurring judgment, suffice it to say that they do not relate to the subject matter of the criminal appeal and being the expression of an expectation or hope by only one of the learned Judges constituting the Bench and not agreed to by the other, is not a decision, order or direction of the Court. That being so, the directions issued to the Secretary General of the Supreme Court, State Governments and Union Territories, and recommendations to the Government of U.P. in the "aside" contained in Paras 17 to 39 of the concurring judgment are not directions to be complied with.

14. The two questions are answered accordingly.