Fakhruddin Ahmad vs State Of Uttaranchal & Anr on 5 September, 2008

Equivalent citations: 2008 AIR SCW 5881, 2008 (17) SCC 157, 2008 (6) ALL LJ 249, 2009 (1) AIR JHAR R 355, AIR 2009 SC (SUPP) 803, 2009 (64) ALLCRIC 774, 2009 (1) ORISSALR 216, 2009 (1) CIV LJ 34, (2008) 3 MAD LJ(CRI) 1163, 2008 (12) SCALE 339, (2008) 4 CHANDCRIC 104, (2008) 3 ALLCRIR 2979, (2008) 3 BANKCLR 842, (2008) 4 CURCRIR 58, (2008) 2 NIJ 457, (2008) 4 BANKCAS 96, (2008) 41 OCR 607, 2008 ALL MR(CRI) 93 NOC, 2008 (2) ALD(CRL) 629

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Bench: D.K. Jain, C.K. Thakker

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1408 0F 2008
(Arising out of S.L.P.(Criminal) No. 3482 of 2006)

FAKHRUDDIN AHMAD -- APPELLANT

VERSUS

STATE OF UTTARANCHAL & ANR. -- RESPONDENTS

JUDGMENT

D.K. JAIN, J.:

Leave granted.

2. This appeal, by special leave, arises from the order dated 21st June, 2006 passed by the High Court of Uttaranchal in Criminal Misc. Application No.434 of 2006. By the impugned order, the High Court has dismissed the petition preferred by the appellant under Section 482 of the Code of

Criminal Procedure, 1973 (for short `the Code'), seeking quashing of the chargesheet dated 16th December, 2005 and consequent proceedings initiated against him by respondent No.2 in this appeal, hereinafter referred to as the complainant, for allegedly committing offences punishable under Sections 420, 467, 468 and 471 of the Indian Penal Code, 1860 (for short `the I.P.C.').

3. A few material facts giving rise to the present appeal are:

> The appellant owns a poultry farm. According to the appellant, he used to supply chickens to the complainant and his partner on cash and credit basis. On 15th June, 2005, the complainant is stated to have issued a cheque in the sum of Rs.8,65,000/- drawn on Union Bank of India in favour of the appellant against the balance payment due. When the cheque was presented for payment, it was returned unpaid by the Bank with the remarks `having no fund'. Thereupon, on 7th September, 2005, the appellant served a legal notice on the complainant and his partner in terms of Section 138 of the Negotiable Instruments Act, 1881 (for short `the Act'), calling upon them to make payment against the said cheque. On getting the said notice, the complainant is stated to have cooked up a story that he had issued blank cheques bearing his signatures to one Salim Ali as security for Rs.30,000/-
>
> borrowed by him along with a guarantee receipt dated 25th June, 2005 on a stamp paper. Salim Ali misplaced the aforementioned blank cheque, which was fraudulently used by the appellant by filling up the amount of Rs.8,65,000/- and was presented to the banker for encashment. The complainant claims to have informed the bank about the loss of the cheque.

4. On 15th September, 2005, the complainant lodged a complaint against the appellant before the Judicial Magistrate alleging commission of offences under Sections 420, 467, 468 and 471 I.P.C. The learned Magistrate, vide his order dated 19th September, 2005, directed the police to register the case and investigate it. In the meanwhile, on 10th October, 2005, the appellant filed a complaint against the complainant and his partner under Section 138 of the Act and Section 420 I.P.C. The Judicial Magistrate took cognizance of the complaint and issued summons against the complainant.

5. Aggrieved by the filing of the complaint by the complainant, the appellant moved the High Court for quashing of the proceedings before the Magistrate. As noted above, the High Court declined to interfere. Dismissing the petition, the High Court observed thus:

> "The prosecution has collected the evidence in this matter, though the evidence has not been filed before this Court by the applicant. Non- presentation of the statements recorded under Section 161 Cr.P.C. leads me to take an assumption that the prosecution has led the evidence to support to the contention of the complainant. If there is an evidence and it discloses the prima facie case (sic) against the present applicant, there is no requirement of the said statement at this stage. If the applicant wants to make any such averment or submission that it cannot be believed on account of certain contradictions in the documents, it can only be raised during the

> trial. This court cannot evaluate the disputed facts of the case. This court cannot decide as to whether the evidence is reliable or not."

Hence the present appeal.

6. Mr. Salman Khurshid, learned senior counsel, appearing on behalf of the appellant submitted before us that the order passed by the High Court dismissing the petition is unsustainable both in law as also on facts of the case. It was contended that the High Court failed to appreciate that the Magistrate had decided to proceed with the case improperly without application of mind, which is evident from the fact that: (i) the report submitted by the police pursuant to the direction issued by the Magistrate under Section 156(3) of the Code was in favour of the appellant;

(ii) the cheque in question was neither seen nor seized by the investigating officer and (iii) the chargesheet filed is perfunctory inasmuch as the assertions made therein, even if taken on face value, do not satisfy the ingredients of any of the offences alleged to have been committed by the appellant. It was urged that the complaint against the appellant was frivolous and had been instituted with an ulterior motive to wreak vengeance and to pre-empt the filing of complaint against the complainant under Section 138 of the Act. It was, thus, argued that the parameters of its jurisdiction under Section 482 of the Code laid down by this Court in State of Haryana & Ors. Vs. Bhajan Lal & Ors.1 are clearly attracted on facts in hand and, therefore, it was a fit case where the High Court ought to have exercised its jurisdiction under the said provision.

7. Per contra, Ms. Anagha S. Desai, learned counsel appearing on behalf of the complainant, while supporting the order passed by the High Court, submitted that the assertions made in the chargesheet on the basis of the material collected by the police do constitute cognizable offences and as such, the High Court was justified in dismissing the petition.

8. Before examining the rival contentions, we may briefly refer to some of the relevant provisions in the Code. Chapter XIV of the Code, containing Sections 190 to 199 deals with the statutory conditions requisite for initiation of criminal proceedings and as to the powers of cognizance of a Magistrate. Sub-section (1) of Section 190 of the Code empowers a Magistrate to take cognizance of an offence in 1992 Supp (1) SCC 335 the manner laid therein. It provides that a Magistrate may take cognizance of an offence either (a) upon receiving a complaint of facts which constitute such offence; or (b) upon a police report of such facts; or (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. Chapter XV containing Sections 200 to 203 deals with "Complaints to Magistrates" and lays down the procedure which is required to be followed by the Magistrate taking cognizance of an offence on complaint. Similarly, Chapter XVI deals with "Commencement of Proceedings before Magistrates". Since admittedly, in the present case, the Magistrate has taken cognizance of the complaint in terms of Section 190 of the Code, we shall confine our discussion only to the said provision. We may, however, note that on receipt of a complaint, the Magistrate has more than one course open to him to determine the procedure and the manner to be adopted for taking cognizance of the offence.

9. One of the courses open to the Magistrate is that instead of exercising his discretion and taking cognizance of a cognizable offence and following the procedure laid down under Section 200 or Section 202 of the Code, he may order an investigation to be made by the police under Section 156 (3) of the Code, which the learned Magistrate did in the instant case. When such an order is made, the police is obliged to investigate the case and submit a report under Section 173 (2) of the Code. On receiving the police report, if the Magistrate is satisfied that on the facts discovered or unearthed by the police there is sufficient material for him to take cognizance of the offence, he may take cognizance of the offence under Section 190 (1) (b) of the Code and issue process straightway to the accused. However, Section 190 (1) (b) of the Code does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation makes out a case against the accused. Undoubtedly, the Magistrate can ignore the conclusion(s) arrived at by the investigating officer.

10.Thus, it is trite that the Magistrate is not bound by the opinion of the investigating officer and he is competent to exercise his discretion in this behalf, irrespective of the view expressed by the police in their report and decide whether an offence has been made out or not. This is because the purpose of the police report under Section 173 (2) of the Code, which will contain the facts discovered or unearthed by the police as well as the conclusion drawn by the police therefrom is primarily to enable the Magistrate to satisfy himself whether on the basis of the report and the material referred therein, a case for cognizance is made out or not.

11.The next incidental question is as to what is meant by expression `taking cognizance of an offence' by a Magistrate within the contemplation of Section 190 of the Code?

12.The expression `cognizance' is not defined in the Code but is a word of indefinite import. As observed by this Court in Ajit Kumar Palit Vs. State of West Bengal2, the word `cognizance' has no esoteric or mystic significance in criminal law or procedure. It merely means--become aware [1963] Supp. 1 S.C.R. 953 of and when used with reference to a Court or Judge, to take notice of judicially. Approving the observations of the Calcutta High Court in Emperor Vs. Sourindra Mohan Chuckerbutty3, the Court said that `taking cognizance does not involve any formal action; or indeed action of any kind, but occurs as soon as a Magistrate, as such, applies his mind to the suspected commission of an offence.'

13.Recently, this Court in S.K. Sinha, Chief Enforcement Officer Vs. Videocon International Ltd. & Ors.4, speaking through C.K. Thakker, J., while considering the ambit and scope of the phrase `taking cognizance' under Section 190 of the Code, has highlighted some of the observations of the Calcutta High Court in Superintendent & Remembrancer of Legal Affairs, West Bengal Vs. Abani Kumar Banerjee5, which were approved by this Court in R. R. Chari Vs. State of U.P.6. The observations are:

> (1910) I.L.R. 37 Calcutta 412 (2008) 2 SCC 492 A.I.R. (37) 1950 Calcutta 437 A.I.R. (38) 1951 SC 207 "7. ... What is `taking cognizance' has not been defined in the Criminal Procedure Code, and I have no desire now to attempt to define it. It seems to me clear, however, that before it can be said that any Magistrate has taken

> cognizance of any offence under Section 190(1)(a) CrPC, he must not only have applied his mind to the contents of the petition, but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter, proceeding under Section 200, and thereafter sending it for enquiry and report under Section 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind, e.g., ordering investigation under Section 156 (3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence."

14.From the afore-noted judicial pronouncements, it is clear that being an expression of indefinite import, it is neither practicable nor desirable to precisely define as to what is meant by `taking cognizance'. Whether the Magistrate has or has not taken cognizance of the offence will depend upon the circumstances of the particular case, including the mode in which the case is sought to be instituted and the nature of the preliminary action.

15.Nevertheless, it is well settled that before a Magistrate can be said to have taken cognizance of an offence, it is imperative that he must have taken notice of the accusations and applied his mind to the allegations made in the complaint or in the police report or the information received from a source other than a police report, as the case may be, and the material filed therewith. It needs little emphasis that it is only when the Magistrate applies his mind and is satisfied that the allegations, if proved, would constitute an offence and decides to initiate proceedings against the alleged offender, that it can be positively stated that he has taken cognizance of the offence. Cognizance is in regard to the offence and not the offender.

16.Adverting to the facts on hand, as noted above, on presentation of the complaint by the complainant before the Magistrate on 15th September, 2005, on its perusal, instead of taking cognizance of the offence alleged, with a view to issue a process, the learned Magistrate considered it appropriate to send the complaint to the police for investigation under Section 156 (3) of the Code. Therefore, it cannot be said that at the initial stage on 15th September, 2005 the Magistrate had taken cognizance. Thereafter, pursuant to the directions by the Magistrate, the police registered the F.I.R. on 22nd September, 2005 and submitted its report which reads as under:

> "Sir, Applicant Virendra Singh Chauhan, the abovementioned, has issued two blank cheques bearing no. and A/c no. as mentioned back, has been issued to Salim Ali against the guarantee for Rs.30,000/- taken from him. The report of it being misplaced from the hands of Salim Ali has been given to Police Station and same the action has been taken in Bank by Accused Fakhruddin in relation to the cheques. There exist no evidence regarding this with the Applicant. The lodging of report regarding misuse of cheques by Fakhruddin or any application thereto has not been confirmed. Send for kind perusal.
>
> S.I. Dinesh Rana P.S. Haldwani"

17.It appears from the afore-extracted report that the stand of the complainant that a report regarding misplacing of the cheque and its user by the appellant had been lodged with the police was found to be incorrect. Nonetheless, after further investigations the police finally filed the chargesheet against the appellant on 16th December, 2005. Relevant portion of the chargesheet reads thus:

> "Applicant Virendra Singh Chauhan on 22.09.05 vide Order of Ld. Court u/s 156 (3) Cr.P.C. filed a report that accused block no.3 after getting the cheque somehow, issued by Applicant, which got misplaced by witness Salim Ali, by his own accord filled hefty amount of Rs.8,65,000/- (Rupees Eight Lacs Sixty Five Thousands only) and produced it before the Bank for the withdrawal of the same but did not get the money as cash was not there. This case, after recording statement, case was investigated and till now after investigation, against the accused, u/s 420, 467, 468, 471 IPC is proved. There is stay arrested against accused from High Court of Nainital.

Hence, it is prayed that accused be summoned and after taking evidence he be punished."

18.Although the order passed by the Magistrate taking cognizance is not before us but it is stated that the Magistrate took cognizance of the aforenoted offences on the basis of the afore-extracted chargesheet and the statements of various persons recorded by the police. Learned counsel appearing for the State placed on record copies of the statements. It is pertinent to note that in the impugned order, extracted above, the High Court has itself observed that no material had been placed before it, which, in fact, led the learned Judge to assume that the prosecution has produced evidence in support of the complaint. It is, thus, manifest that in the absence of material stated to have been filed alongwith the chargesheet, the High Court did not get an opportunity to apply its mind as to whether on the basis of the material before the Magistrate, a prima facie case had been made out against the accused-appellant. Under these circumstances, we feel that it may not be proper to express any opinion on the merits of the case against the appellant based on the documents placed before us by learned counsel for the State, save and except noting that the cheque in question, i.e. the `valuable security' does not form part of this set of documents.

19.So far as the scope and ambit of the powers of the High Court under Section 482 of the Code is concerned, the same has been enunciated and reiterated by this Court in a catena of decisions and illustrative circumstances under which the High Court can exercise jurisdiction in quashing proceedings have been enumerated. However, for the sake of brevity, we do not propose to make reference to the decisions on the point. It would suffice to state that though the powers possessed by the High Court under the said provision are very wide but these should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the Courts exist. The inherent powers possessed by the High Court are to be exercised very carefully and with great caution so that a legitimate prosecution is not stifled. Nevertheless, where the High Court is convinced that 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 or where the allegations made in the F.I.R. or the 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, the powers of the High Court under the said provision should be exercised. [See: Bhajan Lal's case (supra)]

20.Bearing in mind the above legal position, we are convinced that the High Court was not justified in dismissing the petition on the afore-stated ground. In our opinion, in order to arrive at a conclusion, whether or not the appellant had made out a case for quashing of the chargesheet against him, the High Court ought to have taken into consideration the material which was placed before the Magistrate. For dismissal of the petition, the High court had to record a finding that the uncontroverted allegations, as made, establish a prima facie case against the appellant. In our judgment, the decision of the High Court dismissing the petition filed by the appellant on the ground that it is not permissible for it to look into the materials placed before the Magistrate is not in consonance with the broad parameters, enumerated in a series of decisions of this Court and briefly noted above, to be applied while dealing with a petition under Section 482 of the Code for discharge and, therefore, the impugned order is unsustainable.

21.For the foregoing reasons, the impugned order is set aside and the matter is remitted back to the High Court for fresh consideration in accordance with law. Nothing said hereinabove shall be construed as an expression of any opinion on the merits of the case.

22.The appeal stands disposed of accordingly.

.....J. (C.K. THAKKER) .....J. (D.K. JAIN) NEW DELHI;

SEPTEMBER 5, 2008.