# K.L.E Society And Ors vs Siddalingesh on 3 March, 2008

## Equivalent citations: AIR 2008 SUPREME COURT 1702, 2008 AIR SCW 1993, 2008 (2) AIR JHAR R 838, 2008 (3) AIR KANT HCR 233, 2008 CRILR(SC&MP) 225, 2008 (3) SRJ 373, (2008) 1 CRILR(RAJ) 225, (2008) 3 MH LJ (CRI) 74, (2008) 2 JCC 1074 (SC), 2008 CRILR(SC MAH GUJ) 225, (2008) 64 ALLINDCAS 124 (SC), 2008 (2) SCC(CRI) 455, 2008 (3) CRI RJ 573, 2008 (2) JCC 1074, 2008 (3) SCALE 490, 2008 (4) SCC 541, 2009 ALL MR(CRI) 43 NOC, (2008) 2 MAD LJ(CRI) 1171, (2008) 2 CHANDCRIC 178, (2008) 3 GUJ LH 221, (2008) 3 SCALE 490, (2008) 2 DLT(CRL) 6, (2008) 1 RECCRIR 623, 2008 CHANDLR(CIV&CRI) 79, (2008) 40 OCR 251, (2008) 1 CURCRIR 458, (2008) 2 ALLCRIR 1153, (2008) 3 CGLJ 502, (2008) 61 ALLCRIC 326, (2008) 3 KANT LJ 393

## Author: Arijit Pasayat

## Bench: Arijit Pasayat, Aftab Alam

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           CASE NO.:
Appeal (crl.)  427 of 2008

PETITIONER:
K.L.E Society and Ors

RESPONDENT:
Siddalingesh

DATE OF JUDGMENT: 03/03/2008

BENCH:
Dr. ARIJIT PASAYAT & AFTAB ALAM

JUDGMENT:
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J U D G M E N T CRIMINAL APPEAL NO. 427 OF 2008 (Arising out of SLP (Crl.) No.63 of 2007) Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by the learned Single Judge of the Karnataka High Court dismissing the application filed before it in terms of Section 482 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.'). Prayer in the application before the High Court was for quashing the proceedings in C.C.No.273/2006 including the complaint on the file of learned Judicial Magistrate First Class, Gulbarga.

3. Background facts in a nutshell are as under:

> Respondent was appointed as a Peon in K.L.E. Society's Women Arts and Commerce College in the year 1992 of which the appellant no.3 was the Principal at the relevant point of time. Appellant no.2 was the Secretary at the relevant point of time and the Society was represented by its Chairman, Board of Management. He resigned from service on 17.12.2003. The complaint was filed on 13.1.2006 alleging commission of offence punishable under Section 403, 405 and 415 read with Section 34 of the Indian Penal Code, 1860 (in short 'IPC'). The learned Judicial Magistrate took cognizance and issued process. The same was questioned by the appellants. The stand before the High Court was that the complaint was misconceived, no offence was made out even on indepth scrutiny of the complaint. In fact, the respondent had filed petition in terms of Section 33 (C) (2) of the Industrial Disputes Act, 1947 (in short 'ID' Act) and also filed writ petition claiming parity in salary which was disposed of by giving the direction to consider the respondents' case. In the petition in terms of Section 33-(C)(2) of the ID Act the respondent had stated that lesser amounts were paid and signatures for higher amounts were taken. The said petition is pending. In the writ petition before the High Court there was no mention about any deduction. It is stated in the complaint that the complainant was given to understand that certain amounts were being deducted for repayment at the time of retirement or cessation of his job. In the notice issued on 23.11.2004, there is no mention about this aspect. It was, therefore, submitted that the complaint was nothing but an abuse of process of law.

4. The complainant-respondent resisted the stand by stating that the offences are clearly spelt out.

5. The High Court dismissed the petition holding as follows:

> "The respondent lodged a private complaint against the petitioner on 13.1.2006 along with six supporting documents. After perusing the complaint, the documents and the sworn statement of the respondent, process is issued against the petitioners for the aforesaid offences. This petition is filed for quashing the proceedings."

6. Learned counsel for the appellants reiterated the stand taken before the High Court. On the other hand, respondent also reiterated the stand taken before the High Court.

7. One thing is clear on reading of High Court's reasoning that the High Court came to the conclusion that deductions were made without any rhyme and reason and without any basis. That was not the case of the complainant. On the other hand, it tried to make out a case that the deduction was made with an object. That obviously, was the foundation to substantiate claim of entrustment. On a close reading of the complaint it is clear that the ingredients of Sections 403, 405 and 415 do not exist. The statement made in the complaint runs contrary to the averments made in the petition in terms of Section 33-(C) (2).

8. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code,

(ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. 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 abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/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.

9. In R. P. Kapur v. State of Punjab (AIR 1960 SC 866) this Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings.

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

10. In dealing with the last case, 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 clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal (1992 Supp (1) 335). A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases. The illustrative categories indicated by this Court 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.
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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 of 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.
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> (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.
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> (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.
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> (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (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 Act concerned, 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."

11. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. (See: Janata Dal v. H. S. Chowdhary (1992 (4) SCC 305), and Raghubir Saran (Dr.) v. State of Bihar (AIR 1964 SC 1). It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. (See: Dhanalakshmi v. R. Prasanna Kumar (1990 Supp SCC 686), State of Bihar v. P. P. Sharma (AIR 1996 SC 309), Rupan Deol Bajaj v. Kanwar Pal Singh Gill (1995 (6) SCC 194), State of Kerala v. O. C. Kuttan (AIR 1999 SC 1044), State of U.P. v. O. P. Sharma (1996 (7) SCC 705), Rashmi Kumar v. Mahesh Kumar Bhada (1997 (2) SCC 397), Satvinder Kaur v. State (Govt. of NCT of Delhi) (AIR 1996 SC 2983) and Rajesh Bajaj v. State NCT of Delhi (1999 (3) SCC 259, State of Karnataka v. M. Devendrappa and Another (2002 (3) SCC 89) and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque and Anr. (2005 (1) SCC 122).

12. When the factual scenario is examined in the background of the legal principles set out above, the inevitable conclusion is that the complaint was nothing but an abuse of the process of law. We, therefore, allow this appeal and set aside the proceedings in C.C.No.273/2006 pending before learned Judicial Magistrate First Class, Gulbarga.

13. We make it clear that we have not expressed any opinion on the merits so far as the petition under Section 33-(C)(2) of the ID Act is concerned, which is stated to be pending.