State Of Andhra Pradesh vs Golconda Linga Swamy And Anr on 27 July, 2004

Equivalent citations: AIR 2004 SUPREME COURT 3967, 2004 AIR SCW 4329, (2004) 6 JT 34 (SC), (2004) 21 ALLINDCAS 882 (SC), (2004) 3 KHCACJ 298 (SC), (2004) 6 SUPREME 19, 2004 (3) KHCACJ 298, 2004 CRI(AP)PR(SC) 537, 2004 (6) ACE 371, 2004 (21) ALLINDCAS 882, 2004 ALL MR(CRI) 2857, 2004 (4) SLT 836, 2004 (2) ALL CJ 1979, 2004 CRILR(SC MAH GUJ) 683, 2004 (6) SCALE 281, 2004 (6) SCC 522, 2004 SCC(CRI) 1805, 2004 (6) JT 34, 2004 (7) SRJ 125, (2004) 3 PUN LR 559, (2004) 3 RECCRIR 912, (2004) 4 ALLCRILR 119, (2004) 1 MPHT 432, (2004) MAD LJ(CRI) 1055, (2004) 4 PAT LJR 11, (2004) 3 RAJ CRI C 741, (2004) 3 RECCRIR 831, (2004) 3 CURCRIR 43, (2005) 1 ALLCRIR 566, (2004) 6 SCALE 281, (2004) 3 JLJR 262, (2004) 103 FACLR 894, 2004 BLJR 2 1458, (2004) 3 BLJ 41, (2004) 21 INDLD 209, (2004) 3 EASTCRIC 89, (2004) 5 SUPREME 583, (2004) 2 UC 1087, (2004) 50 ALLCRIC 249, (2004) 3 CHANDCRIC 27, (2004) 3 CRIMES 170, (2004) 2 KER LJ 674, (2004) 29 OCR 65, (2004) 3 BLJ 388, (2004) 4 ALLCRILR 54, 2004 CHANDLR(CIV&CRI) 49, 2004 (2) ANDHLT(CRI) 288 SC

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Bench: S.N. Variava, Arijit Pasayat

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           CASE NO.:
Appeal (crl.)  1180 of 2003

PETITIONER:
State of Andhra Pradesh

RESPONDENT:
Golconda Linga Swamy and Anr.

DATE OF JUDGMENT: 27/07/2004

BENCH:
S.N. VARIAVA & ARIJIT PASAYAT.

JUDGMENT:
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J U D G M E N T WITH (Criminal Appeal Nos. 1181/2003, 1183-1189/2003, 1191-1196/2003, Criminal Appeal No.732/2004 @ SLP(Crl.)No.4702/2003, Crl.A.No. 736/2004@SLP(Crl.)no. 4703/2003, Crl.A. No.735/2004 @ SLP(Crl.)No. 4704/2003, Crl. A.No.730/2004 @SLP(Crl.)No.

513/2003, Crl. A. No. 739/2004 @SLP (Crl.)no. 2190/2003, Crl.A. No.733/2004 @SLP(Crl.) No. 2191/2003, Crl.A. No. 737/2004 @SLP (Crl.)No. 2632/2003, Crl. A. No. 738/2004 @SLP (Crl.)No. 2633/2003, Crl.A. No.731/2004 @ SLP(Crl.)No. 2636/2004 and Crl.A. No.734/2004 @SLP(Crl.)No. 3463/2003) ARIJIT PASAYAT, J Leave granted in SLP (Crl.) Nos. 4702-4704/2003, 513/2003, 2190/2003, 2191/2003, 2632/2003, 2633/2003, 2636/2003 and 3463/2003.

By the impugned judgments the High Court of Andhra Pradesh has quashed the FIR filed by Prohibition and Excise officers alleging commission of offences under Andhra Pradesh Excise Act, 1968 (in short the 'Act') and the Andhra Pradesh Prohibition Act, 1995 (in short the 'Prohibition Act'). In all the cases the allegation was that the concerned accused was either transporting or storing black jaggery/molasses for the purpose of manufacturing illicit distilled liquor or was an abettor so far as the offence of manufacturing illicit liquor is concerned. On being moved by application under Section 482 of the Code of Criminal Procedure, 1973 (in short the "Code") by the concerned accused for quashing the FIR, the High Court accepted the plea holding that there was no material to show that the seized articles were intended to be used for manufacturing of illicit distilled liquor. Accordingly the FIR in each case was quashed.

In support of the appeals, learned counsel appearing for the State of Andhra Pradesh submitted that the High Court's approach is clearly erroneous. These are not cases where there was no material to show the commission of a crime. Whether there was adequate material already in existence or which could have been collected during investigation and their relevance is essentially a matter of trial. The High Court was not therefore justified in quashing the FIR. The exercise of power under Section 482 of the Code is clearly indefensible.

Per contra, learned counsel for the concerned accused-respondents submitted that on mere surmises and conjectures that the black jaggery/molasses being transported or stored were intended to be used for the purpose of manufacturing illicit distilled liquor, the FIR was lodged. Suspicion however strong cannot be a ground to initiate criminal proceedings thereby unnecessarily harassing the innocent traders/transporters. In some cases, it was pointed out that there was absolutely no material to even show that the seized articles were intended for manufacturing illicit distilled liquor.

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 alique concedit, conceditur et id sine quo res ipsa 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 such 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 exercises 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.

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.

In dealing with the last category, 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 no doubt 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) SCC 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.
>
> (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 F.I.R.

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 F.I.R. 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 S. 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.

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. 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 : The Janata Dal etc. v. H.S. Chowdhary and others, etc. (AIR 1993 SC

892), Dr. Raghubir Saran v. State of Bihar and another (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 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/F.I.R. 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 or disclosed in the F.I.R. that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/F.I.R. 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 itself be the basis for quashing the proceeding. (See : Mrs. Dhanalakshmi v. R. Prasanna Kumar and others (AIR 1990 SC 494), State of Bihar and another v. P. P. Sharma, I.A.S. and another (1992 Suppl (1) SCC 222), Rupan Deol Bajaj (Mrs.) and another v. Kanwar Pal Singh Gill and another (1995 (6) SCC 194), State of Kerala and others v. O.C. Kuttan and others (1999 (2) SCC 651), State of U.P. v. O. P. Sharma (1996 (7) SCC 705), Rashmi Kumar (Smt.) v. Mahesh Kumar Bhada (1997 (2) SCC 397), Satvinder Kaur v. State (Govt. of NCT of Delhi) and another (1999 (8) SCC 728), Rajesh Bajaj v. State NCT of Delhi and others AIR 1999 SC 1216), State of Karnataka v. M. Devendrappa and another (2002 (3) SCC 89).

Keeping in view the principles of law as enunciated above, the action of the High Court in quashing the FIR cannot be maintained so far as Criminal Appeal Nos. 1180-1181/2003, 1184-1189/2003, 1191-1192/2003 and Criminal Appeals arising out of SLP(Crl.) Nos. 4702-4704/2003, 513/2003, 2636/2003 are concerned.

In all these cases there was either statements of witnesses or seizure of illicit distilled liquor which factors cannot be said to be without relevance. Whether the material already in existence or to be collected during investigation would be sufficient for holding the concerned accused persons guilty has to be considered at the time of trial. At the time of framing the charge it can be decided whether prima facie case has been made out showing commission of an offence and involvement of the charged persons. At that stage also evidence cannot be gone into meticulously. It is immaterial whether the case is based on direct or circumstantial evidence. Charge can be framed, if there are materials showing possibility about the commission of the crime as against certainty. That being so, the interference at the threshold with the F.I.R. is to be in very exceptional circumstances as held in R.P. Kapoor and Bhajan Lal cases (supra).

Ultimately, the acceptability of the materials to fasten culpability on the accused persons is a matter of trial. These are not the cases where it can be said that the FIR did not disclose commission of an offence. Therefore, the High Court was not justified in quashing the FIR in the concerned cases.

So far as Criminal Appeal Nos. 1183/2003, 1193-1196/2003 and Criminal Appeals arising out of SLP(Crl.) Nos. 2191/2003, 2632/2003, 2633/2003, and 3463/2003 are concerned, we find that the FIR did not disclose commission of an offence without anything being added or subtracted from the recitals therein. Though the FIR is not intended to be an encyclopedia of the background scenario, yet even skeletal features must disclose the commission of an offence. The position is not so in these cases. Therefore, the High Court's interference does not suffer from any legal infirmity, though the reasonings indicated by the High Court do not have our approval.

In the ultimate analysis, Criminal Appeal Nos. 1180/2003, 1181/2003, 1184-1189/2003, 1191-1192/03 and Criminal Appeals arising out of SLP (Crl.) nos.4702-4704/2003, 513/2003, 2636/2003 are allowed and Crl. A. Nos. 1183/2003, 1193-96/2003, and Criminal appeals arising out of SLP (Crl.) Nos. 2191/2003, 2632/2003, 2633/2003 and 3463/2003 are dismissed so far as Criminal Appeal arising out of SLP (Crl.)No. 2190 is concerned, it is allowed in respect of A-1, but dismissed so far as it relates to A-2 in the absence of any allegation against him.

Learned counsel for the concerned accused persons submitted that early investigation in the matter and in submission of the report under Section 173 of the Code would be in the interest of all concerned accused. Learned counsel for the State of Andhra Pradesh submitted that all possible efforts will be made to complete the investigation in each case latest by the end of November, 2004. We make it clear that we have not expressed any opinion on the merits of the case. The appeals are disposed of as set out above.