

Gorige Pentaiah vs State Of A.P. & Ors on 20 August, 2008

Equivalent citations: 2008 AIR SCW 6901, 2008 (12) SCC 531, 2009 (1) AIR JHAR R 878, AIR 2008 SC (SUPP) 634, (2009) 1 EASTCRIC 356, (2009) 64 ALLCRIC 430, (2008) 4 RECCRIR 171, 2009 (1) SCC (CRI) 446, (2008) 11 SCALE 715, (2008) 41 OCR 614, (2008) 3 MAD LJ(CRI) 1067, (2009) 2 CGLJ 392, (2008) 4 CHANDCRIC 113, (2008) 4 CURCRIR 330, (2008) 4 JCC 2277 (SC), (2008) 5 MPHT 247, 2009 ALL MR(CRI) 23 NOC

Bench: J.M. Panchal, Dalveer Bhandari

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1311 OF 2008

[Arising out of SLP (Crl.) No.3743/2007]

Gorige Pentaiah

... Appellant

Versus

State of A.P. & Others

... Respondents

ORDER

Leave granted.

This appeal is directed against the judgment dated 19.9.2006 passed by the High Court of Andhra Pradesh.

The brief facts which are necessary to dispose of this appeal are recapitulated as under:

Bakaram Eswar, respondent No.3 herein, on 15.6.2004, filed a complaint against the appellant in the Police Station, Uppal, Hyderabad which reads as under:

"To The Sub-Inspector of Police, Uppal.

Subject: One Gorige Pentaiah s/o Bakkaiah of Uppal Village has come to our 3200 sq. yards of land in Sy. No. 80 of Peerjadiguda with his men at 11.30 in the night and

demolished the wall and went away. You are requested to take action. Apart from that though on 27.5.2004 said Gorige Pentaiah s/o Bakkaia abused us with the name of our caste no action is taken against them. I am requesting you to take action against the said people. I am filing all xerox copies of documents to show my rights in the said land. Said Pentaiah obtained pass books and pahanies in his name illegally in respect of our land in Sy. No. 80 and has been harassing us. R.D.O. has stayed the said entries. You are requested to take action against the said pentaiah and his men who demolished the compounded wall of our plot. We are also afraid that they may come at any time and kill us. Said Pentaiah drove our security guards Ramulu and Sudhakar and demolished the wall. You are requested to take action against the said person.

Sd/B.Eswar (Bakara Eswar) S/o Rajaiah Peerjadiguda Village, Ghatkesar Mandal, RR District."

The appellant aggrieved by registration of the criminal case, invoked inherent powers of the court by filing a petition under Section 482 of Code of Criminal Procedure before the High Court for quashing of the proceedings emanating from Crime No. 281 of 2004 Police Station Uppal, Hyderabad. The High Court, by impugned judgment dated 19.9.2006, dismissed the said petition.

Aggrieved by the dismissal of the petition by the High Court, present appeal, by special leave, is preferred by the appellant.

Learned counsel appearing for the appellant submitted that even if all the allegations incorporated in the complaint are taken as true, even then, no offence is made out under Section 3(1)(x) of the Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the Act") and under Sections 447, 427, 506 of the Indian Penal Code.

As far as Section 3(1)(x) of the Act is concerned, it reads as under:

"3(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe:-

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view."

In the instant case, the allegation of respondent No.3 in the entire complaint is that on 27.5.2004, the appellant abused them with the name of their caste. According to the basic ingredients of Section 3(1)(x) of the Act, the complainant ought to have alleged that the accused-appellant was not a member of the Scheduled Caste or a Scheduled Tribe and he (respondent No. 3) was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. In the entire complaint, nowhere it is mentioned that the accused-appellant was not a member of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate respondent No. 3 in a place within public view. When the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the

appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law.

Similarly, we find that the ingredients of Section 506 of the Indian Penal Code are totally absent in the complaint.

In the complaint it is not even mentioned that the accused had intimidated or threatened the complainant or any one else. In absence of basic ingredients of the section in the complaint, no case under section 506 IPC can be sustained.

Section 506 reads as under:

"Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both".

"Criminal intimidation" has been defined in Section 503 which reads as under:

"Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation."

It may be pertinent to mention here that respondent No. 3 had filed Civil Suit bearing O.S. No. 832 of 2004 for perpetual injunction against appellant on 14.5.2004. The suit was withdrawn on 19.7.2004 on the ground "that due to personal problems the plaintiffs are not interested to continue the proceedings against the defendants as such they intends to withdraw the above as not pressed".

Respondent No.3 also filed a second suit bearing O.S. No. 1211 of 2004 in the month of July, 2004 with the following prayer:

"Pass a decree in favour of plaintiffs and against the defendants, their agents, legal heirs, successors, attorneys etc. declaring that the plaintiffs are absolute owners and direct the defendants to handover the peaceful possession of the suit schedule property to the plaintiffs".

The details of the scheduled property are as under:

"All that the piece and parcel of plots bearing Nos. 198 to 216 (totally plots 19) in Survey No. 80, total admeasuring 3,200 sq. yards or 2675 sq. meters, situated at Peerzadiguda Village and Grampanchayath, Ghatkesar Mandal, Ranga Reddy District and bounded by:

North: Land belongs to Satyanarayana (survey of India) and Purender Reddy;

South : Road and land belongs to late Cheruku Sailu;

East : Road and grave yard;

West : Land belongs to Humari Manikyam"

On careful consideration of the prayer made in the second suit, it becomes abundantly clear that respondent No. 3 was not even in possession of the suit property on the date of incident and this fact has not been disputed by the learned counsel appearing for the State of Andhra Pradesh. When respondent No.3 was not even in possession of the land in question, the allegation made in the complaint, that the appellant demolished the wall on 14.6.2004, could not arise.

The allegations are totally baseless and without any foundation. On the face of it, it looks that the criminal complaint filed by the respondent No. 3 was totally false and frivolous. The complaint was filed with an oblique motive. In this view of the matter, charges under sections 427 and 447 are also wholly illegal and unsustainable in law.

In our considered view, in a case of this nature, the High Court ought to have exercised its jurisdiction under Section 482 Cr.P.C. and quashed the complaint.

Scope and ambit of courts' powers under section 482 Cr.P.C.

This court in a number of cases has laid down the scope and ambit of courts' powers under section 482 Cr.P.C. Every High Court has inherent power to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court.

Inherent power under section 482 Cr.P.C. can be exercised:

- (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.

Inherent powers under section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.

Discussion of decided cases Reference to the following cases would reveal that the courts have consistently taken the view that they must use this extraordinary power to prevent injustice and secure the ends of justice. The English courts have also used inherent power to achieve the same objective. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. In *Connelly v. DPP* [1964] AC 1254, Lord Devlin stated that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial. Lord Salmon in *DPP v. Humphrys* [1977] AC 1 stressed the importance of the inherent power when he observed that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the judge has the power to intervene. He further mentioned that the court's power to prevent such abuse is of great constitutional importance and should be jealously preserved.

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 of the proceedings;
- (ii) where the allegations in the first information report or complaint taken at their 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.

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. The 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 should normally refrain from giving a *prima facie* decision in a case where all the 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 such magnitude that they 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 proceedings at any stage.

This court in *State of Karnataka v. L. Muniswamy & Others* (1977) 2 SCC 699 observed that the wholesome power under section 482 Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The court observed in this case that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. This case has been followed in a large number of subsequent cases of this court and other courts.

In Chandrapal Singh & Others v. Maharaj Singh & Another (1982) 1 SCC 466, in a landlord and tenant matter where criminal proceedings had been initiated, this Court observed in para 1 at page 467 as under:-

"A frustrated landlord after having met his Waterloo in the hierarchy of civil courts, has further enmeshed the tenant in a frivolous criminal prosecution which prima facie appears to be an abuse of the process of law. The facts when stated are so telling that the further discussion may appear to be superfluous."

The court noticed that the tendency of perjury is very much on the increase. Unless the courts come down heavily upon such persons, the whole judicial process would come to ridicule. The court also observed that chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court.

This court in Madhavrao Jiwajirao Scindia & Others v. Sambhajirao Chandojirao Angre & Others (1988) 1 SCC 692 observed in para 7 as under:

"7. The legal position is well settled 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. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

In State of Haryana & Others v. Bhajan Lal & Others 1992 Supp. (1) SCC 335, this court in the backdrop of interpretation of various relevant provisions of the Cr.P.C. under Chapter XIV and of the principles of law enunciated by this court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under section 482 Cr.P.C. gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised:

"(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 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.

This court in *Janata Dal v. H. S. Chowdhary & Others* (1992) 4 SCC 305 observed thus:

"132. The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but 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 powers possessed by the High Court under section 482 of the Code are very wide and the very plentitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles."

In *G. Sagar Suri & Another v. State of UP & Others* (2000) 2 SCC 636, this court observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process particularly when matters are essentially of civil nature.

This court in Roy V.D. v. State of Kerala (2000) 8 SCC 590 observed thus:-

"18. It is well settled that the power under section 482 Cr.P.C has to be exercised by the High Court, inter alia, to prevent abuse of the process of any court or otherwise to secure the ends of justice. Where criminal proceedings are initiated based on illicit material collected on search and arrest which are per se illegal and vitiate not only a conviction and sentence based on such material but also the trial itself, the proceedings cannot be allowed to go on as it cannot but amount to abuse of the process of the court; in such a case not quashing the proceedings would perpetuate abuse of the process of the court resulting in great hardship and injustice to the accused. In our opinion, exercise of power under section 482 CrPC to quash proceedings in a case like the one on hand, would indeed secure the ends of justice."

This court in Zandu Pharmaceutical Works Ltd. & Others v. Mohd. Sharaful Haque & Another (2005) 1 SCC 122 observed thus:-

"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."

In Indian Oil Corporation v. NEPC India Ltd. & Others (2006) 6 SCC 736, this court again cautioned about a growing tendency in business circles to convert purely civil disputes into criminal cases. The court noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. The court further observed that "any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged."

The question before us is - whether the case of the appellants comes under any of the categories enumerated in Bhajan Lal (supra)? Is it a case where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in entirety, do not make out a case against the accused under Sections 420, 467 and 120B IPC? For determination of the question it becomes relevant to note the nature of the offences alleged against the appellants, the ingredients of the offences and the averments made in the FIR/complaint.

A three judge Bench of this court in Inder Mohan Goswami & Another v. State of Uttaranchal & Others AIR 2008 SC 251 has examined scope and ambit of section 482 of the Criminal Procedure Code. The court in the said case observed that inherent powers under section 482 should be exercised for the advancement of justice. If any abuse of the process leading to injustice is brought

to the notice of the court, then the court would be fully justified in preventing injustice by invoking inherent powers of the court.

In our considered opinion, filing of such a frivolous complaint in the instant case is a total abuse of process of law. Consequently, we set-aside the impugned judgment passed by the High Court and quash the complaint emanating from Crime No.281 of 2004, Police Station, Uppal, Hyderabad.

The appeal is accordingly allowed and disposed of.

.....J. (Dalveer Bhandari)J. (J.M. Panchal) New Delhi;

August 20, 2008