Supreme Court of India
Municipal Corporation Of Delhi vs Ram Kishan Rohtagi And Others on 1 December, 1982
Equivalent citations: 1983 AIR 67, 1983 SCR (1) 884
Author: S M Fazalali
Bench: Fazalali, Syed Murtaza

PETITIONER:
MUNICIPAL CORPORATION OF DELHI

Vs.

RESPONDENT:
RAM KISHAN ROHTAGI AND OTHERS

DATE OF JUDGMENT01/12/1982

BENCH:
FAZALALI, SYED MURTAZA
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FAZALALI, SYED MURTAZA
VENKATARAMIAH, E.S. (J)

CITATION:
1983 AIR 67 1983 SCR (1) 884
1983 SCC (1) 1 1982 SCALE (2)1124
CITATOR INFO :
RF 1983 SC 158 (1)
D 1983 SC 288 (3)
R 1983 SC 595 (13)
RF 1986 SC 833 (46)
R 1989 SC 1 (6)
R 1992 SC1168 (9)

ACT:
Code of Criminal Procedure, 1973-ss. 4827 397(2) and 319 - Allegations in complaint not constituting offence against accused-Exercise of High Court's inherent power under s. 482 to quash interlocutory order summoning accused not affected by s. 397(2)-Court has power under s. 319 to proceed against such accused on production of additional evidence.

HEADNOTE:
A Food Inspector of the Municipal Corporation visited tho premises of a shopkeeper and purchased a sample of toffees which, when analysed by Public Analyst, was found not to conform to the prescribed standards. In clause No. S of the complaint filed before the Magistrate it was stated:

"That the accused No. 3 is tho Manager of accused No. 2 and accused No. 4 to 7 are the Directors of

accused No. 2 and as such they were incharge of and responsible for the conduct of business of accused No. 2 at the time of sampling."

Accused No. 2 was the Company which manufactured the toffees, accused No. 3 was its Manager and accused Nos. 4 to 7 were its Directors (respondents l to 5 here). The Magistrate passed an order summoning all the accused for being tried for violation of ss. 7/16 of the Prevention of Food Adulteration Act and that order was assailed before the High Court.

It was argued before the High Court that the complaint did not attribute any criminal responsibility to the Directors inasmuch as there was no clear averment of the fact that the Directors were really incharge of the manufacture of toffees and were responsible for the conduct of business and that the words 'as such' in clause No. S of the complaint indicated that the complainant had merely presumed that the Directors of the Company must be guilty because they were holding a particular office. The High Court accepted the argument and quashed the proceedings against the Directors as well as the Manager of the Company.

In appeal, it was contended on behalf. Of the appellant that on the allegations made in the complaint, a clear case had been made out against all the respondents and the High Court ought not to have quashed the proceedings on the ground that the complaint did not disclose any offence. Counsel for respondents contended that even taking the allegations of the complaint ex facie no case for trial had been made out.

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Upholding the order of the High Court in respect of quashing of proceedings against the Directors and allowing the appeal in respect of quashing of proceedings against the Manager,

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HELD: Where the allegations set out in the complaint do not constitute any offence it is competent to the High Court exercising its inherent jurisdiction under 8. 482 of the Code of Criminal Procedure, 1973 to quash the order passed by the Magistrate taking cognizance of the offence. It is true that s. 397(2) bars the jurisdiction of the court in respect of interlocutory orders. But s. 482 confers a separate and independent power on the High Court alone to pass orders ex debito justitiae in cases where grave and substantial injustice has been done or where the process of the court has been seriously abused. It is not merely a rovisional power meant to be exercised against the orders passed by subordinate courts. Nothing in s. 397(2) limits or affects the inherent power under s. 482. The scope, ambit and range of the power under s. 482 are quite different from those of the power conferred under s. 397. It may be that in some cases there may be overlapping but such cases would be few and far between. It is well settled that the inherent

powers under s. 482 can be exercised only when no other remedy is available to the litigant and Dot where a specific remedy is provided by the statute. It is clear that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. The test is that taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out then the High Court would be justified in quashing the proceedings in the exercise of its powers under s. 482.

[889 A-B, G; 887 C; 888 A-B; 887 G-H; 888 C-D; 890 A-B]

Madhu Limaye v. State of Maharashtra [1978] 1 S.C.R. 749; Ra; Kapoor and Ors. v. State and Ors., [1980] 1 S.C.C. 43; Smt. Nagavva v. Veeranna Shivalingappa Konjalgi and Ors., [1976] Suppl. S.C.R. 123; and Sharda Prasad Sinha v. State of Bihar. [9771] 2 S.C.R. 357, referred to.

In the instant case, so far as the Manager of the Company was concerned, from the very nature of his duties it could be safely inferred that he would be vicariously liable for the offence as he must have been in the knowledge of the manufacture and sale of the disputed sample. So far as the Directors of the Company were concerned, there was nothing to show, apart from the presumption drawn by the complainant, that there was any act committed by them from which a reasonable inference could be drawn to the effect that they were also vicariously liable and the High Court was right in holding that no case had been made out ex facie on the allegations made in the complaint. {891 D; 891 A; 891 E-F]

2. The mere fact that the proceedings have been quashed against the Directors will not prevent the court from exercising its discretion under s. 319 of the Code if it is fully satisfied that a case for taking cognizance against them is made out on the additional evidence led before it. Section 319 gives ample powers to any court to take cognizance and add any person not being an accused before it and try him along with the other accused. However, this being an extraordinary power conferred on the court, it should be used very sparingly and only if compelling reasons exist for doing so. [893 G; 893 G; 893 F]

Joginder Singh and Anr. v. State of Punjab and Anr. [1979] 2 S.C.R. 306, referred to.

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JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 701 of 1980.

Appeal by special leave from the Judgment and order dated the 5th March, 1980 of the Delhi High Court in Criminal Revision No. 335 of 1974.

B.P. Maheshwari for the Appellants.

M.C. Bhandari, Mrs. Madhhu Mull Chandani and R.B. Datar for the Respondents.

F.S. Nariman, Parveen Kumar Jain, Kapil Sibbal and Anil Kumar Sharma for Respondents.

The Judgment of the Court was delivered by FAZAL ALI, 1. This appeal by special leave is directed against a judgment dated March 5, 1980 of the Delhi High Court quashing the proceedings taken against respondents Nos. 1 to S and arises in the following circumstances.

On March 25, 1974, one Shri M.M. Gupta, Food Inspector, Municipal Corporation of Delhi visited premises No. 5171, Basant Road, Delhi where Shri Madan Lal had kept for sale 'Morton Toffees'. The said Inspector after purchasing the sample of the article sent it to the Public Analyst who opined that the said sample did not conform to the standards prescribed for toffees. The toffees were manufactured by M/s. Upper Ganges Sugar Mills. Respondent No. 1 (Rain Kishan Rohtagi) was the Manager of the company and Respondent Nos. 2 to 5 were the Directors of the Company, including the company also.

A complaint was filed before the Metropolitan Magistrate who summoned all the respondents for being tried for violating the provisions of the Prevention of Food Adulteration Act (hereinafter referred to as the 'Acts). The said complaint was filed by the Assistant Municipal Prosecutor in the court of Metropolitan Magistrate, Delhi against the accused for having committed offences under sections 7/16 of the Act.

The only point canvassed before us was that on the allegations made in the complaint, a clear case was made out against all the respondents and the High Court ought not to have quashed the proceedings on the ground that the complaint did not disclose any offence. Before going through the relevant part of the complaint, it mag be necessary to say a few words about the law on the subject.

After the coming into force of the Code of Criminal Procedure, B 1973 (hereinafter referred to as the 'present Code'), there was a serious divergence of judicial opinion on the question as to whether where a power is exercised under section 397 of the present Code, the High Court could exercise those very powers under section 482 of the present Code. It is true that s. 397 (2) clearly bars the jurisdiction of the Court in respect of interlocutory orders passed in appeal, enquiry or other proceedings. The matter is, however, no longer res integra as the entire controversy has been set at rest by a decision of this Court in Madhu Limaye v. State of Maharashtra(1) where this Court pointed out that s. 482 of the present Code had a different parameter and was a provision independent of s. 397(2). This Court further held that while s. 397(2) applied to the exercise y of revisional powers of the High Court, section 482 regulated the . inherent powers of the court to pass orders necessary in order to prevent the abuse of the process of the court. In this connection, Untwalia, J. speaking for the Court observed as follows:-

> "On a plain reading of section 482, however, it would follow that nothing in the Code, which would include sub section (2) of section 397 also, "shall be deemed to limit or affect the inherent powers of the High Court". But, if we were to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers .. But in case the impugned order clearly brings about a situation which is an abuse of the process of the court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly."

It may be noticed that s. 482 of the present Code is the ad verbatim copy of s. 561A of the old Code. This provision confers a separate and independent power on the High Court alone to pass orders ex debito justitiae in cases where grave and substantial injustice has been done or where the process of the Court has been seriously abused. It is not merely a revisional power meant to be exercised against the orders passed by subordinate courts. It was under this section that in the old Code, the High Courts used to quash the proceedings or expunge uncalled for remarks against witnesses or other persons or subordinate courts. Thus, the scope, ambit and range of s. 561A (which is now s. 482) is quite different from the powers conferred by the present Code under the provisions of s. 397. It may be that in some cases there may be overlapping but such cases would be few and far between. It is well settled that the inherent powers under s. 482 of the present Code can be exercised only when no other remedy is available to the litigant and not where a specific remedy is provided by the statute. Further, the power being an extraordinary one, it has to be exercised sparingly. If these considerations are kept in mind, there will be no inconsistency between sections 482 and 397(2) of the present Code.

The limits of the power under s. 482 were clearly defined by this Court in Raj Kapoor and Ors. v. State and Ors.(l) where Krishna Iyer J. Observed as follows:-

> "Even so, a general principle pervades this branch of law when a specific provision is made: easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same Code."

Another important consideration which is to be kept in mind is as to when the High Court acting under the provisions of s. 482 should exercise the inherent power in so far as quashing of criminal q proceedings are concerned. This matter was gone into in greater detail in Smt. Nagawwa v. Veeranna Shivalingappa Konjalji and Ors.(2) where the scope of ss. 202 and 204 of the present Code was consider ed and while laying down the guidelines and the grounds on which proceedings could be quashed this Court observed as follows:

"Thus, it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:

> (1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;
>
> (2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;
>
> (3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and (4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.
>
> The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash Proceedings."

Same view was taken in a later decision of this Court in Sharda Prasad Sinha v. State of Bihar(l) where Bhagwati, J. speaking for the Court observed as follows:-

> "It is, now settled law that where the allegations set out in the complaint or the charge-sheet do not constitute any offence, it is competent to the High Court exercising its inherent jurisdiction under section 482 of the Code of Criminal Procedure to quash the order passed by the Magistrate taking cognizance of the offence."

It is, therefore, manifestly clear that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting any thing, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers under s. 482 of the present Code.

In the instant cases the argument of the appellant before us is that taking the complaint as a whole, it cannot be said that no offence is made out or that the facts mentioned in the complaint do not constitute any offence against the respondents or some of them. On the other hand, the counsel for the respondents submitted that even taking the allegations of the complaint ex facie no case for trial has been made out at all.

Before going to the complaint, we might state that it is common ground that the complaint clearly contains the allegations regarding the visit of the Inspector to the shop of respondent No. 6 (Madan Lal) and that the sample taken by him, which was sent to the Public Analyst, was manufactured by Upper Ganges Sugar Mills, Daryagang, Delhi having its registered office at Calcutta and that the Public Analyst found the samples to be adulterated. There is no dispute regarding these facts. The

only point on which the contro- versy centres is as to whether or not on the allegations, the Manager as also the other respondents I to 5 committed any offence. The main clause of the complaint which is the subject matter of the dispute is clause No. S which may be extracted thus:

> "5. That the accused No. 3 is the Manager, of accused No. 2 and accused No. 4 to 7 are the Directors of accused No. 2 and as such they were incharge of and responsible for the conduct of business of accused No. 2 at the time of a sampling."

According to this clause, accused No. 3 (Ram Kishan) who is respondent No. I in this appeal and accused Nos. 4-7 who are respondent Nos. 2 to 4, were the Directors of the company, respondent No. 5. So far as the Manager, respondent No. 1, is concerned it was not and could not be reasonably argued that no case is made out against him because from the very nature of his duties, it is manifest that he must be in the knowledge about the affairs of the sale and manufacture of the disputed sample. It was, however, contended that there is no allegation whatsoever against the Directors, respondent Nos. 2 to 4.

Reliance has been placed on the words 'as such' in order to argue that because the complaint does not attribute any criminal responsibility to accused Nos. 4 to 7 except that they were incharge of and responsible for the conduct of the business of the company. It is true that there is no clear-averment of the fact that the Directors were really incharge of the manufacture and responsible for the conduct of business but the words 'as such' indicate that the complainant has merely presumed that the Directors of the company must be guilty because they are holding a particular office. This argument found favour with the High Court which quashed the proceedings against the Directors as also against the Manager, respondent No. 1.

So far as the Manager is concerned, we are satisfied that from the very nature of his duties it can be safely inferred that he would undoubtedly be vicariously liable for the offence; vicarious liability being an incident of an offence under the Act. So far as the Directors are concerned, there is not even a whisper nor a shred of evidence nor anything to show, apart from the presumption drawn by the complainant, that there is any act committed by the Directors from which a reasonable inference can be drawn that they could also be vicariously liable. In these circumstances, therefore, we find ourselves in complete agreement with the argument of the High Court that no case against the Directors (accused Nos 4 to 7) has been made out ex facie on the allegations made in the complaint and the proceedings against them were rightly quashed.

We, however, do not agree that even accused No. 3, respondent No. 1, who is Manager of the Company and therefore directly incharge of its affairs, could fall in the same category as the Directors. Hence, we would set aside that part of the judgment of the High Court which quashes the proceedings against the Manager, respondent No. I (Ram Kishan Rohtagi).

Although we uphold the order of the High Court we would like to state that there are ample provisions in the Code of Criminal Procedure, 1973 in which the Court can take cognizance against persons who have not been made accused and try them in the same manner along with the other accused. In the old Code, s. 351 contained a lacuna in the mode of taking cognizance if a new person

was to be added as an accused. 1 he Law Commission in its 41st Report (para 24.81) adverted to this aspect of the law and s. 319 of the present Code gave full effect to the recommendation of the Law Commission by removing the lacuna which was found to exist in s. 351 of the old Code. Section 319 as incorporated in the present Code may be extracted thus:-

> "319. Power to proceed against other persons appearing to be guilty of offence.
>
> (1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.
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> (2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.
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> (3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the enquiry into, or trial of, the offence which he appears to have committed.
>
> (4) Where the Court proceeds against any person under sub-section (1) then-
>
> (a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;
>
> (b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced."

This provision gives ample powers to any court to take cognizance and add any person not being an accused before it and try him alongwith the other accused. This provision was also the subject matter of a decision by this Court in Joginder Singh and Anr. v. State of Punjab and Anr.(1) where Tulzapurkar, J., speaking for the Court observed thus:-

> "A plain reading of section 319 (1), which occurs in chapter XXIV dealing with general provisions as to inquiries and trials, clearly shows that it applies to all the Courts including a Sessions Court and as such a Sessions Court will have the power to add any person, not being the accused before it, but against whom there appears during trial sufficient evidence indicating his involvement in the offence, as an accused and direct him to be tried along with the other accused."

In these circumstances, therefore, if the prosecution can at any stage produce evidence which satisfies the court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed have also committed the offence the Court can take cognizance against them and try them along with the other accused. But, we would hasten to add

that this is really an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken. More than this we would not like to say anything further at this stage. We leave the entire matter to the discretion of the court concerned so that it may act according to law. We would, however, make it plain that the mere fact that the proceedings have been quashed against respondent Nos. 2 to S will not prevent the court from exercising its discretion if it is fully satisfied that a case for taking cognizance against them has been made out on the additional evidence led before it.

For these reasons, therefore, we allow this appeal only to the extent that the order of the High Court quashing the proceedings against the Manager (Rohtagi), respondent No. 1, is hereby set aside and that of the Metropolitan Magistrate is restored. As regards the other respondents (Directors) the order of the High Court stands and the appeal in respect of these respondents only will stand dismissed. An attested copy of this judgment be placed on the file of criminal appeal No. 749 of 1980.

H.L.C. Appeal partly allowed.