Supreme Court of India
Manakshi Bala vs Sudhir Kumar (M.K. Kukherjee, J.) on 10 May, 1994
Equivalent citations: 1994 SCC (4) 142, JT 1994 (4) 158
Author: M M.K.
Bench: Mukherjee M.K. (J)

PETITIONER:
MANAKSHI BALA

Vs.

RESPONDENT:
SUDHIR KUMAR (M.K. Kukherjee, J.)

DATE OF JUDGMENT10/05/1994

BENCH:
MUKHERJEE M.K. (J)
BENCH:
MUKHERJEE M.K. (J)
AGRAWAL, S.C. (J)

CITATION:
1994 SCC (4) 142 JT 1994 (4) 158
1994 SCALE (2)973

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by M.K. MUKHERJEE, J.- Special leave granted. Heard the learned counsel appearing for the parties.

2.On 24-9-1990 the appellant lodged a first information report (FIR) with the Civil Lines Police Station, Ludhiana alleging commission of offences under Sections 406 and 498-A of the Indian Penal Code by her husband, parents-in-law and four other members of her husband's family. On that information a case was registered and on completion of investigation police submitted charge-sheet against all of them on 31-12-1990. Aggrieved thereby all the accused persons, except the appellant's husband, filed a petition in the Punjab and Haryana High Court on 14-7-1991 seeking exercise of its inherent powers under Section 482 CRPC for quashing the FIR and the proceeding arising therefrom. By the time the petition came up for hearing before the High Court, the Additional Chief Judicial Magistrate, Ludhiana had taken cognizance upon the charge-sheet and, after hearing the parties, framed charges under Sections 406 and 498-A of the Indian Penal Code

against all the accused persons. As they had pleaded not guilty the Magistrate had also fixed a date for recording of prosecution evidence. Before, however, evidence could be gone into, the High Court took up the petition for final hearing, along with another petition which the accusedrespondents had subsequently filed under Section 482 CrPC for setting aside the charges, and quashed the entire proceeding including the charges framed against the accused by a common order. Hence these two appeals.

3.Having carefully gone through the impugned order we are constrained to say that the entire approach of the High Court in dealing with the matter is patently wrong and opposed to settled principles of law. As earlier noticed, the petition under Section 482 CrPC was filed in the High Court at a stage when the police had already submitted charge-sheet on completion of investigation and when the petition came up for hearing a competent court had not only taken cognizance thereupon but framed charges also. In spite thereof, the High Court, surprisingly enough, proceeded to deal with the matter as if it was called upon to decide whether the FIR disclosed any offence and, for that matter, whether investigation should be permitted to continue. This will be evident from the following observations made by the High Court:

> "The principles relating to the quashing of the FIR at its initial stage were considered by their Lordships of the Supreme Court in State of W.B. v. Swapan Kumar Guhal. Their Lordships observed therein that once an offence is disclosed, an investigation into the offence must necessarily follow in the interest of justice. If, however, no offence is disclosed, an investigation cannot be permitted, as any investigation, in the absence of any offence being disclosed, will result in unnecessary harassment to a party, whose liberty and property may be put to jeopardy for nothing."
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> 4.The High Court then quoted into extenso from the judgment in Swapan Guha case' and laid particular emphasis on the following passage: (SCC p. 598, para 66) "If, on the other hand, the Court on a consideration of the relevant materials is satisfied that no offence is disclosed, it will be the duty of the Court to interfere with any investigation and to stop the same to prevent any kind of uncalled for and unnecessary harassment to an individual."

to conclude that the materials brought on record clearly showed that the proceeding impugned before it was an abuse of the process of the court.

5.In the case of Swapan Kumar Guhal this Court was moved at a stage when investigation was being carried on and the question for its consideration was as to whether the first information report lodged therein disclosed an offence under Section 4 read with Section 3 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 entitling the police to undertake the investigation. This Court examined that question with reference to the facts of the case and held that the allegations did not attract the provisions of the above Act. The High Court, therefore, was not at all justified in placing reliance upon the case of Swapan Kumar Guhal.

6.Having regard to the fact that the offences, for which charge-sheet was submitted in the instant case and cognizance taken, were triable as a warrant case the Magistrate was to proceed in accordance with Sections 239 and 240 of the Code, at the time of framing of the charges. Under the above sections, the Magistrate is first required to consider the police report and the documents sent with it under Section 173 CrPC and examine the accused, if he thinks necessary, and give an opportunity to the prosecution and the accused of being heard. If on such consideration, examination and hearing the Magistrate finds the charge groundless he has to discharge the accused in terms of Section 239 CrPC; conversely, if he finds that there is ground for presuming that the accused has committed an offence triable by him he has to frame a charge in terms of Section 240 CrPC.

1 (1982) 1 SCC 561 : 1982 SCC (Cri) 283 : AIR 1982 SC 949

7.If charges are framed in accordance with Section 240 CrPC on a finding that a prima facie case has been made out as has been done in the instant case the person arraigned may, if he feels aggrieved, invoke the revisional jurisdiction of the High Court or the Sessions Judge to contend that the charge-sheet submitted under Section 173 CrPC and documents sent with it did not disclose any ground to presume that he had committed any offence for which he is charged and the revisional court if so satisfied can quash the charges framed against him. To put it differently, once charges are framed under Section 240 CrPC the High Court in its revisional jurisdiction would not be justified in relying upon documents other than those referred to in Sections 239 and 240 CrPC; nor would it be justified in invoking its inherent jurisdiction under Section 482 CrPC to quash the same except in those rare cases where forensic exigencies and formidable compulsions justify such a course. We hasten to add even in such exceptional cases the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence.

8.Apart from the infirmity in the approach of the High Court in dealing with the matter which we have already noticed, we further find that instead of adverting to and confining its attention to the documents referred to in Sections 239 and 240 CrPC the High Court has dealt with the rival contentions of the parties raised through their respective affidavits at length and on a threadbare discussion thereof passed the impugned order. The course so adopted cannot be supported; firstly, because finding regarding commission of an offence cannot be recorded on the basis of affidavit evidence and secondly, because at the stage of framing of charge the Court cannot usurp the functions of a trial court to delve into and decide upon the respective merits of the case.

9.On the conclusions as above we allow these appeals, set aside the impugned order and remand the matter to the High Court to dispose of the petitions of the accused respondents in accordance with law and in the light of the observations made hereinbefore.