

Dr. Subodh Jain vs The State Of Madhya Pradesh on 20 January, 2016

Author: P.K. Jaiswal

Bench: D.K. Paliwal, P.K. Jaiswal

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WA No.440/2015

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE
D.B.: Hon'ble Shri P.K. Jaiswal
Hon'ble Shri D.K. Paliwal, JJ.
Writ Appeal No.440/2015
Dr. Subodh Jain s/o Suhagmal Jain
Versus
The State of Madhya Pradesh & others

Shri Vivek Dalal, learned counsel for the appellant.
Shri Vijay Assudani, learned counsel for respondents No.4 to
6.

ORDER

(Passed on this 20th day of January, 2016) Per P.K. Jaiswal, J.

The appellant (respondent No.4 in the writ petition) calls in question the legality of order dated 23.09.2015 passed by the Single Bench of this Court, partly allowing Writ Petition No.6398/2015 filed by respondents No.4, 5 and 6 (writ petitioners).

2. The writ petition under Article 226 of the Constitution of India was filed with the following relief:
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"7.1 Issue appropriate writ, order or direction directing respondents No.1 to 3 to register FIR on the complaint dated 13.07.2015 (Annexure P/6) and notice dated 24.08.2015 (Annexure P/7) submitted by the petitioner.

7.2 Allow this Petition with costs. 7.3 Any other and further orders as may be deemed fit by this Hon'ble Court may kindly be passed in favour of the petitioner."

3. The appellant, respondent No.7 and respondents No.4, 5 and 6 were Directors / Shareholders in the company popularly known as Saubhagyamal Hospital & Research Centre, which is running Synergy Hospital from Vijay Nagar, Indore. Due to certain illegalities and irregularities, Company Petition No.16/2014 was filed before the Company Law Board, Mumbai. In the said company petition, respondents No.4, 5 and 6 gave an offer to either purchase shares of appellant and respondent No.7 and / or sale their shares to appellant and respondent No.7 at a cost of

Rs.80,000/- per share. In pursuance to the said offer, appellant and respondent No.7 decided to purchase shares of respondents No.4, 5 & 6 and others; and a consent terms was filed in the company petition and in terms of the said consent terms, vide order dated 15.12.2014, the appellant and respondent No.7 were to make payment to respondents No.4, 5 and 6 within six months and till then they were restrained from creating any third party rights over the assets of the company. Relevant Clause (3) (4) and (5) of the consent terms reads, as under: -

"3. The Respondent No.2 Mr. Anil Jain, 3 Dr. Subodh Jain along with Dr. Sunil Rajan (herein after referred to as the "Respondents") shall purchase 1070 (One Thousand Seventy) equity shares of the Respondent No.1 Company (the "Sale Shares") for aggregate consideration of Rs.8,56,00,000/- (Rupees Eighty Crores Fifty Six Lakhs only) at the rate of Rs.80,000/- (Rupees Eighty Thousand) per share from the shareholders of Respondent No.1 Company whose names are as under: -

Sr. Name of the Shareholder / Transferor Director No. of Sale Shares Total 1070
Note: The petitioners and other Shareholders at Sr. No.1 to 7 are collectively referred to as the "Petitioners & others".

4. The entire consideration towards the purchase of Sale Shares shall be paid by the Respondents to the Petitioners & Others in four (4) equal installments of Rs.2,14,00,000/- (Rupees Two Crore Fourteen Lakhs only) each payable at forty five (45) days interval, and out of the above, the first of the installment shall be paid in two tranches, consisting of 5% (Rs.42,80,000/- Rs. Forty two lacs Eighty thousand) payable at the time of execution of the present consent terms and the balance 20% (Rs.1,71,20,000/- Rs. one crore seventy one lacs twenty thousand) shall be payable within a period of thirty days from the execution of the present consent terms and the respondents shall deposit of post dated cheques, the last one of which will be payable before the expiry of six (6) months from the date of the consent terms becoming effective through the Order of the Hon'ble Company Law Board.

5. Until realization of the consideration amount to the Petitioners & Others as provided in Clause 4 above, the Respondents shall not transfer, dispose off and or create third party rights in any manner whatsoever, except in the ordinary course of business including the Banks for financial facilities, in any of the assets, fixed and movable of the Respondent No.1 Company."

4. It is alleged that when the full amount of shares was not paid to respondents No.4, 5 and 6, they inquired into the matter and after enquiry, it came into their knowledge that appellant (Dr. Subodh Jain), respondent No.7 (Anil Jain), respondent No.8 (Parakh Jain), respondent No.9 (Ramnaresh Singh Ghosh), respondent No.10 (Rituraj Sharma) and respondent No.11 (Vinay Deriya) in collusion with each other have committed offence of preparation of forged document, cheating, breach of trust and embezzlement of company property, and thus, have committed criminal offence. The aforesaid allegations have been made by respondents No.4, 5 and 6 in Clause (i) to Clause (iv) of paragraph No.5.8 of the writ petition and Clause (a) and Clause (b) of paragraph No.5.9 of the writ petition, which reads, as under: -

"(i) That Subodh Jain (Respondent No.4) has taken loan of 21 crores from Religare Fin Investment Ltd. for acquiring assets for the company and have transferred the said amount to five companies namely Bright Laundry and House Keeping Pvt. Ltd, Indore Manpower Solutions Pvt. Ltd., Real Grain India Pvt.

Ltd., Malwa Remedies Pvt. Ltd. and Glossy Medi Equipment Pvt. Ltd. wherein the directors are close relatives of Dr. Subodh Jain viz his brother in law i.e. Shri Ajit Kumar Deriya his close relative, Parakh Jain his sister in law Manju deriya his close associate and employee in Synergy Hospital Rituraj Sharma his brother in law, Ajit Kumar, his close associate and employee in Synergy Hospital Shri Ram Naresh Singh Ghosh.

(ii) That it is worth mentioning here that all these four companies were incorporated a day or two prior to transaction like Malwa Remedies Pvt. Ltd. was incorporated on 07.04.2015, Real Gain India Pvt. Ltd. was incorporated on 07.04.2015, Glossy Medi Equipment Pvt. Ltd. was incorporated on 08.04.2015 Bright Laundry and House Keeping Pvt. Ltd. was incorporated on 08.04.2015, Indore Manpower Solutions Pvt. Ltd. was incorporated on 07.04.2015, a copy of the incorporation certificate and list of directors of all these companies are annexed as Annexure P/3 (colly) & Annexure P/4 (colly) respectively.

(iii) That just after a few days after incorporation of said companies, the amount of loan received by Saybhagya Hospital and Research Centre Pvt. Ltd. was transferred to these companies which was used for purpose of shares, thus by window dressing of accounts and by preparation of forged documents offence of cheating was committed by accused persons because the condition for purpose of shares was to purchase the shares from own fund and not from the borrowed capital that too after mortgaging the assets of the company by putting additional burden on company.

(iv) That to substantiate these averments, petitioners say and submit that on 10.04.2015 a sum of Rs.2,50 crores was transferred from Saubhagya Hospital and Research Centre to Malwa Remedies Pvt. Ltd., similarly on 10.04.2015 itself a sum of Rs.2.20 crores was transferred to Indore Manpower Solutions Pvt. Ltd. and a sum of Rs.2.20 crores was transferred to Bright Laundry and House Keeping Pvt. Ltd., the said companies have paid the amount for purpose of shares of petitioners as well as Dr. Ravi Nagar, Dr. Hari Prasad Yadav, Dr. Sandeep Julfa, Nitin Modi, and Seema Lodha. The said fact will be evidently clear from bank statements of all these companies copies of which are annexed herewith as Annexure P/5. a. That they have taken loan for advancement of operations of the company but have diverted the funds to the newly incorporated companies wherein all their relatives are in realm of affairs with a clear intention to purchase shares of petitioners and other shareholders which is amounting to offence of cheating and criminal breach of trust.

b. That accused persons in collusion with each other have created fictitious companies and the companies which are having no business and have no concern with the hospital industries have transferred such huge amount and said amount has been transferred in violation to the terms of grant of financial assistance thereby creating an offence of criminal breach of trust."

5. The grievance in the writ petition is that on 13.07.2015 (Annexure P/6) a written report was submitted by respondents No.4, 5 and 6 (original writ petitioners) before the Station House Officer of the Police Station, Vijay Nagar, Indore, who did not take any action on the same. Thereafter, on 24.08.2015 a notice was issued to the Inspector General of Police, Senior Superintendent of Police, concerned Station House Officer to direct the Senior Superintendent of Police to act in accordance with law and mandate of Hon'ble Supreme Court in the case of Lalita Kumari v. Government of U.P. & others reported in 2014 (2) SCC 1 = 2013 (5) MPHT 336 (SC) and to register First Information Report on the complaint made by respondents No.4, 5 and 6; failing which, they shall initiate appropriate proceedings before the Competent Court of jurisdiction.

6. According to the writ petitioners, in spite of notice, no steps were taken by respondents No.1 to 3, and therefore, writ petition was filed on 10.09.2015. As per notice dated 24.08.2015 (Annexure P/7), following allegations have been made against the appellant and others and have committed criminal offence, which reads, as under: -

"a. That they have taken loan for advancement of operations of the company but have diverted the funds to the newly incorporated companies wherein all their relatives one in realm of affairs with a shareholders which is amounting to offence of cheating and criminal breach of trust.

b. That accused persons in collusion with each other have created fictitious companies and the companies which are having no business and have no concern with the hospital industries have transferred such huge amount and said amount has been transferred in violation to the terms of grant of financial assistance thereby creating an offence of criminal breach of trust."

7. Learned Writ Court relying on the decision / dictum of the Apex Court in the case of Lalita Kumari v. Govt. of U.P. (supra) has held that there was a mandatory duty cast on the Police Officers for registering the FIR, primarily if prima facie cognizable offence is made out and there are allegations of forgery, cheating, breach of trust and embezzlement of company property in the present case and collusion seems to have already begun. However, there is no recording of the FIR under the circumstances and directed that respondent No.3 shall register the FIR but may not take any coercive action like arrest against respondents No.4 to 9, without giving prior notices since fundamental rights of the respondents should not be infringed. Relevant part of order dated 23.09.2015 passed in Writ Petition No.6398/2015, reads as under: -

"Considering the above submissions, I find that however, as per direction by the Apex Court there was a mandatory duty cast on the Police Officers for registering the FIR, primarily if prima facie cognizable offence is made out and there are allegations of forgery, cheating, breach of trust and embezzlement of company property in the present case and collusion seems to have already begun. However, there is no recording of the FIR under the circumstances. The Apex Court in the matter of Lalita Kumari v. State of U.P. [2013 (5) MPHT 380] has also observed that:

"86. The underpinnings of compulsory registration of FIR is not only to ensure transparency in the criminal justice delivery system but also to ensure 'judicial oversight'. Section 157 (1) deploys the word 'forthwith'. Thus, any information received under Section 154 (1) or otherwise has to be duly informed in the form of a report to the Magistrate. Thus, the commission of a cognizable offence is not only brought to the knowledge of the investigating agency but also to the subordinate judiciary.

88. The registration of FIR either on the basis of the information furnished by the informant under Section 154 (1) of the Code or otherwise under Section 157 (1) of the Code is obligatory."

In view of the above, I find that respondents cannot refuse to register the FIR and it is directed that respondent No.3 shall register the FIR but may not take any coercive action like arrest against the respondents No.4 to 9 without giving prior notices since fundamental rights of the respondents should not be infringed. The Apex Court in the matter of Arnesh Kumar v. State of Bihar & another SLP (CRL) No.9127/2013 decided on 2 July, 2014 directed that:

nd "Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorize detention casually and mechanically." relied on.

Any hence under the circumstances the persons should not to be falsely implicated, if any legal process is to be instituted, proper notices to be given to other side.

With the aforesaid observations and directions, the petition is partly allowed to the extent herein above indicated."

8. Learned counsel for the appellant has submitted that the impugned order has been passed in violation of the law laid down by the Apex Court in the case of Lalita Kumari v. Govt. of UP (supra) and Arnesh Kumar v. State of Bihar [SLP (CRL) No.9127/2013 decided on 2nd July, 2014]. The dispute between the parties is purely civil dispute and no prima facie material evidence is available for registering first information report against the appellant. He placed reliance on various documents, conditions and decision / law laid down by the Apex Court in case of Gangadhar Janardan Mhatre v. State of Maharashtra & others reported in (2004) 7 SCC 768 and submitted that without availing the remedy available under the Code of Criminal Procedure, 1973, respondents No.4 to 6 could not have approached the High Court by filing a writ application. He also placed reliance on the decision in the case of Abhinandan Jha & others v. Dinesh Mishra reported in AIR 1968 SC 117 and submitted that the learned Writ Court erred in directing respondents No.1 to 3 for registering first information report and prayed for setting aside of the impugned order.

9. In reply, Shri Vijay Assudani, learned counsel for respondents No.4 to 6 has drawn our attention to Section 67 of the Companies Act, 2013 and paragraphs No.83, 88, 95 and 102 of the decision in the case of Lalita Kumari v. Govt. of UP (supra) and the decision in the case of Chandra Deo Singh v.

Prokash Chandra Bose & another reported in AIR 1963 SC 1430 and submitted that for the purpose of enabling the Police to start investigation, it is open to the Magistrate to direct the Police to register an FIR and there is nothing illegal in doing so. After registration of the FIR, it involves only the process of entering the substance of the information relating to the commission of the cognizable offence and book kept by the Station House Officer of the Police Station, as indicated in Section 154 of the Code. He submitted that it is the duty of the Station House Officer of the Police Station to register FIR relating to cognizable offence disclosed by the complainant, because that Police Officer could take further steps only thereafter. He further submitted that learned Writ Court relying on the Constitutional Bench decision of the Apex Court in the case of Lalita Kumari v. Govt. of UP (supra) directed that respondent No.3 shall register FIR, but may not take any coercive action like arrest against the appellant and other respondents and thus, no case is made out to interfere with the impugned order, and prayed for dismissal of the writ appeal.

10. Paragraphs No.83, 88, 95, 102 and 110 of the Constitutional Bench decision in the case of Lalita Kumari v. Govt. of UP (supra) are relevant and reproduced, as under: -

"83. The object sought to be achieved by registering the earliest information as FIR is inter alia two fold: one, that the criminal process is set into motion and is well documented from the very start; and second, that the earliest information received in relation to the commission of a cognizable offence is recorded so that there cannot be any embellishment etc., later.

88. The registration of FIR either on the basis of the information furnished by the informant under Section 154 (1) of the Code or otherwise under Section 157 (1) of the Code is obligatory. The obligation to register FIR has inherent advantages:

- a) It is the first step to 'access to justice' for a victim.
- b) It upholds the 'Rule of Law' inasmuch as the ordinary person brings forth the commission of a cognizable crime in the knowledge of the State.
- c) It also facilitates swift investigation and sometimes even prevention of the crime. In both cases, it only effectuates the regime of law.
- d) It leads to less manipulation in criminal cases and lessens incidents of 'ante-dates' FIR or deliberately delayed FIR.

95. Burking of crime leads to dilution of the rule of law in the short run; and also has a very negative impact on the rule of law in the long run since people stop having respect for rule of law. Thus, non-registration of such a large number of FIRs leads to a definite lawlessness in the society.

102. Besides, the Code gives power to the police to close a matter both before and after investigation. A police officer can foreclose an FIR before an investigation under Section 157 of the Code, if it appears to him that there is no sufficient ground to investigate the same. The Section itself states

that a police officer can start investigation when he has a 'reason to suspect the commission of an offence'. Therefore, the requirements of launching an investigation under Section 157 of the Code are higher than the requirement under Section 154 of the Code. The police officer can also, in a given case, investigate the matter and then file a final report under Section 173 of the Code seeking closure of the matter. Therefore, the police is not liable to launch an investigation in every FIR which is mandatorily registered on receiving information relating to commission of a cognizable offence.

110. Therefore, in view of various counter claims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.

Conclusion/Directions:

111. In view of the aforesaid discussion, we hold:

- i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.
- ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.
- iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered.

In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

a) Matrimonial disputes/ family disputes

b) Commercial offences

c) Medical negligence cases

d) Corruption cases

e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

11. On due consideration of the nature of allegations made against the appellant and respondents No.7 to 11 and as the matter is pending before respondents No.1 to 3, we cannot examine those questions and give our reasoning as to whether cognizable offence is made out against them or not. It is for respondents no.1 and 2 to examine the matter, as per law laid down by the Constitutional Bench of the Supreme Court and looking to the prima facie allegations made against the appellant and respondents No.7 to 11 and for the purpose of enabling the Police to start investigation, registration of an FIR is must.

12. For these reasons, we are of the view that the learned Writ Court has not committed any legal error in passing the impugned order and directing respondents No.1 to 3 to register an FIR and inquire into the matter. No case to interfere with the impugned order dated 23.09.2015 passed by the Single Bench of this Court in Writ Petition No.6398/2015 is made out, because while issuing the

aforesaid direction, learned Writ Court protected the right of the appellant and respondents No.7 to 11.

13. Writ Appeal No.440/2015 has no merit and is dismissed, without any order as to costs.

(P.K. Jaiswal)
Judge

(D.K. Paliwal)
Judge

Pithawe RC