

Vimla Agarwal Vs. State of Rajasthan

Vimla Agarwal Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/759149

Court : Rajasthan

Decided On : Oct-07-1988

Reported in : 1989WLN(UC)213

Judge : V.S. Dave, J.

Appeal No. : S.B. Cr. Misc. Petition No. 175 of 1988

Appellant : Vimla Agarwal

Respondent : State of Rajasthan

Advocate for Def. : Mr. S.R. Bajwa

Advocate for Pet/Ap. : Mr. Dhankar

Disposition : Petition dismissed

Judgement :

V.S. Dave, J.

1. This is an application under Section 482, Cr.P.C. where by the petitioner has prayed for calling the entire record pertaining to the case end to quash the investigation being carried on by police in persuance of the FIR No. 83/88 of Police Station Kotwali, Jaipur and to further direct that all actions taken so far including sealing of the shops and the premises be set aside.

2. Facts giving rise to this petition, under Section 482 Cr.P.C. are that one Smt. Banarasi Devi wife of Shri Shree Niwas Agarwal filed a complaint through her husband, a Tax-practitioner, against her younger son, Rajendra Kumar, his wife Smt. Vimla and one unknown person for offences under Sections 406, 409, 426, 467, 468, 471, 477A and 120B of the Indian Penal Code in the Court of Additional Chief Judicial Magistrate No. 5, Jaipur City, Jaipur. The allegations levelled in the complaint are that Shree Niwas, who is also power of attorney holder of his wife Smt. Banarasi Devi, has two sons-Ram Babu and Rajendra Kumar. Banarasi Devi opened a shop in Tripolia Bazar, Jaipur for giving utensils on hire in 1963. This shop was then shifted in shop No. D-50, Atish Market, Jaipur and was styled as Rajas than Tent House in 1975. At various time there were various partners in this firm but in 1978 it became the sole proprietorship firm of Smt. Banarasi Devi. Thereafter, on 10th May, 1978 she accepted the partnership of her younger son Rajendra Kumar. A complete list of property was prepared and was entrusted to Rajendra Kumar. He, however, had no investment in firm since he had just come out of the school in that year. Smt. Banarasi Devi was running one more business at D-48, Atish Market, Jaipur since 1965 which was taken on rent in her name on 16th November, 1965 and was in partnership with Mohanlal Gupta and Indrasen Jain. This firm was closed down in 1967. She then started business in the name of Shree Rajasthan Bartan Store. Thus, they opened the shop in D 48 and D-50 and also keep their material in various other godowns. The firm is an income-tax payer and has books of accounts. It is alleged that values of the goods have shown With deprivation else the market value of the goods mentioned in the list placed before the Income-tax Department is on much higher side. Banarasi Devi alleged that she had full faith in her son and did not use to interfere with books of accounts as she was illiterate. In 1982 Rajendra Kumar Agrawal and his wife Vimla separated from the family and both of them started living separately. It was alleged that non-petitioners started acting in an arbitrary manner and when accounts were asked from him, he used to start picking up quarrel. Then on inquiry, it was learnt that he has made false entries in the account-books to devour the money of the partnership firms. He has also shown very little stock in the books. Not only this, but it was also alleged that accused Rajendra Kumar withdrew the money from Banarasi Devi's account and deposited the same in his wife's account Several

other allegations were levelled from para No. 8 onwards of 8 the complaint. It was also mentioned in the complaint that Rajendra Kumar planned to devour the entire money of the firm so he conspired with his wife and in persequence of same even the name of 'Rajasthan Tent House' was unilaterally altered to 'Shree Rajasthan Tent House' and Smt. Vimla Agrawal was made the sole proprietor of the firm. The name was also changed on the goods of the firm accordingly. Some allegations about the selling of the goods and transferring the partnership goods to individual and recovery of some money from certain persons named in the complaint were also alleged. When this complaint was received by the Magistrate, the same was Sent to Police Station, City Kotwali under Section 156(3) Cr.P.C. for investigation. Police during the course of investigation sent notice to the petitioner seeking information relating to the accounts in accounts-books. The accused persons meanwhile also approached the Court of Sessions, Jaipur City for seeking indulgence of anticipatory bail and the same was extended to them. Police during the course of investigation sealed (be shops D-48 and D-50 situated in Atish Market, Jaipur, art? (be premises of House No, 3714, Babu ka-Tiba, Surajpol, Jaipur godown at Mandir Pratapeshwar, Chandani Chowk, City Palace, Jaipur and the show-room situated at A-8, Sethi Colony, Jaipur. It is, thereafter, that this petition was moved on grounds mentioned in the petition. It is pertinent to mention here that this petition, has also a reference to the civil matters pending before the parties.

3. Before initiating the proceedings in criminal courts, a civil suit had already been filed by Banarasi Devi in the Court of Additional District Judge No. 1, Jaipur City, Jaipur in March, 1987 for rendition of accounts and dissolution of partnership. Application for appointment of Receiver and appointment of a Commissioner to prepare a report have also been moved which all are still pending.

4. This petition was filed when the learned members of the bar were on strike and Hon'ble Kasliwal, J. admitted the same on April 2, 1988 The parties to the petition including the SHO, Police Station Kotwali appeared before me on 7th April. 1988. Since the running business has been brought to an end by abruptly sealing of all the business premises I passed an interim order which is being reproduced as under:

Heard the parties and perused the diary. I have also gone through the reply filed by the complainant. Looking to the facts and circumstances of the case, I feel the ends of justice would meet if Smt. Vimla Agrawal is permitted to carry on the business on the following terms and conditions;

(a) That an inventory of the property shall be prepared in presence of both the parties by Shri Babulal Sharma, Advocate, who is appointed as a Commissioner in this case and he shall be paid Rs. 1,000/- to be divided equally by both the parties;

(b) that no property shall be disposed of, sold or otherwise alienated in any manner without the permission of this Court;

(c) that the petitioner shall furnish a solvent surety of Rs. 4,00,000/- (Rupees four lakhs) to the satisfaction of the Additional Chief Judicial Magistrate No. 5, Jaipur City, Jaipur.

Shri Babulal Sharma, Advocate shall prepare the inventory in presence of both the parties as well as the Police Officer to be deputed by the SHO, Police Station, Kotwali, Jaipur. As soon as the surety is furnished, the petitioner shall be permitted to start her business, SHO Police Station, Kotwali, Jaipur shall ensure that till the inventory is not complete, the goods to be taken out should be removed after making proper entries.

The copy this order shall be given to the SHO, Police Station, Kotwali today with a spare copy meant for Shri B.L. Sharma, Advocate to whom the SHO shall get the order served. It is expected that Shri Sharma will start acting upon the order from tomorrow onwards and finish it as early as possible.

Put up after three weeks.

5. Reply was submitted by the respondent and Hon'ble Kapoor, J. on 11th May, 1988 directed that the case shall be finally disposed of after vacations. Thereafter an application had been filed by learned Counsel for the petitioner for modifying the order but the same remained undisposed and the case was listed for orders on 14th July, 1988 on which day this Court made it clear to learned Counsel for the both the parties that the entire case shall be heard and disposed of at this stage.

This order was passed keeping in view the order passed by Hon'ble Kapoor J. on 11th May, 1988.

6. It is contended by Mr. Dhankar, learned Counsel for the petitioner that this is a fit case where provisions of Section 482 Cr.P.C. should be invoked in as much as the civil proceedings are virtually sought to be converted into criminal one. His submission is that what could not be achieved by the complainant in Civil Court has been achieved through the intervention of police in criminal proceedings. It is submitted that this court has jurisdiction to interfere and quash FIR because the complainant herself had invoked the jurisdiction of the criminal Court under the Code of Criminal Procedure and had not chosen the forum of police for investigating the case. When the complaint was filed, it was only thereafter that the Magistrate invoking the powers referred the matter for investigation under Section 156(3) Cr.P.C. therefore, Court having been seized of the matter at one time, this Court can interfere under Section 482 Cr.P.C. It is submitted that there are two parts of the prayer and even assuming without admitting that this Court does not interfere in the police investigation yet the court has to grant relief to the petitioner and quash that part of the action of the police by which the running business has been brought to a close.

7. Submitting that jurisdiction of this Court can always be invoked for quashing the proceedings in a criminal case under Section 482 Cr.P.C. even at the initial stage, the learned Counsel has referred to various cases, which will be discussed here in after.

8. It is submitted by the learned Counsel for the petitioner that in the light of the aforesaid cases, there remains no doubt that the court has ample power to interfere in the cases where the ends of justice so desires or where there is an abuse of the process of Court. It is submitted that in the instant case, civil suit is pending for last more than one year, prior to filing of the present complaint where an application for interim relief has also been filed with a prayer for appointment of Receiver. It is submitted that criminal justice system is adopted by non-petitioner so that petitioner may suffer irreparably. It is submitted that proper order may be passed so that nobody's rights are affected.

9. Mr. S.R. Bajwa, learned Counsel for the respondent, submits that this Court had no jurisdiction express or implied to quash the FIR at this stage. It is submitted that exercising the jurisdiction of the Civil Court would not debar the complainant to initiate the criminal proceedings against the petitioner and that it is too pre-mature to approach this Court because it cannot be said that the police is going to file a charge-sheet against the petitioner. The result of the investigation cannot be forestalled. He submitted that in the cases cited by the learned Counsel for the petitioner, the prosecution had started and the matters were not pending before the police for investigation by they were pending before the Court and, therefore, the prosecution was stayed. It is submitted that Mr. Dhanker has categorically taken a stand that he brings his case within third part of the Section 482 Cr.P.C., i.e. he has come for securing the ends of justice while the case law cited by him are not applicable at all because in those cases the prosecution have been quashed holding the same to be abuse of the process of the Court has to go into the allegation made in the complaint and if prima facie there is a case for investigation then no interference should be drawn by the courts. Even otherwise, it is submitted that it is only under Articles 226 and 227 of the Constitution of India that the complainant could approach this Court when the matter was before police because under Section 482 Cr.P.C. the scope cannot be extended to office extent that even investigation before police is quashed. Learned counsel has relied on Emperor v. Khwaja Nazir Ahmed AIR 1945 Privy Council 18, Jehan Singh v. Delhi Administration : 1974 CriLJ802 , State of West Bengal v. N. Basak : [1963]2SCR52 , Kurukshetra University and Another v. State of Haryana and Another : 1977 CriLJ1900 . Mis. Maheshwari Oil Mill v. The State of Bihar 1978 Cr. Lj 659, State of Punjab v. Dharam Singh and Ors. (1987 Supp) Supreme Court Cases 89, and Raj Kapoor and Ors. v. State and Ors. 1980 (1) Supreme Court Cases 43. It is submitted that in fact, if the petitioner was aggrieved by the closure of her business, she had a remedy by invoking the jurisdiction of the Court under Section 457 Cr.P.C. Learned counsel has submitted that in the case of Madho Rao Jiwaji Rao Scindia and Anr. v. Ambhajirai Chandrojirai Angre and Ors. : 1988 CriLJ853 which has been relied upon by both the parties clinches the issue and there is no room for doubt that 'prosecution' can be quashed at initial stage but this is not an authority that 'investigation' could be quashed at the initial stage as

under Code of Criminal Procedure (here is no power express or implied vested in any Court to direct the police not to investigate into the case or to form an opinion other than what it can form during investigation. He submits that the word 'prosecution used in this case is of extreme importance Similar is the situation in State v. Dharam Singh's case. It has further been submitted that scrutinising the legal import of language used in complaint should not be such which fore closes the petitioner's case, it is submitted that a bare perusal of the complaint discloses a prima facie case for investigation and this Court cannot substitute its order for the order of the Magistrate to direct an investigation. If the petitioner so chooses, he can seek any other remedy if she is entitled to

10. Mr. Dhanker, in rejoinder reiterated his proposition that no criminal case is made out on the perusal of the complaint and that the same has been mala fide filed. His submission is that so far as the application under Section 427 Cr.P.C. was concerned that too had been filed before the Magistrate.

11. I have heard learned Counsel for the parties and have gone through the record as well as the entire case law cited.

12. At the outset I may observe that this is one of the very unfortunate litigations wherein on one side are younger son and the daughter in law and on the other are father, mother and elder son and the parents had to approach the civil and the criminal court against son and daughter in law. This is an example as to how far because of the lust for money materialistic things the pious relationship between father and son, mother and son and brother and brother can be changed into enmity relations As I would not cherish such sort of litigations, when this case came up before me on 5th April, 1988. I called both the sides in the Court because lawyers were on strike. When they appeared, I told them they should explore the possibility of amicable settlement because this sounds bad when the parents and the sons are against each other in courts may be in civil or criminal may be for property otherwise. But on 7th April, 1988 when they reiterated that there appears to be DO chance for the settlements. I passed an interlocutory order which has been quoted above.

13. There are only two points involved in this case one is whether this is a fit case where the investigation can be quashed and should be quashed and secondly, whether the action of the police in sealing the shops and taking over the premises be set aside.

14. Coming to the first point, I would first like to deal with the cases cited by the learned Counsel for the parties. IN *Protibha Rani v. Suraj Kumar* AIR 1985 Supreme Court 628, the learned Counsel relied on the following observations:

It is well settled by a long course of decisions of this Court that for the purpose of exercising its power under Section 482 Cr.P.C. to quash a FIR or a complaint the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se.

15. Learned counsel submits that the aforesaid words 'for the purpose of exercising its power under Section 482 Cr.P.C. to quash an FIR or a complaint' clearly indicate that their Lordships have visualised the circumstances that proceedings can be quashed under Section 482 Cr.P.C. even at the stage when the FIR and complaint is under investigation. In this case the complainant appellant was married to respondent in 1972 and the allegations was that dowry was demanded in that marriage. One of the allegations was that the parents and relatives gave dowry articles for Rs. 1,60,000. Even after this, when she went to her in-laws, she was harassed and beaten and ultimately turned out with her child after five years of the marriage. The goods which were taken at the time of marriage in dowry were also not retained and, therefore, a criminal case was instituted for offence under Section 406 IPC besides the other proceedings under Section 125 Cr.P.C. and so on. This complaint was filed against various persons who were summoned by the learned Magistrate. Thereafter the application was filed in the High Court for quashing the proceedings and the High Court quashed the complaint of the wife relying on a Full Bench decision of that High Court in *Vinod Kumar's* case. It is thereafter that *Pratibha Rani* approached the Supreme Court and their Lordships by a majority judgement while reversing the judgment of the High Court made the aforesaid observations.

16. Thus the facts and circumstances of the aforesaid case are totally distinguishable particularly because in that case the Magistrate had taken the cognizance and summoned the accused in his court and it was thereafter that the proceedings were quashed, It was not that the investigation pending before the police was quashed as are the facts in the present case.

17. In *R.P. Kopoor v. State of Punjab* AIR 1960 Supreme Court 866 where in their Lordships observed as under:

The inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice.

18. Learned counsel, on the strength of the aforesaid observations, wanted to canvass that his case falls under the latter part that in order to secure the ends of justice, inherent powers of this Court should be exercised. In this case, the papers had been filed in the Court under Section 173, Cr.P.C. as is apparent from the facts given in the judgment. Some allegations made against the petitioner in the FIR constituted certain offences and their Lordships held that there was no legal bar to the institution of proceedings commenced on the FIR or their continuance. Since the police did not submit the report for several months, the petition was filed for quashing the investigation. The High Court had refused to quash and their Lordships of the Supreme Court confirmed the order. Hence, this case does not lay down the proposition that High Court in its inherent powers should quash the investigation.

19. In *Madhavrao Jiwaji Rao Scindhia and Anr. v. Samhhajirao Chandroji Rao Angre and Ors.* (supra) the learned Counsel relied on the following observations:

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 established 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

utilised for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction are 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.

20. In *State of West Bengal and Ors. v. Swapan Kumar Guha and Ors.* : 1982 CriLJ819 it has been held that the High Court would not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed, if how ever, the material does not disclose an offence, no investigation should normally be permitted and in that case the High Court can quash the investigation. Their Lordships upheld the judgment and dismissed the appeal of the State of West Bengal. I will deal with this case at a later stage because this has an important bearing on the law involved in the instant case.

21. The case of *Municipal Corporation of Delhi v. Ramkishan Rohtagi and Ors.* : 1983 CriLJ159 was that of quashing the trial under Section 482, Cr.P.C. and, therefore, has no bearing on the facts of the present case.

22. In *State of Punjab v. Dharam Singh and Ors.* 1987 Cr. LR. (SC) 618 the following observations have been made.

Thus what the High Court has done is to go far beyond the contents of the First Information Report and enter into a discussion on the merits of the case before the Investigating Agency had conducted investigation and collected evidence.

23. From these words learned Counsel wanted to infer that the court could quash the investigation while in this very case it has been held that:

As such the quashing of a first information report will amount to restraining the police from performing the duties enjoined upon them by him.

24. *Bhivraj and Anr. v. Ravindra and Anr.* 1987 (1) Crimes 173 was again a case of quashing the prosecution under Section 482 Cr.P.C. and hence is not applicable. Reference was also made to *Ismail Merchant and Anr. v. The State of Rajasthan and Miss Sunayana Mishra* 1988 Cr. LR (Raj) 211 and/. *Omprakash v.*

State of Rajasthan 1988 Cr. LR (Raj) 225.

25. A careful study of the aforesaid cases shows that their Lordships had been emphasizing on the importance of the Investigating Agency and has consistently been holding that in normal course, the police authorities should not be restrained from performing their duties enjoined upon them by law and investigating the cases. In none of the cases cited, the investigation has been quashed though in some of the cases once the matter was before the Court their Lordships quashed the prosecution. A distinction has been drawn between 'prosecution, and investigation' and a case where the process is issued and where the parties asked for quashing the taking of the cognizance of the complaint by issuance of the process. In my humble opinion it is because till that time, the accused has hardly any say into the matter and the police is only finding out or probing into the truth of the bundle of facts placed before the Investigating Agency for the alleged commission of offence. Whether a case for investigation is made out or not, it is for them to consider and then if no case is made out the police will file the final report before the Court. The only case where the observations have been made for quashing the investigation is *West Bengal and Ors. v. Swapan Kumar Guha and Ors.* (supra). In this case it was not under the inherent powers of the Court that the Court considered the case for quashing of the charge but it was under Article 226 of the Constitution of India that they had discussed the same. In this case, the entire case law has been reviewed by their Lordships including explaining *Emperor v. Khwaja Nazir Ahmed* (supra) and held that under our Constitution the only guarantee of personal liberty of a person is that he shall not be deprived of except in accordance with the procedure established by law. It was not under Section 482 Cr.P.C. or 561(A), Cr.P.C. as it existed prior to this law that the investigation has been quashed. On the contrary, their Lordships *Abhinandan Jha and Ors. v. Dinesh Mishra* AIR 1968 Supreme Court 117 held that the functions of the Magistrate and the police are entirely different. Their Lordships have gone to the extent of holding that police cannot be asked to form a particular opinion that is, when no charge-sheet is Pled, court cannot ask them to file the charge sheet. Thus, their Lord-ships have held that manner and method of conducting the investigation are left entirely to the police and the court has no power under any of the provisions to interfere with the same. Of course; the observations were made

in reference to a Magistrate but still they are of far reaching importance and may lead to a conclusion that the investigation is totally within the domain of the police where interference should not be done by courts. It is also because that the protection has been given by the legislation both against the person and property. If in a false case the investigation is going on and the petitioner feels that he shall be harassed and humiliated and may be detained wrongfully, he can always approach the court for anticipatory bail and thus, it would not be affecting his personal liberty. Similarly, if his property is seized or sealed, he can approach the Magistrate for releasing the same during the pendency of the investigation also under Section 457 Cr.P.C. Thus, when the safeguards have been provided both for the person and the property under the Code in the judicial, Courts, in my opinion, investigation should not be quashed and cannot be quashed in an application Under Section 482 Cr.P.C. Even in Madhavrao Scindhia case (supra) when their Lordships held that it can be quashed at the preliminary stage, their Lordships were considering the case after the summons had been issued against the appellants in that case for offence under Sections 406, 467 read with Section 34 and 120B, IPC. It was not during the course of investigation that their Lordships have quashed the proceedings.

26. After careful study of the aforesaid case law, I could lay my hands on the decision of Full Bench of Punjab and Haryana High Court in Vinod Kumar Sethi and Ors. v. State of Punjab and Another . Their Lordships have summarised the circumstances in which the Court should quash the first information report and consequent investigation even before a charge sheet is filed in the Court. Their Lordships have mentioned some requisite pre-conditions which are illustrative but not exhaustive and therein four circumstances have been shown in which first information report or the investigation should be quashed If the cases arising subsequently also to this case are read and whenever the investigations have been quashed, they are all virtually within the parameters mentioned in this judgment and thus I am in full agreement with the judgment reported in Vinod Kumar Sethi's case (supra) and am fortified in My view with the observations made in Madhavrao Scindhia's case (supra) and to borrow the phraseology of their Lordships of the Punjab and Haryana High Court I hold that I see no blanket bar against quashing of the first information report in the circumstances mentioned

here in below which are not exhaustive but illustrative:

(i) When the First Information Report, even if accepted as true, discloses no reasonable suspicion of a cognizable offence; as there is a complete legal bar for taking cognizance in the manner presented;

(ii) When the materials subsequently collected in the course of an investigation further disclose no such cognizable offence at all;

(iii) When the continuation of such investigation would amount to an abuse of power by the police thus necessitating interference in the end of justice; and

(iv) that even if the First Information Report or its subsequent investigation purports to raise a suspicion of a cognizable offence. the High Court can still quash if it is convinced that the power of investigation has been exercised mala fide.

27. Thus, to conclude, it should be the rarest of the rare case where interference should be made under Section 482, Cr.P.C. However, I find that the present case does not fall within the parameters laid down in Vinod Kumar Sethi's case (supra). Thus, I refuse to entertain the application under Section 482, Cr.P.C. for quashing the proceedings.

28. For the second prayer, this Court granted an interim relief to the petition because the lawyers were on strike and I wanted to safeguard the rights of the parties by an interim order keeping in view that neither proper legal assistance was to come forth nor the documents had been placed before me and since it was a matter of running business, I did so. The order of the criminal court is always co-terminus with the order of the Civil Court and I was informed that application in the Civil Court to that extent is also pending. In fact passing an order like the one under Section 482, Cr.P.C. would be usurping the jurisdiction of the other courts including that this can be decided in an application under Section 457 Cr.P.C. and the learned Magistrate is competent to pass an order. While the case was coming to an end; I was informed by the learned Counsel for the parties that the Civil Court has dismissed the application for appointment of the receiver. Learned

counsel for the non-petitioner submitted that, that was so done in view of the orders passed by this court. If the non-petitioners want and so advised then they can always move application for review of the order and it is for the court to review or modify the same in accordance with law. I may make it absolutely clear that I only made an interim arrangement which was during the pendency of the application under Section 482, Cr.P.C. with a prayer for quashing the investigation, and that lawyers were not available for either assistance of parties or the courts, since I am not inclined to entertain the revision petition, this order automatically goes.

29. The result is that the miscellaneous petitions had no force and is dismissed. How ever, before concluding, I here by grant eight weeks' time to the parties to obtain proper orders in respect of the sealing of the property, possession of the shops and running of the business from the court of competent jurisdiction either on civil side or criminal side as they deem proper.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com