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Court : Rajasthan

Decided On : Sep-13-1995

Reported in : 1995(2)WLN342

Judge : N.L. Tibrewal, J.

Appeal No. : S.B. Cr. Misc. Petitions Nos. 36, 65, 103, 134, 136, 141, 229, 231 and 518 of 1992

Appellant : Somti Devi and ors.

Respondent : State of Rajasthan and ors.

Disposition : Petition dismissed

Judgement :

N.L. Tibrewal, J.

1. All these petitions have been filed under Section 482 of Code of Criminal Procedure (for short 'Cr.P.C.') for quashing the investigation in pursuance of the crime registered against the petitioners for the offences punishable under Sections 420, 467, 468, 471, 120B IPC and Section 13(l)(d)(ii) of the Prevention of Corruption Act, 1988. While the investigation was on its way at the initial stage, the petitioners filed these petitions and succeeded in getting the following stay order:

In the meanwhile the parties shall maintain status quo, as obtaining today.

2. At the outset, it may be stated that in the respective reports there are serious allegation of mis-appropriation and mis-use of money granted by the Central Social Welfare Board for social welfare schemes. This amount was in lacs of rupees. It also contained complaint of falsification of accounts and documents prepared with a view to show that the amount given in grant were utilised by the concerned organisations/institutions registered under the Rajasthan Societies Registration Act. As per the allegations made in the FIR, a sum of Rs. 4,35,463/- were sanctioned as grant by the Central Social Welfare Board for Utilisation for social and welfare schemes. Some of the activities for utilisation of the amount related to organisation camps for development of children and to create awareness in the public, for development of Dairy 'Bal-Bari' Family Advisory Centre etc.

3. In FIR No. 201/91, which is under challenge, in Misc. Petition No. 65/92 the amount involved is Rs. 4,35,463/-; in FIR No. 202/91 in Misc. Petition No. 518/92 the amount involved in Rs. 8,13,579/-, in FIR No. 204/91 in Cr. Misc. Petition No. 134/92 the amount involved is Rs. 1,53,026/-, in FIR No. 198/91 in Cr. Misc. Petition No. 103/92 the amount involved is Rs. 1,00,350/-; in FIR No. 206/91 in Cr. Misc, Petition No. 136/92 the amount involved is Rs. 1,28,612/-; in FIR No. 199/91 in Cr. Misc. Petition No. 229/92 the amount involved is Rs. 1,62,413/-; in FIR No. 200/91 in Cr. Misc. Petition No. 231/92 the amount involved is Rs. 87,773/- in FIR No. 197/91 in Cr. Misc. Petition No. 141/92 the amount involved is Rs. 96,032/-; in FIR No, 203/91 in Cr. Misc. Petition No. 36/92, the amount involved is Rs. 3,78,727/-.

4. The then Additional Director-cum-Cashier of Social Welfare Department Smt. Hansa Devi apprehended that the amount of grant made available to the various voluntary organisations were mta-appropriated and mis-used by them, as such, she got the matter enquired. The inquiry so conducted revealed mis-appropriation and mis-utilisation of money in violation to the conditions under which the grant was made for social and welfare schemes. It also transpires that the employees of social welfare board were also involved and they were charging substantial amount for giving reports for making inspection of the institution. The inquiry report was also attached with the reports. On the basis of the averments made in the

report and facts contained in the inquiry report and other documents filed alongwith the inquiry report, criminal cases were registered as stated above. After registration of the case, some investigations were also carried on by the Investigating Agency, but before it could be completed the petitioners approached this Court and succeeded in getting halt in further investigation.

5. The learned Counsel for the petitioners vehemently contended that the allegations averred in various reports are, even if they are taken on their face value and accepted in their entirety, do not constitute a cognizable offence requiring even registration of a case. It was also contended that the allegation for the offence of mis-appropriation and misutilisation are full of falsity and vagueness, demonstrating only the personal and interest rivalry between the employees of the Social Welfare Department. It was also seriously contended that before releasing the amount of grant Bonds - were obtained from the President/Secretary or other representatives of the Institutions to refund the same in case the amount was not properly utilised or if there was any lacking in proper utilisation of the amount. Hence, it was at the most a civil matter between the Central Social Welfare Board and the concerned organisation/institution hardly warranting registration of a criminal case. It was, then, contended that ingredients of the offences under Sections 420, 467, 468, 471 and 120B IPC are completely lacking and that there was hardly any occasion to register the case under Section 13(1)(b)(ii) of Prevention of Corruption Act 1988 as the officers/ employees, who have been made co-accused in the case are not public servants.

6. On the other hand, the learned Advocate General seriously opposed these petitions and it was contended by him that at the initial stage all these questions can not be examined by this Court under Section 482 Cr.P.C. It was also contended that investigation into an offence is a statutory function of the police and superintendence thereof is vested in the State Government and Courts do not come into picture at the stage of investigation without any compelling and Justifiable reasons. Learned Advocate General contended that allegations in the FIRs are very serious and Investigating Agency should be given free hand to complete the investigation and bring guilty persons on the book.

7. Section 154(1) Cr.P.C. regulates the manner of recording the FIR relating to the commission of a cognizable offence. At the stage of registration of a crime on the basis of the information, disclosing a cognizable offence, the concerned police officer is duty bound to record the FIR and he cannot embark upon an inquiry as to whether the information, laid by the informant, is reliable and genuine or otherwise. He cannot refuse to register a case on the ground that the information is not reliable or credible. After registration of the case, investigation starts which is an statutory right of the police. In *Emperor v. Khwaja Nazir Ahmad* AIR 1945 PC 18, while dealing with the statutory right of the police under Sections 154 and 156 of the Code the Privy Council has observed; so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry. In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved under Section 491, Criminal P.C. to give directions in the nature of habeas corpus. In such a case as the present, however the Court's functions begin when a charge is preferred before it and not until then.

8. In *State of Bihar v. J.A.C. Saldanha* : 1980 CriLJ98 , the above principle has been reiterated by the Apex Court of the country as under:

There is a clear-cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department the superintendence over which vests in the State Government. The executive which is charged with a duty to keep vigilance over law and order, situation is obliged to prevent crime and if an offence is alleged to have been committed it is its bounden duty to investigate

into the offence and bring the offender to book. Once it investigates and finds an offence having been committed it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the Court requesting the Court to take cognizance of the offence under Section 190 of the Code its duty comes to an end.

9. Sections 156, 157 and 159 of the Cr.P.C. make it abundantly clear that if a police officer has reason to suspect the commission of a cognizable offence, he must either proceed with the investigation or cause an investigation to be proceeded with by his subordinate; that the field of investigation of any cognizable offence is exclusively within the domain of the Investigating Agency over which the Courts cannot have control and have no power to stifle or impinge upon the proceedings in the investigation so long as the investigation proceeds in compliance with the provisions relating to investigation. In *State of Haryana and Ors. v. Bhajan Lal and Ors.* MR 1992 SC, page 604, the Apex Court of the country, after consideration of the various judgments on the point, the position of law in relation to investigation of the case by the police officer has been explained in the following manner:

The sum and substance of the above deliberation results to a conclusion that the investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Code and the Courts are not justified in obliterating the track of investigating agencies are well within their legal bounds as aforementioned. Indeed, a noticeable feature of the scheme under Chapter XIV of the Code is that a Magistrate is kept in the picture at all stages of the police investigation but he is not authorised to interfere with the actual investigation or to direct the police how that investigation is to be conducted. But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provisions causing serious prejudice to be personal liberty and also property of a citizen, then the Court on being approached by the person aggrieved for the redress of any grievance has to consider the nature and extend of the breach and pass appropriate orders as may

be called for without leaving the citizens to the mercy of police echelons since human dignity is a dear value of our Constitution. Needs no emphasis that no one can demand absolute immunity even if he is wrong and claim unquestionable right and unlimited powers exercisable upto unfathomable cosmos. Any recognition of such power will be tantamount to recognition of 'Divine Power' which no authority on earth can enjoy.

10. At the outset it may be stated that there is no complaint in these petitions that the Investigating Agency is mis-directing itself in the investigation or that the investigation is not fair. There is also no allegation that the investigating officer is transgressing the limits or improperly and illegally exercising his investigating powers in breach of any statutory provision causing serious prejudice to the petitioners.

11. In *State of Haryana v. Bhajan Lal* (Supra), the Apex Court of the country has lucidly - discussed the law after considering a catena of decisions on the point, and laid down the categories of cases where interference can be made at the stage of investigation either in exercise of extra ordinary power under Article 226 of the Constitution or inherent powers under Section 482 Cr.P.C. For the sake of convenience the entire paragraph 108 dealing with the subject may be reproduced as under:

In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formula and to give an exhaustive list of 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 F.I.R 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.

12. In the *Jonta v. H.S. Choudhary* : 1993 CriLJ600 after making survey of the entire case law, the Apex Court of the country has again observed:

135. This inherent power conferred by Section 482 of the Code should not be exercised to stifle a legitimate prosecution. The High Court being the highest Court

of a State should normally refrain from giving a premature decision in a case wherein the entire facts are extremely 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 great magnitude and cannot be seen in their true perspective without sufficient material.

13. In *Prattbha Rani v. Suraj Kumar* : 1985 CriLJ817 the position of law for quashing the FIR has been explained as follows:

103. 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. It has no jurisdiction to examine the correctness or otherwise of the allegations.

14. It would also be convenient to refer paragraph 109 from the judgment of *State of Haryana v. Bhajan Lal* (supra), which reads as under:

109-We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extra ordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.

15. Applying the aforesaid principles laid down by the Apex Court of the country, the allegations made in the FIR, in my opinion, do make out commission of a cognizable offence justifying the registration and investigation thereon. The present case does not fall under any of the categories of cases formulated by the Supreme Court for the exercise of extra ordinary or inherent powers of the High Court to quash the FIR itself. Some of the questions, which have been raised by the learned Counsel appearing for the petitioners cannot be appreciated at this stage and it is difficult to say that the matter involves only a civil liability. The

argument of the learned Counsel is wholly un-founded that the averments, even taken on its face value do not constitute a cognizable offence. As stated earlier, there is no allegation that the Investigating Agency is mis-directing or otherwise investigating the matter contrary to the statutory provisions to the prejudice of the petitioners. I am of the confirmed view, that the matters require no interference by this Court at this stage and it should be left for the police to investigate the matter in accordance with law.

16. The net result of the above discussion is that all these petitions are dismissed having no merit at all.

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