STATE OF BIHAR

v.

SRI RAJENDRA AGRAWALLA

JANUARY 18, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Code of Criminal Procedure, 1973 :

S. 482—Inherent powers of High Court—Exercise of—Magistrate taking cognizance of offence under s. 414 IPC—High Court quashing the order—Held, High Court exceeded its jurisdiction in appreciating evidence and holding that no prima facie case was made out.

The police found a truck loaded with pieces of the track trolly used in B.C.C.L. The driver told that the truck was loaded from the factory of the respondent, and the goods had been purchased by a company. No documents regarding the transaction were produced. The duty officer prepared a report which was treated as the F.I.R. A case under s.414 I.P.C. was registered. On completion of the investigation, a charge-sheet against the respondent and five others was filed before the Magistrate, who took cognizance of the offence. The respondent filed a petition under s. 482 Cr. P.C. before the High Court praying for quashing the order of cognizance. The High Court allowed the petition. Aggrieved, the State filed the appeal.

Allowing the appeal and setting aside the order of the High Court, this Court

HELD : 1.1. The inherent power of the Court under s.482 of the Code of Criminal Procedure, 1973 should be very sparingly and cautiously used only when the court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of court if such power is not exercised. So far as the order of cognizance by a Magistrate is concerned, the inherent power can be exercised when the allegations in the First Information Report or the complaint together with the other materials collected during investigation, taken at their face value, do not constitute the offence alleged. At that stage it is not open for the court either to shift the evidence or appreciate the evidence and come to the conclusion that no *prima facie* case is made out. [747-A-C]

1.2. On examination of the charge-sheet and the F.I.R. filed in the case, it is evident that the High Court exceeded its jurisdiction by trying to appreciate the evidence and coming to the conclusion that no offence is made out. The High Court was wholly unjustified in invoking its inherent power under s. 482 of the Code of Criminal Procedure to quash the cognizance taken in as much as the allegation in the F.I.R. and the material referred to in the charge-sheet do make out an offence under s.414, I.P.C. so far as the respondent is concerned.

Mrs. Rupan Deol Bajaj & Anr. v. *Kanwar Pal Singh Gill & Anr.*, **JT (1995) 7 SC 299, relied on.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 66 of 1996.

From the Judgment and Order dated 5.3.92 of the Patna High Court in Crl. Misc. No. 475 of 1992 (R).

B.B. Singh for the Appellant.

U.R. Lalit, E.C. Vidyasagar and Imtiaz Ahmad for the Respondent.

The Judgment of the Court was delivered by

G.B. PATTANAIK, J. Leave granted.

This appeal by the State is directed against the order of the Patna High Court dated 5.3.1992, by which order the High Court has quashed the cognizance taken against the respondent under Section 414 of the Indian Penal Code.

Shri Uddai Singh, Sub-Inspector of Police, Dhanbad Police Station was on duty at the Police Station on 8.1.1992. At 5.15 P.M. two Constables brought a truck bearing Registration No. HRX-3125 along with its driver, Khalasi and two other persons and reported that they found the truck coming speedly and crossing the Railway gate and did not stop even though the vehicle was asked to stop. They, therefore, chased the vehicle and stopped the same after some time and found that the truck has been loaded with pieces of iron tracks which were the property of B.C.C.L. On their enquiry about the documents, a copy of challan was shown but suspecting something wrong they brought the truck with the persons to the Police

Station. The Sub-Inspector then found on checking that most of the iron loaded on the truck were the pieces of the track trolly used in B.C.C.L. On suspicion the Sub-Inspector asked the driver who told that the truck has been loaded from the factory of Rajendra Agarwalla, the respondent in this appeal and one Surendra Agarwalla, proprietor of Associate Iron and Steel Company at Saraidhela has purchased the same. But they could not produce any document. He therefore submitted a report to the Inspector-cum-Officer-in-Charge of the Police Station alleging that the accused persons are guilty of offence under Section 414 of I.P.C. and the said report was treated as First Information Report. After investigation, charge sheet was filed against the respondent and five other persons on 21.1.1992. In G.R. Case No. 107 of 1992, the learned Magistrate on perusal of the papers submitted by the police and all other relevant materials took cognizance of the offence in question on 1.2.1992. The respondent thereafter filed application in the Patna High Court at Ranchi Bench invoking the jurisdiction of the Court under Section 482 of the Code of Criminal Procedure praying for quashing the order of cognizance taken and the said application was registered as Criminal Case No. 475 of 1992. The learned Judge by the impugned order having quashed the cognizance taken by the Magistrate so far as respondent is concerned, the State has approached this Court.

Mr. B.B. Singh, learned counsel appearing for the State contended that the High Court exceeded its jurisdiction under Section 482 of the Code of Criminal Procedure by trying to appreciate the evidence on record and thereafter recording the finding that no *prima facie* case has been made out. Mr. Singh further contended that notwithstanding the well recognised principle enunciated by this Court that the power under Section 482 of the Code of Criminal Procedure should be exercised very sparingly and cautiously and only when the court comes to the conclusion that there has been an abuse of the process of the court, but in the case in hand the learned Judge examined the legality of the order of cognizance as a court of appeal and as such the order of the High Court is unsustainable in law. Mr. U.R. Lalit, learned senior counsel appearing for the respondent on the other hand contended that the High Court having examined the material and having come to the conclusion that the materials on record do not make out an offence under Section 414 of the Indian Penal Code, the court was fully justified in quashing the order of cognizance and the same order should not be interfered by this Court.

It has been held by this Court in several cases that the inherent power of the court under Section 482 of the Code of Criminal Procedure should be very sparingly and cauciously used only when the court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the court, if such power is not exercised. So far as the order of cognizance by a Magistrate is concerned, the inherent power can be exercised when the allegations in the First Information Report or the complaint together with the other materials collected during investigation taken at their face value, do not constitute the offence alleged. At that stage it is not open for the court either to shift the evidence or appreciate the evidence and come to the conclusion that no *prima facie* case is made out. In a recent Judgment of this Court to which one of us (Hon. K. Ramasway, J) was a member it has been held, following the earlier decision in *Mrs. Rupan Deol Bajaj & Anr.* v. *Kanwar Pal Singh Gill & Anr.,* JT 1995 (7) SC 299 :

> 'It is thus settled law that the exercise of inherent power of the High Court is an exceptional one. Great care should be taken by the High Court before embarking to scrutinise the FIR/charge-sheet/complaint. In deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter whether the allegations constitute the offence. It must be remembered that FIR is only an initation to move the machinery and to investigate into cognisable offence. After the investigation is concluded and the charge-sheet is laid the prosecution produces the statements of the witnesses recorded under Section 161 of the Code in support of the charge-sheet. At that stage it is not the function of the Court to weigh the pros and cons of the prosecution case or to consider necessity of strict compliance of the provisions which are considered mandatory and its effect of non-compliance. It would be done after the trial is concluded. The Court has to *prima facie* consider from the averments in the charge-sheet and the statements of witnesses on the record in support thereof whether court could take cognizance of the offence, on that evidence and proceed further with the trial. If it reaches a conclusion that no cognigible offence is made out no further act could be done except to quash the charge sheet. But only in exceptional cases, i.e. in rarest of rare cases of *mala fide* initiation of the proceedings to wreak private vengence process of

criminal is availed of in laying a complaint or FIR itself does not disclose at all any cognisable offence - the Court may embark upon the consideration thereof and exercise the power.

When the remedy under Section 482 is available, the High Court would be loath and circumspect to exercise its extraordinary power under Article 226 since efficacious remedy under Section 482 of the Code is available. When the Court exercises its inherent power under Section 482 the prime consideration should only be whether the exercise of the power would advance the cause of justice or it would be an abuse of the process of the court. When investigation officer spends considerable time to collect the evidence and places the charge-sheet before the Court, further action should not be short-circuited by resorting to exercise inherent power to quash the charge-sheet. The social stability and order requires to be regulated by proceeding against the offender as it is an offence against the society as a whole. This cardinal principle should always be kept in mind before embarking upon exercising inherent power.'

Bearing in mind the aforesaid parameters if the charge sheet and the F.I.R. filed in the case in hand are examined and the impugned order of the High Court is tested, the conclusion becomes irresistible that the High Court exceeded its jurisdiction by trying to appreciate the evidence and coming to a conclusion that no offence is made out. On examining the material on record and the impugned judgment of the High Court we are of the considered opinion that the High Court was wholly unjustified in invoking its inherent power under Section 482 of the Code of Criminal Procedure to quash the cognizance taken in as much as the allegation in the F.I.R. and material referred to in the charge sheet do make out an offence under Section 414 of the Indian Penal Code, so far as the respondent is concerned. In the aforesaid premise the impugned order of the High Court dated 5.3.1992 passed in Criminal Miscellaneous No. 475 of 1992 is quashed and this appeal is allowed. The Magistrate is directed to proceed with the trial against the respondent. The respondent may now appear before the Magistrate forthwith.

Appeal allowed.