

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 288 OF 2009
(Arising out of S.L.P (Crl.) No. 3854 of 2007)

State of Punjab & Ors. .Appellants

Versus

Inder Mohan Chopra & ors. .Respondents

With

CRIMINAL APPEAL NO. 289 OF 2009
(Arising out of S.L.P (Crl.) No. 4261 of 2007)

JUDGMENT

DR. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in these appeals is to the judgment of a learned Single Judge of the Punjab and Haryana High Court allowing two petitions filed under Section 482 of the Code of Criminal Procedure, 1973 (in short the 'Cr.P.C.'). Respondent had made prayer that the FIR No. 152 dated 12.7.2002 registered under Section 36 of the Punjab Apartment and Property Regulations, 1995 (in short the 'Regulation') at police station Sultanwind, Amritsar, should be quashed. The complaint was filed on the premises that the total area alleged to have sold was 1861.16 Sq. Yards which was jointly held by four real brothers and the individual shares comes to 465.29 Sq. Yards. It was alleged that the accused persons had sold joint family property by conveying land into an unauthorised colony in violation of the provisions of the Act and each one of them was therefore guilty of offence punishable under Section 36 of the Act read with Section 120 (B) of the Indian Penal Code, 1860 (in short the 'IPC'). The respondents in the petition filed before the High Court stated that the individual shares come below 465.29 sq. yards and, therefore, there was no violation. The stand of the appellant before the High Court was that by selling 1861.16 Sq. Yards in a joint Khasra to different purchasers, the accused person

had violated the provisions of the Act and, therefore, they were rightly proceeded against. Reference was made under Section 2(k) of the Act which shows that the expression 'Person' includes a 'company, firm, cooperative society, joint family and 'body of persons' whether incorporated or not. Therefore, it was pleaded that the joint holders are to be treated as one person in the eye of law in such prosecutions. The High Court accepted the stand of the respondents by holding that even if the property continued to be joint, it cannot be said that the vendors had sold anything more than their respective shares.

3. Section 2(i) of the Act reads as follows:

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"Colony - Colony means an area of land not less than 1000 sq. meters divided or proposed to be divided into plots for residential, commercial or industrial purpose, but does not include any area of abadi deh of the village falling inside its Lallakir or phirny or any area of land divided or proposed to be divided."

4. Learned counsel for the appellant submitted that the accused persons have accepted that they had sold the land in the year 1996 and, therefore, there was clear violation. It is submitted that the High Court had not kept in view the parameters of Section 482 Cr.P.C.

5. Learned counsel for the respondent on the other hand supported the impugned order of the High Court. It was also submitted that no offence was made out.

6. It appears that the High Court came to an abrupt conclusion that if the property continues to be joint it cannot be said that the vendor sold anything more than their respective shares.

7. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect

to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the Section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle *quando lex aliquid aliqne concedit, conceditur et id sine quo res ipsa esse non potest* (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the Section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the Section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an

abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercises of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

8. In R.P. Kapur v. State of Punjab (AIR 1960 SC 866), this Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings:

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

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(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

9. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the Section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of

Haryana v. Bhajan Lal (1992 Supp (1) SCC 335). A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases. The illustrative categories indicated by this Court are as follows:

"(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 FIR 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 F.I.R. 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 F.I.R. 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 S. 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."

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10. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are 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 magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. (See: The Janata Dal etc. v. H.S. Chowdhary and others, etc. (AIR 1993 SC 892), Dr. Raghubir Saran v. State of Bihar and another (AIR 1964 SC 1)). It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do

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not constitute the offence of which cognizance has been taken by the Magistrate,

it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint/F.I.R. has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant or disclosed in the F.I.R. that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/F.I.R. is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in Court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceeding. (See : Mrs. Dhanalakshmi v. R. Prasanna Kumar and others (AIR 1990 SC 494), State of Bihar and another v. P. P. Sharma, I.A.S. and another (1992 Suppl (1) SCC 222), Rupan Deol Bajaj (Mrs.) and another v. Kanwar Pal Singh Gill and another (1995 (6) SCC 194), State of Kerala and others v. O.C. Kuttan and others (1999 (2) SCC 651), State of U.P. v. O. P. Sharma (1996 (7) SCC 705), Rashmi Kumar (Smt.) v. Mahesh Kumar Bhada (1997 (2) SCC 397), Satvinder Kaur v. State (Govt. of NCT of Delhi) and another (1999 (8) SCC 728), Rajesh Bajaj v. State NCT of Delhi and others AIR 1999 SC 1216), State of Karnataka v. M. Devendrappa and another (2002 (3) SCC 89) and State of Andhra Pradesh v. Bajjoori Kanthaiah and Anr. [2008(11)JT 574].

11. It appears that the High Court has come to an abrupt conclusion that the individual shares could be less than 1000 Sq.m. That is not the relevant aspect for consideration of the issues raised. Therefore, the impugned orders of the High Court are unsustainable and are quashed. We make it clear that we have not expressed any opinion on the merits of the cases which are to be adjudicated in trial.

12. The appeals are allowed.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(Dr. MUKUNDAKAM SHARMA)

New Delhi,
February 12, 2009

ITEM NO.11 COURT NO.3 11 SECTION IIA
(For jt.)

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 288 OF 2009 @
S.L.P.(Cr.)No. 3854/2007

STATE OF PUNJAB & ORS. Appellant (s)

VERSUS

INDER MOHAN CHOPRA & ORS. Respondent(s)

WITH
Crl.A.No..289/2009 @ SLP(Crl.)No.4261/07

Date:12/02/2009 This Appeal was called on for judgment today.

For Appellant(s)

Mrs. Rachna Joshi Issar,Adv.
Mr. Shailendra Kumar,Adv.
Ms. Nidhi Tiwari,Adv.

For Respondent(s) Mr. Ashok Mathur,Adv.

Hon'ble Dr. Justice Arijit Pasayat
pronounced the judgment of the Bench comprising His
Lordship and Hon'ble Dr. Justice Mukundakam
Sharma.

Leave granted.

The Appeals are allowed.

[SUMAN WADHWA]
COURT MASTER

[SHASHI BALA VIJ]
COURT MASTER

Signed Reportable judgment is placed on the file.