

REPORTABLE

IN THE SUPREME COURT OF INDIA CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.2211 OF 2014

(Arising out of Special Leave Petition (Crl.) No.3262 of 2010)

P.S. Meherhomji

...Appellant (s)

versus

K.T. Vijay Kumar and others

...Respondent(s)

JUDGMENT

M.Y. Eqbal, J.:

Leave granted.

2. This appeal arises out of an order dated 5.12.2009 passed by the High Court of Andhra Pradesh, Hyderabad in Criminal Petition No.3917 of 2007, whereby the High Court dismissed the petition preferred by the appellant and respondent no.4 herein, under Section 482 Cr.P.C. for quashing proceedings in C.F.No.2425 of 2007 on the file of 1st Additional Chief Metropolitan Magistrate, Vijayawada relating to offence under Section 499 of the Indian Penal Code (in short, 'IPC'). Respondent no.4 (Rallies India Ltd.)

and the Appellant, Company Secretary of M/s. Rallies India Ltd. are accused nos.1 and 2 in the aforesaid proceedings.

3. The brief facts of the case are that K.T. Vijay Kumar - Respondent no.1 joined M/s. Rallis India Ltd.-Respondent no.4, as Sales Representative and later promoted to different posts. The Company entrusted various powers to him including the powers to recommend various companies or firms for dealership to sell company's product. Taking advantage of the powers entrusted by the Company, Respondent no.1 along with few of his relatives and friends clandestinely formed two partnership firms and he appointed them as Company's dealers to misappropriate funds by way of diverting goods from M/s. Rallies India. It is alleged that upon enquiry, it was found that huge amount of stocks were routed clandestinely through the said two firms and Respondent no.1 - Vijay Kumar along with his associates defrauded the Company M/s. Rallies India. It is further alleged that Vijay Kumar - Respondent no.1 floated a Company called Chemical Biotech Ltd. with his wife and relatives at Vijayawada while he was serving with M/s.

Rallies India Ltd. and his Company was dealing, producing and trading in the same products as manufactured by Respondent no.4 company – M/s. Rallies India. When all the facts came to light, he resigned from M/s. Rallies India-Respondent No.4.

4. Respondent no.1 made two firms M/s. Sri Laxmi Agencies and M/s. Vaishnavi Chemicals through their partners to enter into and execute a Memorandum of Understanding dated 31.3.2004 with Respondent No.4 Company (M/s. Rallies) wherein they admitted their entire liability of Rs.7,94,70,517/- payable to M/s. Rallies and agreed to settle the same by payment of Rs.4.05 crores. Thereafter in August, 2006, M/s. Rallies India through Mr. Ankur Sharma (recovery agent) lodged a complaint under Sections 403, 405, 406, 408, 415, 420 r/w Section 34 of the IPC against Respondent no.1 and aforesaid two firms and their respective partners with the Economic Offences Wing, Mumbai.

5. Respondent Nos.1 and 2 are the Managing Director and Chairman of the Company – M/s. Chemical Bio Tech Limited, respectively. Respondent's Company with an intention to go for public issue engaged Ashika Capital Limited, Mumbai as lead manager to handle their public issue and in course of their due diligence acts, sought clarification and information in respect of respondent Company's credentials so as to go ahead with the publication of prospectus.

6. It is alleged that the present appellant, representing Rallis India as its Company Secretary, addressed a letter dated 14.12.2006 to the Manager-MBD of Ashika Capital Limited, Mumbai making false and baseless allegations against the respondents with a malicious intention of causing wrongful loss to them. The said letter was forwarded by the present appellant marking copies to Managing Director, Ashika Capital Limited; Secretary, Indian Bank Association, Mumbai; Managing Director, Credit Information Bureau, Mumbai; Chairman, SEBI, Mumbai; Finance Minister, Government of India, New Delhi;

State Minister of Finance (Banking), New Delhi; Secretary, Ministry of Finance, New Delhi; Secretary(Banking) Government of India, New Delhi, Joint Secretary(Banking), Govt. of India, New Delhi and Joint Secretary (C.M.) Department of Economic Affairs, New Delhi.

7. The said letter contained the following imputations:

“Mr. K.T. Vijay Kumar along with his brother Mr. Balakrishna Rao had affected suitable change in the shareholding pattern as the part of well-planned conspiracy perfectly planned and executed by them and other directors of the Chemical Biotech Ltd. to cheat and depute the common men via the IPO mode and finally to embezzle crores of rupees.

We are in the process of approaching CBL's banks, financial institutions and the state government departments which have also been misled by these habitual cheats and had been made a part of the conspiracy in the proposed initial public offer.

This shall help these banks, financial institution & state govt. departments to reevaluate their support for these habitual cheats at the cost of public money.”

8. The said letter was in turn forwarded by Ashika Capital Ltd. to Respondents' Company on 21.12.2006. It was alleged by the respondents that the imputations made in the letter dated 14.12.2006 are defamatory. Hence, Respondent Nos. 1 and 2 filed a private complaint in the Court of Ist Additional Chief Metropolitan Magistrate,

against the present proforma respondent Company viz., Rallis India through its Managing Director, present appellant (Company Secretary of proforma Respondent Company) and the directors of the proforma respondent Company. The trial court took cognizance of the offence against present appellant and proforma respondent company and held that a prima facie case is made out under Sections 499 and 500 of the IPC making the proforma Respondent Company and the appellant as necessary parties for the cause of action and they were accordingly summoned as accused nos.1& 2.

9. Aggrieved by the order of the trial court the present appellant and proforma respondent-Company preferred a Criminal Petition No.3917 of 2007 under Section 482 Cr.P.C. before the High Court of Andhra Pradesh praying inter alia to quash the complaint initiated against them. The High Court dismissed the said petition and observed that the contents of the letter dated 14.12.2006, authored by the present appellant, prima facie contained defamatory statements. Hence, the present appeal by special leave.

10. We have heard learned counsel for the parties appearing on either side and have gone through the impugned order passed by the High Court.

11. Dr. A.M. Singhvi, learned senior counsel appearing for the appellant, assailed the impugned order as being erroneous and against the settled principles of law laid down by this Court in a number of decisions. Learned counsel firstly submitted that the allegations made in the complaint together with annexures relied on their face value does not make out an offence against the appellant. Learned counsel submitted that the High Court has committed an error in dismissing the quashing petition without perusing sole alleged letter, which is the subject matter of complaint. Dr. Singhvi submitted that the alleged letter dated 14.12.2006, which is the basis of taking cognizance, was allegedly sent from the office of respondent No.4 Company under the signature of one colleague of the appellant without the knowledge or prior permission of the appellant and the said letter was never signed by the

present appellant. Learned counsel put heavy reliance on the decision of this Court in the case of ***State of Maharashtra vs. Sayed Mohammad Masood & Anr.***, (2009) 8 SCC 787. Learned counsel submitted that allowing the criminal proceedings to continue against the present appellant, when pre-summoning of the evidence does not make out any offence, would tantamount to abuse of process of court inasmuch as a false case has been made out against the appellant. Dr. Singhvi submitted that the appellant cannot be an accused for commission of an offence of defamation when the document relied in the complaint clearly and categorically points out that the appellant had no role to play in any part of the alleged commission of the offence. Learned counsel further relied upon the decision of this Court in the case of ***Thermax Limited & Ors. vs. K.M. Johnny & Ors.*** (2011) 13 SCC 412, ***Madhavrao Jiwajirao Scindia vs. Sambhajirao Chandrojirao Angre***, (1988) 1 SCC 692.

12. Indisputably, judicial process should not be an instrument of oppression or needless harassment. The court should be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of private complainant as vendetta to harass the persons needlessly.

13. It is equally well settled that summoning of an accused in a criminal case is a serious matter and the order taking cognizance by the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of court and to quash the proceeding instituted on complaint but such power could be exercised only in cases where the complaint does not disclose any offence or is vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by

the Magistrate it is open to the High Court to quash the same in exercise of power under Section 482.

14. So far as the complaint alleging offence under Section 499 IPC is concerned, if on consideration of the allegations the complaint is supported by a statement of the complainant on oath and the necessary ingredients of the offence are disclosed, the High Court should not normally interfere with the order taking cognizance.

15. In the case of ***Dhanalakshmi vs. R. Prasanna Kumar and Others***, 1990(Supp) SCC 686, a three Judge Bench of this Court held:-

“3. Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is mala fide frivolous or vexatious, in

that event there would be no justification for interference by the High Court.”

16. In the case of **Chand Dhawan vs. Jawahar Lal and Others**, AIR 1992 SC 1379, this Court, while considering the power of the High Court under Section 482, Cr.P.C. and quashing the criminal proceedings, observed that when the High Court is called upon to exercise its jurisdiction to quash the proceedings at the stage of the Magistrate taking cognizance of the offence, the High Court is guided by the allegations, whether those allegations, set out in the complaint or the charge-sheet, do not in law constitute or spell out any offence and that resort to criminal proceedings would, in the circumstances, amount to an abuse of the process of court or not.

17. In **Radhey Shyam Khemka vs. State of Bihar**, (1993) 3 SCC 54, this Court again held:-

“8. The complaint made by the Deputy Secretary to the Government of India to the CBI mentions different circumstances to show that the appellants did not intend to carry on any business. In spite of the rejection of the application by the Stock Exchange, Calcutta they retained the share moneys of the applicants with dishonest intention. Those allegations were investigated by the CBI and ultimately charge-sheet has been submitted. On basis of that charge-sheet cognizance has been taken. In such a

situation the quashing of the prosecution pending against the appellants only on the ground that it was open to the applicants for shares to take recourse to the provisions of the Companies Act, cannot be accepted. It is a futile attempt on the part of the appellants, to close the chapter before it has unfolded itself. It will be for the trial court to examine whether on the materials produced on behalf of the prosecution it is established that the appellants had issued the prospectus inviting applications in respect of shares of the Company aforesaid with a dishonest intention, or having received the moneys from the applicants they had dishonestly retained or misappropriated the same. That exercise cannot be performed either by the High Court or by this Court. If accepting the allegations made and charges levelled on their face value, the Court had come to conclusion that no offence under the Penal Code was disclosed the matter would have been different. This Court has repeatedly pointed out that the High Court should not, while exercising power under Section 482 of the Code, usurp the jurisdiction of the trial court. The power under Section 482 of the Code has been vested in the High Court to quash a prosecution which amounts to abuse of the process of the court. But that power cannot be exercised by the High Court to hold a parallel trial, only on basis of the statements and documents collected during investigation or inquiry, for purpose of expressing an opinion whether the accused concerned is likely to be punished if the trial is allowed to proceed.”

18. In the case of ***Mushtaq Ahmad vs. Mohd. Habibur Rehman Faizi and Others***, (1997) 7 SCC 441, this Court observed:-

“3. Having perused the impugned judgment in the light of the complaint and its accompaniments we are constrained to say, that the High Court exceeded its jurisdiction under Section 482 CrPC in passing the impugned judgment and order. It is rather unfortunate that though the High Court referred to the decision in *State of Haryana v. Bhajan Lal* 1992 Supp(1) SCC 335 wherein this Court has enumerated by way of .

illustration the categories of cases in which power to quash complaint or FIR can be exercised, it did not keep in mind — much less adhered to — the following note of caution given therein: (SCC p. 379, para 103)

“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 extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

19. The relevant paragraphs of the complaint filed by the respondent in the present case are reproduced hereinbelow:-

“That the complainant’s company chemical Biotech Ltd., with an intention to go in with public issue engaged Ashika Capital Limited, a company based in Mumbai as Lead Managers to handle their public issue and in the course of their due diligence act they have sought for certain clarifications and information in respect of the Complainant Company’s credentials so as to go ahead with the publication of the prospectus, as the 1st accused earlier made a representation against the Complainants to SEBI.

That the 2nd accused representing the 1st Accused Company through a letter dated 14.12.2006 addressed to Mr. Hari Surya, Manager-MBD, Ashika Capital Limited, Nariman Point, Mumbai, have made very wild false and absolutely baseless allegations against the complainants 1 and 2 only with a malicious intention to cause wrongful loss to the complainant’s company for the simple reason and fact that it has become a strong competitor in the State of Andhra Pradesh to the business of the Accused Company. The said letter is also forwarded by the 2nd Accused by marking a copy of the same to 1) Managing Director, Ashika Capital Limited, 2) The Secretary, Indian Banks Association, Mumbai, 3) The Chairman,

Securities and Exchange Board of India, 5) Finance Minister, Government of India, New Delhi, 6) State Minister of Finance (Banking), Govt. of India, New Delhi, 7) Secretary, Ministry of Finance, New Delhi, 8) Secretary (Banking) Government of India, New Delhi, 9) Joint Secretary Banking, Government of India, New Delhi and 10) Joint Secretary (CM), Department of Economic Affairs, New Delhi.

That the said letter is in turn forwarded by Ashika Capital Limited, Mumbai to the complainants to their Registered Office at Vijayawada, Andhra Pradesh on 21.12.2006 and the Complainants were shocked and surprised to read the contents of the same at Vijayawada.

The allegations contained in the said letter in so far as it refers to the Complainants are absolutely false and baseless and are written with intent to defame the complainants and malign their reputation. The impugned words "Cheat and Dupe the common man via the I.P.O. mode and finally to embezzle crores of rupee" and "These habitual cheats had been made part of the conspiracy in the proposed initial public offer" referring to the complaints directly or per-se defamatory and derogatory and the very letter dated 14.12.2006 on the face of it is calculated to harm the reputation of the complainants without any valid foundation.

The said letter is couched in a wild and unrestrained language and written in scurrilous imputing dishonest character to the complaints."

20. The trial court after considering the allegations made in the complaint and the statement recorded on oath came to the conclusion that prima facie a case is made out for summoning the appellant and the case was taken on file. Concluding portion of the order as contained in paragraph no.5 is quoted hereinbelow :-

“As per the Statement of Complaint, they also got issued legal notice to the accused questioning the letter on 13.12.2006 and it is duly acknowledged by the accused, but they did not respond for the reasons best known. Copy of legal notice and postal acknowledgments were also filed along with the complaint. Evidence spoken by the complainant and the documents enclosed including the documents referred above, prima facie made out the case for the offences U/sec. 499 and 500 IPC. Except the vague averments made in the complaint, probably to attract the offences against A.3 to A.9 who are only directors of the company, no material is placed to substantiate their active participation in releasing the letter dt.14.12.2006 by A.2 who is Company Secretary of A.1 company. A.1 is a company represented by; its Managing Director. It is a legal entity. Company is sued arraying as A.1 in the name of its Managing Director and author of the letter is arrayed as A.2. In these circumstances, A.1 company and A.2 Secretary of A.1 company are only necessary and proper parties. No overacts against the other accused (A.3 to A.9) who are only directors of A.1 company. In the circumstances, case is taken on file for the offences U/Sec.499 and 500 IPC against A.1 and A.2 dismissing the complaint U/Sec.203 Cr.P.C. against A.3 to A.9. It appears A.3 to A.9 are arrayed as parties only to cause harassment to them unnecessarily. No material is placed to substantiate their active participation in releasing the letter by A.2 on behalf of A.1 company. No prima facie case against A.3 to A.9 for the offences /sec. 499 and 500 IPC.”

21. Dr. Singhvi, for the first time before this Court tried to make out a case that the letter dated 14.12.2006 which is the basis of taking cognizance was allegedly sent from the office of Respondent No.4 Company under the signature of one colleague of the appellant without the knowledge or prior permission of the appellant and the

said letter was never signed by the present appellant. In our view, if that is so, it is open to the appellant to take a defense and prove their contention during trial. Needless to say that the trial court shall consider the said contention during trial and record its findings.

22. After giving our thoughtful consideration in the matter we are of the view that the High Court rightly refused to quash the criminal proceedings in exercise of power under Section 482 Cr.P.C.

23. We find no merit in this case, and for the aforesaid reasons, we dismiss the Appeal.

.....J.
[**M.Y. Eqbal**]

.....J.
[**Pinaki Chandra Ghose**]

New Delhi
October 14, 2014

ITEM NO.1B

COURT NO.11

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No.2211 of 2014 arising out of
Petition(s) for Special Leave to Appeal (Crl.) No(s).
3262/2010

P.S.MEHERHOMJI

Petitioner(s)

VERSUS

K.T.VIJAY KUMAR & ORS.

Respondent(s)

Date : 14/10/2014 This petition was called on for
judgment today.

For Petitioner(s)

Mr. Siddhartha Chowdhury,Adv.

For Respondent(s)

Mr. K. Shivraj Choudhuri,Adv.

Mr. D. Mahesh Babu,Adv.

Hon'ble Mr. Justice M.Y. Eqbal pronounced
the judgment of the Bench comprising His
Lordship and Hon'ble Mr. Justice Pinaki
Chandra Ghose.

Leave granted.

The appeal is dismissed in terms of the
signed judgment.

(Sukhbir Paul Kaur)
Court Master

(Sneh Lata Sharma)
Court Master

(Signed reportable judgment is placed on
the file)