REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 773 OF 2003

Sundar Babu & Ors. ...Appellant(s)

Versus

State of Tamil Nadu ...Respondent(s)

J U D G M E N T

Dr. ARIJIT PASAYAT,J.

Challenge in this appeal is to the order passed by the learned single Judge of the Madras High Court rejecting the petition filed under Sec.482 of the Code of Criminal Procedure, 1973 (in short the `Code').

Background facts in short are as follows:

Sukanya (hereinafter referred to as `the complainant') was married with Sunder Babu-appellant No.1. Appellant No. 2-Mr. Venugopal and Mrs. Ramathilagam appellant No.3 are the parents of Sunder Babu. A.4-Rajinishree is his sister and Andalammal is his maternal grandmother. The marriage took place on 25/11/1998. The

appellant No.1 left for USA on 1/7/1999. The complaint was filed on 6/2/2000 alleging commission of offence punishable under Sec.498A of the Indian Penal Code, 1860 (in short the `IPC') and Sec.4 of the Dowry Prohibition Act, 1961 (in short `D.P. Act').

The complaint was treated as First Information Report and investigation was undertaken. On completiion of investigation charge-sheet was filed on 8/6/2000. A divorce petition was filed by the complainant which appears to have been granted ex parte on 12/7/2001. According to the appellants, complainant-Sukanya has remarried on 24/8/2002. It was a stand of the appellant that the complaint filed was nothing but an abuse of the process of law. The allegations were unfounded. There was no basis for making the allegations. The appellant No.1 had left for USA after about six months of the marriage. Long thereafter on 6/2/2000, the complaint was filed. No explanation for the delayed lodging of the complaint was offered. In essence, it was submitted that

the continuance of the proceedings will be an abuse of the process of law. The prosecuting agency before the High Court contested the petition filed under Sec.482 Cr.P.C. taking the stand that a bare perusal of the complaint discloses commission of alleged offences and therefore it is not a case which needed to be allowed. The High Court accepted the stand of the respondent-State and dismissed the application.

In support of the appeal learned counsel for the appellant submitted that the factual scenario indicated above and even a cursory glance of the complaint petition shows that the same was nothing but an attempt to falsely implicate the accused persons. Learned counsel for the respondent State supported the judgment.

Though the scope for interference while exercising jurisdiction under Sec.482 Cr.P.C. is limited, but it can be made in cases as spelt out in the case of Bhajan Lal. The illustrative examples laid down therein 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 Sec.156(1) of the Code except under an order of a Magistrate within the purview of Sec.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 Sec. 155 (2) of the Code.

1 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.

2 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.

3 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."

Even a cursory perusal of the complaint shows that the case at hand falls within the category (7) of the illustrative parameters highlighted in Bhajan Lal's case (supra).

The parameters for exercise of power under Sec.482 have been laid down by this Court in several cases.

The Section does not confer any new power 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 alicui concedit, concedere videtur et id sine quo res ipsae 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 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 exercise

of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice.

As noted above, the powers possessed by the High Court under Sec.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. The 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: Janata Dal v. H.S. Chowdhary (1992 (4) SCC 305), Raghubir Saran (Dr.) v. State of Bihar (AIR 1964 SC1) and Minu Kumari v. State of Bihar (2006 (4) SCC 359). (See (2008) 11 SCALE 20)

Consequently, the appeal deserves to be allowed. The proceedings in Criminal Petition No. C.C.No. 385/2000 pending before the Judicial Magistrate, Palladam, are quashed.

The appeal is allowed.

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

.....J.
(LOKESHWAR SINGH PANTA)

.....J.
(P. SATHASIVAM)

New Delhi,
February 19, 2009.