CASE NO.:Appeal (crl.) 426 of 2008
PETITIONER: Renu Kumari
RESPONDENT: Sanjay Kumar & Ors
DATE OF JUDGMENT: 03/03/2008
BENCH: Dr. ARIJIT PASAYAT & C.K. THAKKER & LOKESHWAR SINGH PANTA
JUDGMENT: CRIMINAL APPEAL NO 426 OF 2008
(Arising out of SLP (Crl.) No.2314 of 2006)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Patna High Court quashing the proceedings initiated against the respondents 1 to 7, in purported exercise of power under Section 482 of the Code of Criminal Procedure, 1973 (in short the 'Cr.P.C.'). A prayer was made before learned Sessions Judge, Patna to quash the proceedings in Criminal Revision No. 817 of 2001. Learned S.D.J.M., Patna in Pirbahore PHB Case No. 120 of 2000 had rejected the prayer of discharge made by the aforesaid respondents. The prayer was made in terms of Section 239 Cr.P.C.

3. Background facts in a nutshell are as follows:

Appellant was married to respondent No. 3 Rajesh Kumar on 1.7.1998. Alleging that she was being harassed and tortured both mentally and physically for having not met the dowry demands, complaint was made alleging commission of offences punishable under Section 498 A of the Indian Penal Code, 1860 (in short the 'IPC') and Sections 3 & 4 of the Dowry Prohibition Act, 1961(in short the 'Act'). Police registered FIR No. 120 of 2000 in Pirbahore Police Station. Appellant's father-in-law filed a complaint alleging assault and criminal trespass by the appellant. Another complaint was filed alleging an attempt to kidnap. A suit for divorce was filed by the husband. Appellant entered appearance in the matrimonial suit which was filed on 15.3.2000. Learned Principal Judge, Family Court directed grant of maintenance at the rate of Rs.2000/-p.m. and the cost of litigation to be paid to the appellant. Respondent's father in law filed Misc. Case No. 12 of 2001 questioning correctness of the maintenance order on the ground that the respondent's husband has no share in the ancestral property and maintenance cannot be paid out of it. Charge sheet was filed on 12.8.2000. An application for discharge in terms of Section 239 Cr.P.C. was filed on 28.8.2001. The prayer was rejected on 7.9.2001 by learned SDJM. As noted above Learned Sessions Judge, Patna dismissed the Revision Application being Criminal Revision No. 817 of 2001. Respondents filed a Criminal Misc. Petition under Section 482 Cr.P.C. By the impugned order the prayer has been accepted. To complete the narration it needs to be noted that the matrimonial case No. 49 of 2000 filed by the respondent-husband was dismissed on 12.10.2004.

Learned Single Judge after referring to a judgment of this Court in State of Haryana & Ors. v. Ch. Bhajan Lal & Ors. (AIR 1992 SC 604) held that the present case is a clear example of malafide where the proceedings have been maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite them due to private and personal grudge. Reference has been made to the matrimonial case stating that the same was filed earlier to the lodging of the FIR.

4. In support of the appeal learned counsel for the appellant submitted that the parameters for exercise of jurisdiction under Section 482 Cr.P.C. have not been kept in view by learned Single Judge, further he lost sight of the fact that the Matrimonial Case No. 49 of 2000 was dismissed long before the disposal of the case before the High Court. The matrimonial suit was dismissed on 12.10.2004 whereas the impugned judgment has been passed on 19.12.2005.

5. There is no appearance on behalf of the respondents in spite of service of notice.

6. Exercise of power under Section 482 Cr.P.C. 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 Cr.P.C. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under Cr.P.C., (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. The 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 recognises 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 the course of administration of justice on the principle of "quando lex aliquid alicui concedit, concedere videtur 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 the 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 the 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 the 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 the 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. When no offence is disclosed by the report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto.

7. In R.P. Kapur v. State of Punjab (1960 (3) SCR 388) this Court summarised 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 their face value and accepted in their entirety do not constitute the offence alleged;(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. (SCR p.393)8. 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 CrPC, 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 should not be an instrument of oppression, or, needless harassment. The 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 CrPC 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 the rarest of rare cases. The illustrative categories indicated by this Court are as follows: (SCC pp.378-79, para 102)

> "102. (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 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 Act concerned (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 Act concerned, 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."

9. As noted above, the powers possessed by the High Court under Section 482 Cr.P.C. are very wide and the very plenitude of the power requires great caution in its exercise. The 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. 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. 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 the court which decides the fate of the accused person.

The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. [See Dhanalakshmi v. R. Prasanna Kumar (1990 Supp SCC 686), State of Bihar v. P.P. Sharma (1992 Supp (1) SCC 222), Rupan Deol Bajaj v. Kanwar Pal Singh Gill (1995(6) SCC 194) , State of Kerala v. O.C. Kuttan (1999(2) SCC 651), State of U.P. v. O.P. Sharma (1996 (7) SCC 705), Rashmi Kumar v. Mahesh Kumar Bhada (1997 (2) SCC 397), Satvinder Kaur v. State (Govt. of NCT of Delhi) (1999 (8) SCC 728) and Rajesh Bajaj v. State NCT of Delhi (1999 (3) SCC 259)]

10. The above position was again reiterated in State of Karnataka v. M.Devendrappa (2002(3) SCC 89), State of M.P. v. Awadh Kishore Gupta (2004(2) SCC 691) and State of Orissa v. Saroj Kr. Sahoo (2005(13) SCC 540).

11. In view of the position of law highlighted above the impugned order is indefensible and is set aside.

12. The appeal is allowed but without any order as to costs.