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MINAKSHI BALA
v.
SUDHIR KUMAR AND ORS.

MAY 10, 1994

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[S.C. AGRAWAL AND M.K. MUKHERJEE, JJ.]

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Code of Criminal Procedure, 1973 : Sections 239, 240 and 482—Lodging of FIR—Charges framed on a finding that prima facie case made out—Revisional Jurisdiction—High Court interfering and quashing FIR relying on documents other than those referred to in Ss.239 and 240—Also dealing with rival contentions and going into merits of the case—Held : Amounts to usurping power of trial Court and hence not justified.

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Appellant lodged a first Information Report alleging commission of offences under Sections 406 and 498-A of the Indian Penal Code, by her husband, parents in-law and four other members of her husband's family. Police registered the case and after investigation charge sheeted all of them. All the accused except the appellant's husband approached the High Court for quashing the FIR. In the meantime the trial Court framed charges and fixed a date for recording of Prosecution evidence. However,

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before the evidence could be recorded, the High Court quashed the entire proceedings. Hence these appeals.

Allowing the appeals, this Court

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HELD : 1. The entire approach of the High Court in dealing with the matter is patently wrong and opposed to settled principles of law. The petition under Section 482 Cr. P.C. was filed in the High Court at a stage when the police has already submitted charge sheet on completion of investigation and when the petition came up for hearing a competent Court had not only taken cognisance thereupon but framed charges also. In spite thereof, the High Court, surprisingly enough, proceeded to deal with the matter as if it was called upon to decide whether the F.I.R. disclosed any offence and, for that matter, whether investigation should be permitted to continue. [1010-F, G]

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State of West Bengal & Ors. v. Swapan Kumar Guha & Ors., AIR (1982) SC 949, distinguished.

2. If charges are framed in accordance with Section 240 Cr. P.C. on a finding that a *prima facie* case has been made out - as has been done in the instant case - the person arraigned may, if he feels aggrieved, invoked the revisional jurisdiction of the High Court or the Sessions Court to contend that the charge sheet submitted under Section 173 Cr. P.C. and documents sent with it did not disclose any ground to presume that he had committed any offence for which he is charged and the revisional Court if so satisfied can quash the charges frames against him. Once charges are framed under Section 240 Cr.P.C. the High Court in its revisional jurisdiction would not be justified in relying upon documents other than those referred to in Sections 239 and 240 Cr. P.C.; nor would it be justified in invoking its inherent jurisdiction under Section 482 Cr. P.C. to quash the same except in those rare cases where forensic exigencies and formidable compulsions justify such a course. Even in such exceptional cases the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence.

3. In the instant case, instead of adverting to and confining its attention to the documents referred to in Sections 239 and 240 Cr.P.C. the High Court has dealt with the rival contentions of the parties raised through their respective affidavits at length and on a threadbare discussion thereof passed the order quashing the FIR. The Course so adopted cannot be supported because finding regarding commission of an offence cannot be recorded on the basis of affidavit evidence, and at the stage of framing of charge the Court cannot usurp the functions of a trial court to delve into and decide upon the respective merits of the case.

CIVIL APPELLATE JURISDICTION : Criminal Appeal Nos. 333-334 of 1994.

From the Judgment and Order dated 3.6.92 of the Punjab & Haryana High Court in CrI. Misc. No. 8184-M & 14917 of 1991.

Ranjit Kumar for the Appellant.

U.R. Lalit, Muni Lal Verma, Seeraj Bagga and Ms. Surestha Bagga for the Respondents.

The following Judgment of the Court was delivered by

M.K. MUKHERJEE, J. Special leave granted. Heard the learned

A counsel appearing for the parties.

On September 24, 1990 the appellant lodged a first information report (FIR) with the Civil Lines Police Station, Ludhiana alleging commission of offences under Sections 406 and 498-A of the Indian Penal Code by her Husband, parents-in-law and four other members of her husband's family. On that information a case was registered and on completion of investigation Police submitted charge sheet against all of them on December 31, 1990. Aggrieved thereby all the accused persons, except the appellant's husband, filed a petition in the Punjab and Haryana High Court on July 14, 1991 seeking exercise of its inherent powers under Section 482 Cr.P.C. for quashing the F.I.R. and the proceeding arising therefrom. By the time the petition came up for hearing before the High Court, the Additional Chief Judicial Magistrate, Ludhiana had taken cognizance upon the charge sheet and, after hearing the parties, framed charges under Sections 406 and 498A of the Indian Penal Code against all the accused persons. As they had pleaded no guilty the Magistrate has also fixed a date for recording of prosecution evidence. Before, however, evidence could be gone into the High Court took up the petition for final hearing, along with another petition which the accused respondents had subsequently filed under Section 482 Cr.P.C. for setting aside the charges, and quashed the entire proceeding including the charges framed against the accused by a common order. Hence these two appeals.

Having carefully gone through the impugned order we are constrained to say that the entire approach of the High Court in dealing with the matter is patently wrong and opposed to settled principles of law. As earlier noticed, the petition under Section 482 Cr.P.C. was filed in the High Court at a stage when the police had already submitted charge sheet on completion of investigation and when the petition came up for hearing a competent Court had not only taken cognizance thereupon but framed charges also. In spite thereof, the High Court, surprisingly enough, proceeded to deal with the matter as if it was called upon to decide whether the F.I.R. disclosed any offence and, for that matter, whether investigation should be permitted to continue. This will be evident from the following observations made by the High Court.

"The principles relating to the quashing of the F.I.R. at its initial stage were considered by their Lordships of the Supreme Court in

State of West Bengal & Ors. v. Swapan Kumar Guha & Ors. AIR (1982) SC 949. Their Lordships observed therein that once an offence is disclosed, an investigation into the offence must necessarily follow in the interest of justice. If, however, no offence is disclosed, an investigation cannot be permitted, as any investigation, in the absence of any offence being disclosed, will result in unnecessary harassment to a party, whose liberty and property may be put to jeopardy for nothing." A B

The High Court then quoted in extenso from the judgment in *Swapan Kumar Guha's* case and laid particular emphasis on the following passage: C

"If, on the other other hand, the Court on consideration of the relevant materials is satisfied that no offence is disclosed, it will be the duty of the Court to interfere with any investigation and to stop the same to prevent any kind of uncalled for and unnecessary harassment to an individual." D

To conclude, the materials brought on record clearly showed that the proceeding impugned before it was an abuse of the process of the Court.

In the case of *Swapan Kumar Guha* this Court was moved at a stage when investigation was being carried on and the question for its consideration was as to whether the first information report lodged therein disclosed an offence under Section 4 read with Section 3 of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 entitling the police to undertake the investigation. This Court examined that question with reference to the facts of the case and held that the allegations did not attract the provisions of the above Act. The High Court, therefore, was not at all justified in placing reliance upon the case of *Swapan Kumar Guha*. E F

Having regard to the fact that the offences, for which charge-sheet was submitted in the instant case and cognisance taken, were triable as a warrant case the magistrate was to proceed in accordance with Sections 239 and 240 of the Code at the time of framing of the charges. Under the above sections, the Magistrate is first required to consider to police report and the documents sent with it under Section 173 Cr.P.C. and examine the accused, if he thinks necessary, and give an opportunity to the prosecution and the accused of being heard. If on such consideration, examination and H

A hearing the Magistrate finds the charge groundless he has to discharge the accused in terms of section 239 Cr.P.C.; conversely, if he finds that there is ground for presuming that the accused has committed an offence triable by him he had to frame a charge in terms of Section 240 Cr.P.C.

B If charges are framed in accordance with Section 240 Cr.P.C. on a finding that a *prima facie* case has been made out - as has been done in the instant case - the person arraigned may, if he feels aggrieved, invoke the revisional jurisdiction of the High Court or the Sessions Judge to contend that the charge sheet submitted under Section 173 Cr.P.C. and documents sent with it did not disclose any ground to presume that he had committed any offence for which he is charged and the revisional Court if so satisfied can quash the charges framed against him. To put it differently, once charges are framed under Section 240 Cr.P.C. the High Court in its revisional jurisdiction would not be justified in relying upon documents other than those referred to in Sections 239 and 240 Cr.P.C.; nor would it be justified in invoking its inherent jurisdiction under Section 482 Cr.P.C. to quash the same except in those rare cases where forensic exigencies and formidable compulsions justify such a course. We hasten to add even in such exceptional cases the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence.

E Apart from the infirmity in the approach of the High Court in dealing with the matter which we have already noticed, we further find that instead of advertng to and confining its attention to the documents referred to in Sections 239 and 240 Cr.P.C. the High Court has dealt with the rival contentions of the parties raised through their respective affidavits at length and on a threadbare discussion thereof passed the impugned order, The Course so adopted cannot be supported; firstly, because finding regarding commission of an offence cannot be recorded on the basis of affidavit evidence and secondly, because at the stage of framing of charge the Court cannot usurp the functions of a trial Court to delve into and decide upon the respective merits of the case.

G On the conclusions as above we allow these appeals, set aside the impugned order and remand the matter to the High Court to dispose of the petitions of the accused respondent in accordance with law and in the light of the observation made hereinbefore.