

Mrs. Anita Mehra and Another Vs Union of India and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 27, 2013

Hon'ble Judges: Rameshwar Singh Malik, J

Bench: Single Bench

Advocate: Sanjeeva Gupta, for the Appellant;

Final Decision: Dismissed

Judgement

Rameshwar Singh Malik, J.

The petitioner seeks to invoke the writ jurisdiction of this court by way of instant writ petition under Articles

226 /227 of the Constitution of India for quashing FIR No. 361 dated 19.7.2013 (Annexure P-17) registered at Police Station Sector 5,

Panchkula. Briefly put, the facts of the case are that the impugned FIR No. 361 dated 19.7.2013 (Annexure P-17) came to be registered against

the petitioners under Sections 452 /323 /506 /34 IPC at Police Station Sector 5, Panchkula, at the instance of complaint-respondent no. 11. Since

the impugned FIR was registered only on 19.7.2013, the same is under investigation. However, the petitioner has approached this court at the

investigation stage of the case for quashing of the impugned FIR on the ground that no case is made out against them.

2. Learned counsel for the petitioners strenuously argued that in view of the background of the case, petitioners are being put to unwarranted

harassment. He further submits that reading of the FIR would show that no case, whatsoever, is made out against the petitioners. Petitioners are

not even remotely connected with the matter and the allegations levelled against them are totally baseless and frivolous. He next contended that

since no case is made out against the petitioners, there would be no chance of conviction, because of which the petitioners should not be forced to

face the agony of criminal trial. Finally, he prays for quashing the impugned FIR by allowing the present writ petition.

3. Having heard the learned counsel for the petitioners at considerable length, after careful perusal of the record of the case and giving thoughtful

consideration to the contentions raised, this court is of the considered opinion that in the given fact situation of the case, no interference is

warranted at this stage at the hands of this court, while exercising its writ jurisdiction under Articles 226 /227 of the Constitution of India. To say

so, reasons are more than one, which are being recorded hereinafter.

4. It is the settled proposition of law that investigation is the exclusive domain of the executive through the investigating agency and the courts will

be slow in quashing the FIR. However, it is not an absolute rule and is always subject to exceptions. So far as the present case is concerned, a

bare reading of the impugned FIR would show that it cannot be said to be a case, wherein no offence, whatsoever, is made out against the

petitioners, as argued by learned counsel for the petitioners. Further, it is too early to say so, because the investigating agency is seized of the

matter and police report u/s 173 Cr. P.C., is yet to be presented before the court. Having said that, this court feels no hesitation to conclude that

no case is made out for quashing the impugned FIR at this stage.

5. The law laid down by the Privy Council way back in the year 1945 AIR 1945 18 (Privy Council) has been consistently followed. The relevant

observations made by the Privy Council in Khwaja Nazir Ahmad's case (supra), which can be gainfully followed in the present case, read as

follows:-

...so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the

law imposes upon them the duty of enquiry. In India as has been shown there is a statutory right on the part of the police to investigate the

circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be

an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The

functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law

and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the court to intervene in an

appropriate case when moved u/s 491, Cr.P.C. to give directions in the nature of habeas corpus. In such a case as the present, however, the

Court's functions begin when a charge is preferred before it and not until then.

6. Further, the Hon'ble Supreme Court after detailed deliberation on the subject, crystalised the law in the case of State of Haryana and others Vs.

Ch. Bhajan Lal and others, The relevant observations made by the Hon'ble Supreme Court in paras 102 and 103 in Ch. Bhajan Lal's case

(supra), which can be gainfully followed in the present case, read as under:-

In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by

this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers u/s 482 of the Code

which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be

exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down

any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of

cases wherein such power should be exercised.

(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 F.I.R. do not disclose a cognizable offence,

justifying an investigation by police officers u/s 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 u/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.

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 F.I.R. 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.

7. Similarly, a Larger Bench of Five Judges of this court in Kulwinder Singh and Others Vs. State of Punjab and Another, followed the law laid

down by the Hon"ble Supreme Court in Bhajan Lal's case (supra). A bare perusal of the observation made by the Privy Council in Khawaza

Nazir Ahmed's case (supra), by the Hon"ble Supreme Court in Bhajan Lal's case (supra) and also by the Larger Bench of this court in Kulwinder

Singh's case (supra) makes it crystal clear that the writ jurisdiction, for quashing the FIR, is to be exercised by this court sparingly and with

circumspection.

8. It is equally true that the FIR can be quashed, only when after taking the allegations levelled in the FIR to be true, without adding anything

thereto and without subtracting anything therefrom, no offence, whatsoever, is made out. However, as noticed herein above, the present one has

not been found to be a case, wherein it can be said that no case, whatsoever, is made out against the petitioners. In this view of the matter, it is

unhesitatingly held that the impugned FIR is not liable to be quashed, at this stage.

9. The investigating agency is entitled to investigate the allegations levelled against the petitioners in the impugned FIR. It is the statutory duty of the

investigating agency, which cannot be interfered with at the hands of this court and that too, at the very initial stage of the investigation. It is so said

because, this court will be transgressing its jurisdiction, while interfering in the investigation of the impugned FIR, at this point of time. Thus, the

arguments raised by learned counsel for the petitioners have been found to be without any force and the same are liable to be rejected.

10. No other argument was raised.

11. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this court is of the

considered view that in the given fact situation, the present writ petition has been found to be misconceived, bereft of merit and without any

substance. Thus, it must fail. No case for interference has been made out. Resultantly, the instant writ petition stands dismissed, however, with no

order as to costs.