

(2003) 08 AP CK 0003

Andhra Pradesh High Court

Case No: Writ Petition No. 22643 of 2001

Anju Kumar Agarwal and
Another

APPELLANT

Vs

State of A.P. and Another

RESPONDENT

Date of Decision: Aug. 1, 2003

Acts Referred:

- Constitution of India, 1950 - Article 226
- Penal Code, 1860 (IPC) - Section 407

Citation: (2003) 5 ALD 294 : (2004) 1 ALT(Cri) 195 : (2003) 3 APLJ 69

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: S. Niranjan Reddy, for the Appellant; Govt. Pleader for Home for Respondent No. 1 and Milind G. Gokhele, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.

The petitioners seek the relief of quashing of FIR dated 19-10-2001 in Cr.No. 496 of 2001 on the file of the Central Crime Station, Hyderabad. The facts relevant for the purpose of this case may be stated as under:

2. Petitioners 1 and 2 are Directors of M/s. DRS Transport (P) Limited, undertaking the activity of goods transport. For the sake of brevity, M/s. DRS Transport (P) Limited is referred to as "the Company" is referred to as "DRS Transport". Its registered office is at Hyderabad. The Company has undertaken transport of the goods entrusted to it by M/s. Videocon International Limited and M/s. Videocon Appliances Limited, to various places under the concerned invoices.

3. On 11-10-2001, M/s. Videocon Export Limited, the 2nd respondent herein, booked certain goods with the Company, for being transported from Ahmednagar to Hyderabad and Vijayawada under Consignment Nos. 0099708 and 0099709. The goods were valued at Rs. 19,61,007/-. On 13-10-2001, the Company addressed letter to the 2nd respondent, stating that the sister concerns of the latter, by name M/s.Videocon International Limited and M/s. Videocon Appliances Limited are due a sum of Rs. 6,96,549/- and till the said amounts are paid, the goods entrusted to it on 11-10-2001 shall be held under mortgage and lien. It was intimated therein that the goods will be released to the 2nd respondent only after payment of the dues referred to above. On receipt of this letter, the 2nd respondent submitted a complaint to the Deputy Commissioner of Police (Crimes), Police Control Room, Hyderabad, on 18-10-2001, alleging that the petitioners have committed offence under Sections 407 and 420 IPC.

4. The petitioners contend that the FIR does not disclose any ingredients of offence under Sections 407 and 420 of IPC and, even if the contents are taken on their face value, at the most, they can disclose a civil liability. With this, and other ancillary submissions, they seek the relief of quashing of the FIR.

5. The 2nd respondent has filed a counter-affidavit. It is stated therein that it has nothing to do with M/s,Videocon International Limited and M/s. Videocon Appliances Limited and that the 2nd respondent is a separate Corporate entity. It is pleaded that the petitioners do not dispute the factum of having been entrusted with the goods and once they are not delivered to the consignee, offence under Sections 407 and 420 IPC can be said to have been committed.

6. Sri K. Pratap Reddy, learned Senior Counsel appearing for the petitioners, submits that the petitioners did not have any intention to withhold or appropriate the goods entrusted to them and they held the goods only as a measure to recover the dues from the sister concerns of the 2nd respondent. According to him, the contents of the FIR, even if they are taken on their face value, do not disclose any offence as alleged, and as such, it is liable to be quashed. He has also brought to the notice of this Court the fact that a suit being OS No. 581 of 2001, in the Court of the III Junior Civil Judge, City Civil Courts, Hyderabad, was filed by the Company, as regards the very transaction against the 2nd respondent and all aspects of the matter can be decided therein. He has placed reliance upon several judgments rendered by the Supreme Court.

7. Learned Government Pleader for Home and Sri Milind Gokhale, learned Counsel for the 2nd respondent, on the other hand, submit that the admissions contained in the letter dated 13-10-2001 addressed by the Company, which is the basis for submission of the complaint by the 2nd respondent constitute the elements and ingredients of offence under Sections 407 and 420 IPC. They submit that the questions as to whether the 2nd respondent and the other two companies have any thing in common and whether there was any justification for the petitioners to

withhold the goods entrusted to them by the 2nd respondent, have to be investigated and established during the trial. They submit that quashing of FIR, in exercise of jurisdiction under Article 226 of the Constitution of India, is a rare phenomenon and the present case does not provide for such an occasion.

8. The Company, represented by the petitioners herein, was entrusted with the goods belonging to the 2nd respondent on 11-10-2001, for being transported from Ahmednagar to Hyderabad and Vijayawada. Having accepted the goods for transporting to the destination, the Company addressed a letter dated 13-10-2001 stating that the sister concerns of the 2nd respondent are liable to pay a sum of Rs. 6,96,549/-towards dues of transport charges and till the said amount is paid, the goods entrusted to them for transport by the 2nd respondent shall be held under mortgage and lien. On receipt of the said letter, the 2nd respondent submitted the complaint. Ultimately a FIR in Crime No. 496/2001 came to be issued. The petitioners want that to be quashed.

9. Whenever a complaint is submitted alleging the commission of an offence, the same is required to be dealt with in accordance with the provisions of the Code of Criminal Procedure. The Code provides for the various stages in the matter, such as, investigation, submission of final report by police, framing of charges, trial of the matter by the Court and rendering judgment thereon.

10. Depending on the gravity and category of the offences, different kind of procedures are stipulated. During the course of framing of the charges as well as trial, the concerned Criminal Court is conferred with the power to discharge the accused, if it is satisfied that sufficient material does not exist. In addition to this, the High Court is conferred with the power u/s 482 Cr.P.C., to quash the proceedings, if it is satisfied that there did not exist proper basis for continuance of the proceedings. However, interference with the FIRs u/s 482 was held to be impermissible. The reason is that Section 482 Cr.P.C, confers inherent powers on the High Court to pass orders, which are necessary to give effect to any order of the Court, or to prevent abuse of process of any Court. Therefore, for the High Court to exercise its jurisdiction u/s 482 Cr.P.C., existence of proceedings before a Criminal Court is sine qua non. At the stage of FIR, the proceedings cannot be said to be pending with any Criminal Court. Further, the police shall have to undertake investigation at a later stage. It was for this reason that the Supreme Court in [Kurukshetra University and Another Vs. State of Haryana and Another](#), held as under:

"It surprises us in the extreme that the High Court thought that in the exercise of its inherent powers u/s 482 of the Code of Criminal Procedure, it could quash a First Information Report. The police had not even commenced investigation into the complaint filed by the Warden of the University and no proceeding at all was pending in any Court in pursuance of the FIR. It ought to be realized that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to

whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases."

11. However, exercise of power, almost similar to the one u/s 482 Cr.P.C., in such cases, held to be permissible in a writ petition under Article 226 of the Constitution of India. In [S.N. Sharma Vs. Bipen Kumar Tiwari and Others](#), it was held as under:

"It appears to us that, though the Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer mala fide, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal powers. The fact that the Code does not contain any other provision giving power to a Magistrate to stop investigation by the police cannot be a ground for holding that such a power must be read in Section 159 of the Code."

12. A note of caution, however, was sounded in [State of West Bengal and Others Vs. Swapan Kumar Guha and Others](#), to maintain the balance between indiscriminate interference with the FIR, on one hand, and protecting the citizens from unnecessary harassment, on the other. The following observations made therein are apt to be quoted:

"If the Court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the Court normally does not interfere with the investigation of a case where an offence has been disclosed."

"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."

13. Except for the stage of interference, the considerations u/s 482 Cr.P.C., and Article 226 of the Constitution of India are mostly similar. In [Pratibha Rani Vs. Suraj Kumar and Another](#), the Supreme Court held as follows:

"It is well settled by a long course of decisions of this Court that for the purpose of exercising its power u/s 482 Criminal Procedure Code to quash a FIR or a complaint (obviously in a writ under Article 226 of the Constitution of India) the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se. It has no jurisdiction to examine the correctness or otherwise of the allegations."

14. In the field of exercise of jurisdiction under Article 226 of the Constitution of India against the FIR, several judgments rendered by the Supreme Court dealt with various aspects. After reviewing the entire case law on the subject, the Supreme Court in [State of Haryana and others Vs. Ch. Bhajan Lal and others](#), has enlisted the circumstances under which such power can be exercised. The Supreme Court observed that the categories formulated by it are by way of illustration. However, they are treated as almost exhaustive in the subsequent cases and were referred to with approval. The categorisation made by the Supreme Court is as under:

"(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 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."

15. It was observed that the power should be exercised sparingly and with circumspection, that too, in rarest of the rare cases. Enquiry into the genuineness or otherwise of the allegations contained in FIR was held to be totally outside the scope of such proceedings. This principle was reiterated by the Supreme Court in its subsequent judgment in [State of Karnataka Vs. M. Devendrappa and Another](#), .

16. In *Lalmuni Devi v. State of Bihar* 2001 (1) ALD (Crl.) 220 (SC), the Supreme Court held that "proceedings initiated for trial of offence under Sections 419, 420 and 471 IPC cannot be quashed u/s 482 Cr.P.C., on the ground that the complaint spells out only civil wrongs.

17. It is in the background of these principles, that the present case needs to be examined. As observed earlier, the letter dated 13-10-2001 addressed by the Company constituted the basis for submission of the complaint by the 2nd respondent. In this letter, the factum of the goods entrusted by the petitioner for transport has been admitted- It was insisted that till the dues of transport charges payable by the two other companies (sister concerns) are cleared, the goods will be held under mortgage and lien. In the FIR, the complaint dated 18-10-2001 submitted by the 2nd respondent is extracted as it is. The allegations in the FIR is that the goods entrusted to the Company by the 2nd respondent for transport were wrongfully withheld. The 2nd respondent enclosed the letter dated 13-10-2001 along with the complaint. From a reading of this letter, it emerges that the (Company) petitioners have admitted the factum of receiving goods from the 2nd respondent for transport and withholding of the same. Section 407 IPC deals specifically with the situation. It reads as under:

"407. Criminal breach of trust by carrier, etc. :-Whoever, being entrusted with property as a carrier, wharfinger or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

18. If the contents of the complaint and Section 407 IPC are read together, it cannot be said that the FIR is absolutely without basis. It is once again to be borne in mind that this Court cannot undertake enquiry into the correctness or otherwise of the allegations at this stage. The limited context and purpose for which this observation is made; is that the very basis for quashing an FIR in a writ petition is whether an offence can be said to have been committed, if the allegations contained in the FIR are to be taken as true. This Court feels that if the contents of the FIR are taken on their face value, they fit into the circumstances provided for u/s 407 IPC. Any further discussion on this aspect is not only prone to render this judgment verbose, but is also likely to have its effect on the further proceedings.

19. It may be true that the same set of facts would give rise to a civil cause. It has come on record that the petitioners have already filed a suit. However, in view of the observation of the Supreme Court in *Lalmuni Devi* case (supra), the possibility of the same set of facts giving rise to a civil cause, does not provide a jurisdiction to quash the FIR.

20. Learned Senior Counsel for the petitioners has relied upon the judgment of the Supreme Court in *M.C. Abraham v. State of Maharashtra* 2003 SCC 628. On

examination of the judgment therein, this Court finds that the facts and circumstances of the present case are substantially different from those in that case. That was a case where the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, directed the State to arrest the accused even when the matter was at the stage of investigation. The same was held impermissible. That situation does not exist here.

21. Learned Counsel for the 2nd respondent submits that, even in a case where the consignor is due to pay transport charges, a transporter cannot have a lien on the goods entrusted to it. Contending that the 2nd respondent is not due any transport charges and relying upon the judgment of the Supreme Court in *Sh. Mahavir Prashad Gupta v. State of NCT of Delhi* 2000 (2) ALD (Cri.) 838 (SC), learned Counsel submits that in the context of the undisputed facts borne out by letter dated 13-10-2001 addressed by the DRS Transport to the petitioner, the offence u/s 407 IPC can be said to have been committed. The Supreme Court held in that case, that a transporter cannot withhold the goods even as lien over the dues from the consignor. The question as to whether necessary facts exist in the present case for application of the said ratio needs to be examined during the trial. This Court cannot express any opinion on that aspect, particularly, at this stage.

22. Viewed from any angle, this Court does not find any basis to quash the FIR in Crime No. 496 of 2001, dated 19-10-2001. The writ petition, is therefore, dismissed. No costs.