

CASE NO.:
Appeal (crl.) 89 of 1999

PETITIONER:
MR.K.RAMAKRISHNA & ORS.

Vs.

RESPONDENT:
STATE OF BIHAR & ANR.

DATE OF JUDGMENT: 22/09/2000

BENCH:
D.P. Mohapatra, & R.P. Sethi.

JUDGMENT:

SETHI, J.
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The appellants, who are senior officers of the United Bank of India, have been arraigned as accused persons in the charge-sheet submitted by the CBI in the Court of Judicial Magistrate, First Class, Patna, for the offences punishable under Sections 467, 468, 420 and 120B IPC. They filed a petition under Section 239 of the Code of Criminal Procedure praying for being discharged as, according to them, no case was disclosed either in the FIR or in the documents accompanying the final report submitted under Section 173 of the Code of Criminal Procedure. The Magistrate, vide his order dated 6.7.1996, rejected the application and directed the presence of the appellants in the court for framing of charges. Feeling aggrieved the appellants moved the High Court under Section 482 of the Code of Criminal Procedure with prayer for quashing the order of the Magistrate. Their prayer was rejected vide the order impugned, hence this appeal.

Mr. Altaf Ahmad, the learned Additional Solicitor General, appearing for the appellants submitted that the averments made in the FIR do not make out any case against his clients, inasmuch as none of them have even been named therein. He further submitted that without disputing the validity of the allegations made in the FIR and the accompanying documents, including the statements of witnesses recorded under Section 161 of the Criminal Procedure Code, no case is made out against anyone of the appellant under any penal law. Learned counsel appearing for the respondents has, however, submitted that the Judicial Magistrate has taken note of the case diaries and other record produced before him and found on facts, that as the appellants were posted on different administrative and responsible posts in the Bank at the time of occurrence which took place during their tenure, to their direct or indirect knowledge and in that commission, the possibility of their involvement in criminal conspiracy could not be ruled out. He has also drawn our attention towards paras 48, 63, 64, 71, 79, 82, 83, 84, 86, 110 and 112 of the case

diaries to impress upon that there existed evidence against the appellants which justified the passing of the impugned orders. It is contended that this Court cannot re-evaluate the evidence at this stage for the purposes of prima-facie finding out as to whether the appellants had committed the offences with which they are directed to be charged.

The inherent powers of the High Court under Section 482 of the Code of Criminal Procedure can be exercised to quash proceedings, in appropriate cases either to prevent the abuse of process of any court or otherwise to secure the ends of justice. Ordinarily the criminal proceedings which are instituted against the accused must be tried and taken to logical conclusions under the Code of Criminal Procedure and the High Court should be reluctant to interfere with the proceedings at an interlocutory stage. However, there may be cases where the inherent jurisdiction to quash proceedings can and should be exercised. Where there is a legal bar against the institution or continuance of the criminal proceedings in respect of the alleged offence, the High Court should not be reluctant to exercise the inherent jurisdiction. Similarly where the allegations in the FIR or the complaint, even if they are taken at their face value do not constitute the offence alleged, or without appreciating the evidence but only merely by looking at the complaint or the FIR or the accompanying documents, the offence alleged is not disclosed, the person proceeded against in such a frivolous criminal litigation has to be saved.

The Trial Court under Section 239 and the High Court under Section 482 of the Code of Criminal Procedure is not called upon to embark upon an enquiry as to whether evidence in question is reliable or not or evidence relied upon is sufficient to proceed further or not. However, if upon the admitted facts and the documents relied upon by the complainant or the prosecution and without weighing or sifting of evidence, no case is made out, the criminal proceedings instituted against the accused are required to be dropped or quashed. As observed by this Court in *Rajesh Bajaj v. State NCT of Delhi & Ors.* [1999 (3) SCC 259], the High Court or the Magistrate are also not supposed to adopt a strict hyper-technical approach to sieve the complaint through a cullendar of finest gauzes for testing the ingredients of offence with which the accused is charged. Such an endeavour may be justified during trial but not during the initial stage.

In view of the legal position, as noticed above, it has to be seen whether the FIR or the documents accompanying the final report under Section 173 of the Criminal Procedure Code including the statements recorded by the prosecution under Section 161 of the Code of Criminal Procedure, discloses the commission of any offence against the appellants. The charge-sheet (Annexure B) filed does not refer to any witness or circumstance which the prosecution intends to use against the appellants. From the record it appears that for irregularities in the affairs of the Branch of the Bank, various complaints were lodged with the local police and the CBI against one Abhay Kant Jha in the years 1983, 1985 and 1987. In its report submitted on 30th November, 1987, the CBI recommended prosecution of said Shri Abhay Kant Jha along with Shri Sanjay Kumar Roy, respondent No.2 herein. To counter blast and ward off his involvement, the said Shri Sanjay Kumar Roy filed a complaint in the year 1987 with the Gandhi Maidan Police Station, Patna making

accusations only against said Shri Abhay Kant Jha. However, while narrating the facts therein, he submitted that some of the appellants had approached him and his father for amicable payments of the bank's dues. It may be noticed that the CBI, after detailed investigations, addressed a confidential report to the bank recommending prosecution of Shri Abhay Kant Jha and 8 other persons including the aforesaid Sanjay Kumar Roy. None of the appellants was found to be, in any way, connected with the commission of the offences alleged in the complaint. As noticed earlier, the Trial Court on perusal of some paras in the case diary found that there existed evidence by which the appellants could be connected with the commission of the crime with which they were charged. We have perused all those paras and other parts of the case diary and find that the Trial Magistrate was not justified in his observations so far as the appellants are concerned. In paragraph 48 of the case diary the investigation officer has mentioned the fact of his visiting the branch office of the United Bank of India on 29.11.1987 at 11 a.m. where despite notice, the officers of the bank were not present. Thereafter he served notice upon the Assistant Manager asking him to cause the presence of all the officers in the police station on 15.12.1987. In paragraph 63 a fact is mentioned about the presence of the officers of the bank at the police station. In Paragraphs 64 and 71 the statement of appellant No.1 is stated to have been recorded. In paragraph 79 it is recorded, "diary should be perused because documents of United Bank has not been received and proceedings is being initiated for finding it". In paragraph 82 it is mentioned that on number of occasions person was sent to the United bank, Bokaro for getting the papers of the case but papers were not received. In paragraph 83 a mention is made of "documents or papers have been received about which the proceedings should be initiated after the discussion with the ASP City". Paragraph 84 mentions the compliance of order of ASP City. Paragraph 86 records that the documents received were shown to S/Shri Balakrishna Rai and Ram Kishore Rai who after seeing the papers and documents told that they do not bear the signature of Shri Sanjay Kumar Roy. In paragraph 110 it is recorded that IO reached the office of the bank at Bokaro and searched Shri Ram Deo Yadav, Branch Manager but what was recovered upon search is not noticed. In paragraphs 112-113, the IO has recorded "I proceeded from Dhanbad in connection with the investigation of other case". On perusal of the other paragraphs of the case diaries we noticed not an iota of evidence against any appellants. We are conscious of the fact that in the normal circumstances, this Court or the High Court while deciding the sufficiency of the evidence would not resort to the perusal of the case diary and sit in appeal over the judgment of the investigating officer but as the Trial Magistrate is apparently shown to have recorded wrongly with respect to the facts allegedly noticed in the case diary, this Court vide order dated 17.7.1998 had no option but to direct the counsel of the respondent-State to produce the documents referred to in the report filed under Section 173 of the Code of Criminal Procedure. On perusal of FIR, the final report under Section 173 of the Code of Criminal Procedure and all other documents accompanying it, we are satisfied that no case is made out against any of the appellants and the pendency of the proceedings against them before the Magistrate is an abuse of process of court. The appeal is allowed and the order of the High Court dated 8th April, 1997 and Magistrate dated 6.7.1996 are quashed and the

appellants discharged in terms of Section 239 of the Code of Criminal Procedure.

JUDIS