STATE OF A.P. A

v.

GOURISHETTY MAHESH & ORS.

(Criminal appeal no.1252 of 2010)

JULY 15, 2010 B

[P. SATHASIVAM AND ANIL R. DAVE, JJ.]

Code of Criminal Procedure, 1973:

s.482 – Scope of – Black jaggery transported for alleged preparation of illicit liquor – Seizure and confiscation – Upheld by Commissioner of Prohibition and Excise – Report of chemical examiner that the seized jaggery was "fit for fermentation, producing alcohol unfit for consumption" – Case registered against accused under ss.34(e), 41, 42 of the Andhra Pradesh Excise Act, 1968 – Order of High Court quashing the proceedings against accused – Held: Not justified – Complaint prima facie disclosed commission of the offence and involvement of accused – Exercise of inherent power u/s.482 – Explained – Andhra Pradesh Excise Act, 1968– ss.34(e), 41, 42. C D E

Prosecution case was that the accused-respondents were transporting 5040 Kgs. of black jaggery and alum illegally in a van. The van and the black jaggery were seized and a case was registered under Sections 34(e), 41, 42 of the Andhra Pradesh Excise Act, 1968 against the accused-respondents. The government chemical examiner gave report that the sample of seized goods was jaggery "fit for fermentation producing alcohol unfit for consumption". High Court allowed the petition for quashing the proceedings against respondents. Aggrieved, the State filed the appeal. F G

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A Allowing the appeal, the Court

HELD: 1.1. While exercising jurisdiction under Section 482 Cr.P.C., the High Court would not ordinarily embark upon an enquiry whether the evidence in B 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/court. It is true that courts should be circumspect and judicious in exercising discretion and should take all relevant facts and C circumstances into consideration before issuing process, otherwise, it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time, Section 482 is not an instrument handed over to an accused to short-circuit D a prosecution and bring about its closure without full-fledged enquiry. Though High Court may exercise its power relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice, the power should be exercised sparingly. The E powers possessed by the High Court under Section 482 are wide, however, such power requires care/caution in its exercise. The interference must be on sound principles and the inherent power should not be exercised to stifle a legitimate prosecution. If the allegations set out in the F complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of inherent powers under Section 482. [Para 12] [432-H; 433-A-G]

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1.2. In the case on hand, apart from specific allegations about the transportation of Jaggery for preparation of illicit distilled liquor, prosecution also placed reliance on laboratory analysis report which H mentioned that the transported Jaggery was 'fit for

fermentation producing alcohol unfit for consumption'. It is also relevant that the Deputy Commissioner of Prohibition and Excise after finding that an offence under A.P. Excise Act, 1968 has been made out, seized the jaggery and confiscated it. The said order was confirmed by the Commissioner of Prohibition and Excise. In the circumstances, whether the material in existence would be sufficient for holding the accused persons concerned guilty or not has to be considered only at the time of trial. Further, at the time of framing the charge, it can be decided whether *prima facie* case has been made out showing the commission of offence and involvement of the charged persons. It is immaterial whether the case is based on direct or circumstantial evidence. That being so, the interference at the threshold quashing the FIR is to be exceptional and not like routine as ordered by the High Court in the instant case. It is not a case where it can be said that the complaint did not disclose commission of an offence. The High Court was not justified in quashing the FIR. [Para 13] [433-H; 434-A-D]

State of A.P. v. Golconda Linga Swamy and Another **(2004) 6 SCC 522;** *R.P. Kapur v.* State of Punjab AIR **1960 SC 866;** *State of Andhra Pradesh v. Bajjoori Kanthaiah and Another* **(2009) 1 SCC 114;** *State of Haryana* v. *Bhajan Lal* **1992 Supp (1) SCC 335 – relied on.**

Case law reference:

(2004) 6 SCC 522	**relied on**	**para 9**
AIR 1960 SC 866	**relied on**	**para 10**
(2009) 1 SCC 114	**relied on**	**para 11**
1992 Supp (1) SCC 335	**relied on**	**para 11**

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1252 of 2010.

From the Judgment & Order dated 27.01.2006 of the High Court of Andra Pradesh at Hyderabad in Criminal Petition No.
B 4362 of 2002.

C.K. Sucharita, N. Das and D. Bharathi Reddy for the Petitioner.

C The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. Leave granted.

2. This appeal is preferred by the State of Andhra Pradesh
D against the judgment and order dated 27.01.2006 passed by the High Court of Judicature, Andhra Pradesh at Hyderabad in Criminal Petition No. 4362 of 2002 whereby the High Court allowed the petition filed u/s 482 of the Criminal Procedure Code (hereinafter referred to as 'the Code') filed by the
E respondents herein and quashed the criminal proceedings in Crime No. 288/2002-03 of Prohibition & Excise Station, Huzurabad, Karimnagar initiated against them.

3. Brief facts:

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a) On 12.09.2002, at about 4 p.m., on information about transportation of black Jaggery and Alum illegally, SDP&E along with other officials kept a watch at Molangur Cross Road. While conducting the route watch, an Eicher Van bearing Regn.
G No. AP 15 U 3123 was checked and the Investigating Officer found 5,040 kgs. of black Jaggery in 106 Gunny Bags. The Investigating Officer seized the vehicle and the black Jaggery under the cover of Panchnama, arrested the accused and registered a case in Crime No. 288/2002-03 under Sections
H 34(e), 41 and 42 of the Andhra Pradesh Excise Act, 1968. A

show cause notice was issued to the owner of the vehicle and the accused persons. On 21.09.2002, the Government chemical examiner gave his remarks stating that the sample contains sugar and extraneous matter and it is Jaggery fit for fermentation producing alcohol unfit for consumption.

b) On 16.09.2002, the respondents/accused persons preferred a petition before the High Court being Criminal Petition No. 4362 of 2002 along with Crl.M.P. No. 5639 of 2002 under Section 482 of the Code to quash the proceedings in Crime No. 288/2002-03. On 17.09.2002, the High Court passed an order in Crl.M.P. No. 5639 of 2002 in Crl. Pet. No. 4362 of 2002 giving the interim custody of the vehicle bearing No. AP15U-3123 to Petitioner No.4 therein subject to certain conditions. The Investigating Officer deposited the seized property in the office of the Deputy Commissioner of Prohibition and Excise, Karimnagar, along with proposals for initiating action for confiscation of the black Jaggery. The Deputy Commissioner, Karimnagar, issued a show cause notice to the owner of the contraband for confiscation of the seized property calling for objections, if any. The owner of the vehicle submitted the explanation in response to the show cause notice. The Deputy Commissioner, Karimnagar, by order dated 24.01.2003 confiscated the contraband. Against the order of confiscation, an appeal being Crl. A. No. 4843/2003/CPE/D4 was filed before the Commissioner of Prohibition & Excise, A.P. The Commissioner upheld the confiscation order passed by the Deputy Commissioner, Karimnagar. Aggrieved by the said order, the owner of the Jaggery filed W.P. No. 11647 of 2004 along with W.P.M.P. No. 14808 of 2004 before the High Court for the release of the seized goods. By an interim order dated 09.07.2007 in W.P.M.P. No. 14808 of 2004, the seized black Jaggery was released on furnishing Bank Guarantee by the petitioner therein to the value of the seized goods to the satisfaction of the Dy. Commissioner Prohibition & Excise,

A Karimnagar (second respondent therein) but the same could not be done as the jaggery was already disposed of. On 27.01.2006, the High Court passed an order in Crl. Pet. No. 4362 of 2002 allowing the criminal petition quashing the proceedings against the respondents/accused in Crime No. B 288/2002-03. Aggrieved by the said order, the State of Andhra Pradesh has filed this appeal by special leave.

4. There is no appearance on behalf of the respondents in spite of service of notice. Heard Mrs. C.K. Sucharita, learned C counsel appearing for the State of A.P.

5. Mrs. C.K.Sucharita, learned counsel appearing for the State, after taking us through the complaint and other materials, submitted that the High Court misdirected itself in quashing the D proceedings against the respondents in the light of the seizure of 5,040 kgs of black Jaggery and the investigating agency having ample evidence to prove that it was transported for manufacture of illicit liquor.

E 6. It is not in dispute that on 12.09.2002 at about 4 p.m. on information, the Excise officials of Prohibition and Excise Station, Huzurabad, Karimnagar District proceeded to Molangur cross road, stopped a van bearing No. AP-15-U 3123 and seized 5,040 kgs of black Jaggery in 106 gunny bags from F the van under the cover of panchanama. Among the other accused A-1 is the clerk of A-4 and A2 and A3 are driver and cleaner of the van and A-4 is doing business in jaggery and other kirana (grocery) items. It is the case of the prosecution that after seizure of the vehicle, the sample of substance had G been sent to the Prohibition and Excise Laboratory for testing. The Govt. Chemical Examiner gave the Laboratory Analysis Report (Annexure P-12) which reads as under:-

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"PROHIBITION AND EXCISE DEPARTMENT,
ANDHRA PRADESH
C.E.No.10/02 LABORATORY ANALYSIS REPORT

The sample (s) of substance received with correct and intact from Proh. & Excise Inspector, Station Hazurabad with his letter Dis.No. /02/P&E/HZD dt. 21.09.2002 has been tested in the Laboratory with the following results.

S.No.	Description of the sample	Percentage of proof Spirit of Hydrometer Strength of Alcohol	Remarks
1	2	3	4
10415	A dark brownish coloured substance in a polythene cover kept in a paper cover weighing (200) Grams.Cr.No.288/ 2002-03 of Station Huzurabad. Test Conducted Test for Sugars: Positive		The sample is containing sugar and extraneous matter. It is Jaggery fit for fermentation producing alcohol unfit for consumption

2. The unexpended portion of the sample (s) is returned in securely sealed.

3. He is requested to depute a person with a letter of authority to take delivery of the enclosures from the Laboratory on any working day.

Signature of Asst.
Examiner
Dt. 21.09.2002

K. Mahender Reddy)
Govt. Chemical Examiner
of Proh. & Excise Regl.
Proh. Excise Laboratory

A To
The Proh. & Excise Inspector,
Huzurabad, Karimnagar Dist.
Copy submitted to the Proh. And Excise
Superintendent, Dist. Hyderabad."

B 7. The remarks offered in (column 4) of the said report shows that the seized substance is Jaggery fit for fermentation producing alcohol unfit for consumption. It is also relevant that the Deputy Commissioner of Prohibition and Excise, Karimnagar Division, by proceedings dated 24.01.2003, after C finding that an offence under A.P. Excise Act, 1968 has been made out, seized the Jaggery involved in Crime No. PR 288/ 2002-03 dated 12.09.2002 and confiscated to the Government of A.P. The said order was confirmed by the Commissioner of Prohibition and Excise on 01.03.2004. In the light of the factual D details, learned counsel for the State submitted that it is not a case of no material at all for taking action under the A.P. Excise Act and the High Court was not justified in quashing the proceedings under Section 482 of the Code when the material on record discloses commission of offence under the A.P. E Excise Act. No doubt, before the High Court, learned Public Prosecutor who defended the Government has neither placed nor highlighted the above mentioned materials.

8. In a series of decisions, this Court has explained the power and jurisdiction of the High Court under Section 482 of F the Code. Exercise of power under Section 482 of the Code, particularly, in a case of this nature is an exception and not the rule. The above provision only saves inherent power which the Court possessed before the enactment of the Code and does not confer any new powers on the High Court.

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9. In *State of A.P. vs. Golconda Linga Swamy and Another,* (2004) 6 SCC 522, while considering similar orders passed by the Andhra Pradesh High Court under the A.P. Excise Act, this Court has held as under:

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"....It envisages three circumstances under which the inherent jurisdiction may be exercised, namely: (*i*) to give effect to an order under the Code, (*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. 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 course of administration of justice on the principle *quando lex aliquid alique concedit, conceditur et 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 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 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 power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it

A 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 complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the B materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

10. In *R.P. Kapur* v. State of Punjab, AIR 1960 SC 866 = 1960 Cri LJ 1239, this Court summarised some categories of C 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;

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(*ii*) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(*iii*) where the allegations constitute an offence, but there E is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge."

11. In *State of Andhra Pradesh* vs. *Bajjoori Kanthaiah and Another*, (2009) 1 SCC 114, again when the Andhra Pradesh F High Court quashed similar complaint under the A.P. Excise Act and A.P. Prohibition Act in an appeal filed by the State of Andhra Pradesh, this Court after reiterating the principle laid down in *R.P. Kapur's* case (supra) and *State of Haryana* vs. *Bhajan Lal*, 1992 Supp (1) SCC 335 = 1992 SCC (Cri) 426 G held that the interference at the threshold is not warranted and set aside the order of the High Court quashing the FIR and permitted the prosecution to proceed with the trial.

12. While exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an H

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/Court. It is true that Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, other wise, it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time, Section 482 is not an instrument handed over to an accused to short-circuit a prosecution and brings about its closure without full-fledged enquiry. Though High Court may exercise its power relating to cognizable offences to prevent abuse of process of any Court or otherwise to secure the ends of justice, the power should be exercised sparingly. For example, where the allegations made in the FIR or 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 or allegations in the FIR do not disclose a cognizable offence or do not disclose commission of any offence and make out a case against the accused or where there is express legal bar provided in any of the provisions of the Code or in any other enactment under which a criminal proceeding is initiated or sufficient material to show that the criminal proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused due to private and personal grudge, the High Court may step in. Though the powers possessed by the High Court under Section 482 are wide, however, such power requires care/caution in its exercise. The interference must be on sound principles and the inherent power should not be exercised to stifle a legitimate prosecution. We make it clear that if the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of inherent powers under Section 482.

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13. In the case on hand, apart from specific allegations H

A about the transportation of Jaggery for preparation of illicit distilled liquor, prosecution also placed reliance on laboratory analysis report which mentions that the transported Jaggery is fit for fermentation, producing alcohol unfit for consumption. In those circumstances, whether the raw material in existence B would be sufficient for holding the accused persons concerned guilty or not has to be considered only at the time of trial. Further, at the time of framing the charge, it can be decided whether *prima facie* case has been made out showing the commission of offence and involvement of the charged C persons. It is immaterial whether the case is based on direct or circumstantial evidence. That being so, the interference at the threshold quashing the FIR is to be exceptional and not like routine as ordered by the High Court in the present case. It is not a case where it can be said that the complaint did not D disclose commission of an offence. The acceptability of the materials to fasten culpability on the accused persons is a matter of trial.

14. In the light of the above principles and the materials placed by the prosecution, we are satisfied that the High Court E was not justified in quashing the FIR in Crime No. 288/2002-03 of Excise and Prohibition Station, Hazurabad, Karimnagar District, accordingly the impugned judgment of the High Court is set aside. We make it clear that we have not expressed any opinion on the merits of the case except holding that F interference by the High Court at the threshold is not warranted. We further make it clear that it is for the prosecution to establish its charge beyond reasonable doubt. With these observations, the State appeal is allowed.

D.G. Appeal allowed.