

HIGH COURT OF MADHYA PRADESH

BENCH AT GWALIOR

JUSTICE SUJOY PAUL.

M.Cr.C. No. 3271/2008

Cdr. A.K. Sharma

Vs.

State of M.P. & another

Shri Raju Sharma, Advocate for the petitioner.

Shri Vijay Sundaram, Panel Lawyer for the
respondent No.1/State.

None for respondent No.2 despite service.

ORDER

(31 / 08 /2015)

The petitioner has invoked the jurisdiction of this Court under Section 482 Cr.P.C. to assail the complaint proceedings in Criminal Case No.12332/2006.

2. Brief facts necessary for adjudication of this matter are that the petitioner is an officer in Indian Navy. He has rendered 27 years of unblemished service. The petitioner remained posted in 03 MP Naval NCC Unit Gwalior between 04.04.2004 to 15.12.2005. The respondent No.2 was also posted in the said Unit at the relevant time. She was working as a Lascar a class IV post. She was appointed on compassionate ground due to death of her husband.

3. Shri Raju Sharma, learned counsel for the petitioner contends that respondent No.2 was highly arrogant and was involved in acts of insubordination and making false complaints against the officers. The respondent No.2 was posted on attachment in NCC Group Headquarters from where she reported back to 03 MP Naval Unit NCC on 01.06.2005. Her routine duty was from 9:30 AM to 5:30 PM excluding one hour of

lunch break. It is urged that similarly posted Lascars always reported on their duty in time but respondent No.2 never turned up in time. She was a habitual latecomer and whenever she was apprised about it, her standard answer was that she will come as per her own wish.

4. Shri Raju Sharma, learned counsel for the petitioner contends that on 7.7.2005, the respondent No.2 again came late. The Chief Instructor asked her about the reason for coming late. She started arguing and misbehaving with the Chief Instructor. The petitioner was the Commanding Officer of the Unit and therefore Chief Instructor reported the matter to the petitioner regarding the conduct of respondent No.2. It was in relation to her late coming, refusing to lift the official suit case of Commanding Officer and even refusing to bring/serve tea. He also apprised the petitioner that respondent No.2 is not following the daily roster of Lascars and further refusing to carry the DAK/Treasury duties.

5. The case of the petitioner is that he called respondent No.2 in the presence of Office Superintendent and Chief Instructor and asked her about the choice of duty in which she will feel comfortable. She in turn, started abusing the petitioner. She used very filthy and improper language and misbehaved with petitioner. The petitioner immediately apprised the higher authorities about the incident dated 07.07.2005. The reliance is placed on Annexure P/1 dated 07.07.2005 which is addressed to the Deputy Director General, NCC Directorate, Bhopal. The President Court of Enquiry, NCC Group Headquarter was also apprised by the petitioner by filing Annexure P/2 dated 07.07.2005. The petitioner even intimated about this incident to Officer- in-charge of Police Station

Kampoo/Mahila Thana on the same day i.e. 07.07.2005.

6. Shri Raju Sharma has taken pains to contend that the respondent No.2 preferred a complaint on 08.07.2005. This was done as an after thought and in order to protect herself from any disciplinary action which may be taken by the department for her act of disobedience and indiscipline.

7. Learned counsel for the petitioner further submits that she subsequently approached the District Programme Officer, Human Rights Commission etc. Petitioner upon receiving notices from said authorities filed his detailed reply. All such authorities were satisfied with the explanation given by the petitioner and therefore no action was taken by Human Rights Commission and the Programme Officer. The document dated 10.11.2005 (Annexure P/5) is relied upon by the petitioner to show that a senior officer of the rank of CSP conducted a detailed enquiry and found that allegations against the petitioner are factually incorrect. Shri Sharma submits that later on respondent No.2 filed a complaint on 29.10.2005 before the Judicial Magistrate First Class, Gwalior. It is contended in the said complaint that petitioner has committed offence under Sections 323, 325, 326, 341, 294, 352, 354, 506 (Part.II) of the IPC and under Sections 3(1) (10), 3 (1) (11), 3 (1) (12) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The court below took the cognizance by its order dated 11.10.2006.

8. Criticizing the order dated 11.10.2006, it is submitted that learned court below has erred in taking cognizance on certain sections of IPC. Although, said court was right in holding that the allegations made under various sections of Atrocities Act are without there being any basis.

9. The bone of contention of Shri Raju Sharma is that the organization like Navy and NCC cannot run unless strict discipline is maintained. The petitioner in order to maintain discipline asked respondent No.2 that she should come in time, she in turn misbehaved with the petitioner and used improper and filthy language. When petitioner promptly reported this matter to the higher authorities, respondent No.2 thought that "offence is the best defence" and she preferred complaint after few months before the court below. The said complaint was like a house of cards and court below should not have entertained this application without application of mind. He placed reliance on various judgments to contend that the complaint is in fact an after thought and malicious act on the part of respondent No.2. For this reason, it is urged that criminal proceedings be set aside.

10. Shri Vijay Sundaram, learned Panel Lawyer supported the proceedings. He submits that the order dated 11.10.2006, whereby a complaint was directed to be registered, is not called in question. Hence no interference is warranted. In addition, he submits that at this stage, factual matrix of the matter cannot be gone into.

11. The respondent No.2 has not chosen to appear despite service.

12. I have bestowed my anxious consideration on rival contentions of the parties and perused the record.

13. In the aforesaid factual backdrop, it is clear that petitioner preferred representations Annexure P/1, P/2 and P/3 on the date of incident i.e. 07.07.2005. The complaint of respondent No.2 Annexure P/4 is later in time. Thereafter, she preferred the criminal complaint on 29.10.2005. The court below recorded her statement

and found that allegations relating to Atrocities Act are not established. However, bailable warrant was ordered to be issued against the petitioner for offence under various sections of IPC.

14. In the opinion of this Court, in the relief clause of the petition, the petitioner has challenged the entire proceedings of criminal Case No.12332/2006. Thus, this prayer is wide enough to include the order dated 11.10.2006. Whether or not said order is specifically challenged, it is covered in the relief clause. Thus, this objection of Shri Sundaram is rejected.

15. This is trite law that at this stage interference by this Court can be made on limited grounds. Correctness of reasons ordinarily cannot be gone into in a proceeding of this nature. However, it is noteworthy that the Apex Court in *1998 (5) SCC 749 (Pepsi Foods Vs. Special Judicial Magistrate)* opined that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course on mere asking because complainant entered the witness box and brought two witnesses in support thereof. The order of Magistrate, summoning the accused must reflect his application of mind. The court is required to examine the nature of allegations made by the complainant and also the evidence both, oral and documentary, in support thereof. The Apex Court further opined that if Magistrate's order suffers from non application of mind, the proceedings can be assailed under Section 482 Cr.P.C. If the order impugned is tested on the anvil of the principle laid down aforesaid, it will be clear that the court below has registered the matter only on the basis of deposition of the complainant and other witnesses. The court below has not examined the documentary evidence and has not given any finding as to when the complainant

preferred representations about the incident. Version of respondent No.2 was treated to be gospel truth and on mere asking, the complaint was registered.

16. The Apex Court in *AIR 1992 SC 604 (State of Haryana Vs. Bhajan Lal)* summarized the ground on which an FIR or complaint can be called in question in a proceedings filed under Article 226 of the Constitution/Section 482 Cr.P.C. It reads as under:-

7. Where a criminal proceedings 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."

17. A plain reading of the aforesaid parameters makes it clear that criminal proceedings can be called in question if it is actuated with malafide or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused. In the present case, the chain of events show that the complaint filed by the respondent No.2 was an after thought and it is designed to take vengeance on the petitioner. The Apex Court in *(2008) 8 SCC 232 (Priya Vrat Singh & Ors. Vs. Shyam Ji Sahai)*, *(2008) 14 SCC 1 (Rukmini Narvekar Vs. Vijaya Satardekar & Ors)* and *Rajib Ranjan & Ors. Vs. R. Vijaykumar (2015 (1) SCC 513*, followed the ratio decidendi of *Bhajan Lal (supra)*. In *Priya Vrat Singh (supra)*, the Apex Court has taken notice of the fact that inspite of service of notice, none appeared for the complainant. Same is the case here.

18. It is noteworthy that in *1988 (1) SCC 692, (Madhavrao Jiwajirao Scindia Vs. Sambhajirao Chandrojtrao Angre)*, the Apex Court held that it is for the court to take into consideration any special feature which appears in a particular case to consider whether it is

expedient and in the interest of justice to permit a prosecution to continue. As noticed, respondent No.2 has not chosen to appear in this matter to assist the court. In *(2012) 1 SCC 520 (Anita Malhotra Vs. Apparel Export Promotion Council & another)*, the Apex Court opined that where the documents relied on by defence are beyond suspicion or doubt, same can be relied upon. In the present case, the respondents have not chosen to raise their eyebrows on the genuineness of the defence documents filed as annexures. Some documents aforesaid are official correspondence. Thus, I find no reason to doubt the said documents. In the aforesaid factual scenario, in my opinion, the order of court below is improper and passed in a routine manner. If the said proceedings are permitted to continue, it will be travesty of justice. The complaint, in my view is a counter blast on the part of respondent No.2. Thus, the petitioner is not required to undergo rigmarole of the criminal proceedings.

19. Resultantly, the criminal complaint proceeding in Criminal Case No.12332/2006 is quashed. Petition is allowed.

(alok)

(Sujoy Paul)
Judge