

* SMT JUSTICE T. RAJANI

+ CRIMINAL PETITION No.7501 of 2011

% 07.11.2017

P.Bhaskara Rao

... Appellant

Vs.

\$ Smt.Kusumanchi Surekha and another

... Respondents

! Counsel for the appellant: SRI T.NIRANJAN REDDY
For MRS.D.SANGEETHA REDDY

Counsel for the Respondents: Sri Y.RAMA RAO (R1)
PUBLIC PROSECUTOR (R2)

< Gist :

> Head Note:

? Cases referred:

1. 2013(3) SCC 330
2. (2013) 10 SCC 591
3. AIR 1992 SC 604
4. 1994(2) SCC 277
5. AIR (SCW)-2009-0-3336
6. 2012 CJ (SC) 1081



SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.7501 of 2011

ORDER:

This petition is filed seeking for quash of the proceedings in Crime No.263 of 2011 of Tanuku Police Station, West Godavari District.

2. Heard the counsel for the petitioner; the counsel for the 1st respondent; and the Public Prosecutor, who took notice on behalf of the 2nd respondent.

3. The facts of the case, briefly, which lead to the filing of the present report by the complainant, need to be stated as it is, in the earlier report given by the complainant herein, that the roots of this case lie.

4. There was a theft in the house of the complainant regarding which a report was lodged by the complainant on 05.03.2009. The narrated facts therein are that the complainant went to her younger brother's house in order to attend a marriage 20 days back and she took some of the gold ornaments along with her and on 04.03.2009, in the evening all their family members went to Dwaraka Tirumala and when they were attending the marriage, her elder brother Chalapathi telephoned to her and informed that the doors of her house were found opened and he expressed a doubt that a theft might have been committed in their house. Immediately, she returned and she found that the doors of her bed room were also opened and some gold ornaments were found missing. Investigation was taken up based on the said report and now she comes up with a complaint against the Circle Inspector (CI), who investigated the earlier report, stating that there was no justice done to her and the CI cheated and committed theft of gold ornaments, weighing 80 tulas, which value

about Rs.30 lakhs and that he cheated them in the enquiry and that no recovery was made and no action was taken against the CI. She sought the Inspector General to take action against the CI and prayed that their ornaments are returned to them and also to punish the CI, who is responsible for not returning the articles. She further stated that out of 120 tulas of gold, only 25 tulas of gold ornaments were returned to her. She complained that from the beginning the CI was cheating them and that he was not responding about Rs.25,000/- of cash and 25 tulas of silver.

5. In the background of the allegations made in the above report, it is necessary to examine the investigation that was done in respect of the earlier report. The earlier report is in respect of gold ornaments, which pertain not only to the complainant but also to her mother and her sister and there is absolutely no mention made in the said report about any cash or silver.

6. When the counsel for the petitioner made an effort to draw the attention of this Court to the earlier statements and the record pertaining to the investigation of the earlier report, the counsel for the respondent opposed the said effort by contending that it is only the material pertaining to the present crime that has to be perused to find out whether there are any grounds to quash the proceedings against the petitioners/accused. She also furnished several rulings in support of her argument, though none of them run counter to the principles laid down in *Rajiv Thapar and others vs. Madan Lal Kapoor*¹ by the apex court. They may however be gone through, to keenly understand the ratio laid down in the above rulings and to see whether they run counter to those in Rajiv Thapar's case.

¹ 2013(3) SCC 330

1) In *Umesh Kumar vs. State of Andhra Pradesh and another*², it was held that the order as to partial quashment of charge sheet in relation to offences concerned passed by the High Court therein on the basis of material available before it at that stage, which could not be termed as substantive evidence, is not final and the same is subject to further orders which could be passed by trial court under Section 216 Cr.P.C. The scope of Section 482 is also explained by stating that the inherent powers under Section 482 Cr.P.C. could be exercised by the High Court to give effect to an order under Cr.P.C. to prevent abuse of the process of the court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised *ex debito justitiae*. It also observed that however in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its *prima facie* satisfaction about the existence of sufficient ground for proceeding against the accused and the court cannot look into materials, the acceptability of which is essentially a matter for trial and any document filed along with the petition labelled as evidence without being tested and proved cannot be examined.

2) In *State of Haryana and ors., vs. Ch.Bhajanlal and others*³, it was held that in the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given 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 guide, myriad kinds of cases wherein such power should be exercised;

² (2013) 10 SCC 591

³ AIR 1992 SC 604

- a) 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;
- b) 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 under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;
- c) 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;
- d) 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 under Section 155(2) of the Code;
- e) 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;
- f) 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 proceeding 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;
- g) 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.

3) In *Union of India v. B.R. Bajaj*⁴, it was observed that the approach of the High Court amounts to investigation by the Court whether the alleged offences in the FIR were made out or not.

4) In *State of M.P. v. S.B. Johari and others*, dated 17.01.2000, the apex court found fault with the approach of the High Court therein, as the High Court recorded reasons by appreciating and

⁴ 1994(2) SCC 277

weighing the material on record produced by the accused therein. It was observed that it is settled law that at the stage of framing the charge the court has to *prima facie* consider whether there is sufficient ground for proceeding against the accused and the court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused.

5) In *State of Andhra Pradesh v. Aravapally Venkanna*⁵, it was held therein that it would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. It was observed that the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest Court of a State should normally refrain from giving a *prima facie* decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage.

6) In *Gian Singh vs. State of Punjab and another*⁶, the issue before the court was whether a non-compoundable case can be allowed to be compounded and the summary of the discussion, which touched upon the principles of quashment of the proceedings in a criminal case, was as follows:

⁵ AIR (SCW)-2009-0-3336

⁶ 2012 CJ (SC) 1081

“The position that emerges from the above discussion can be summarised thus; the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guidelines engrafted in such power viz., (1) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R. may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim’s family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on different footing for the purposes of quashing, particularly, the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry etc., or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings

if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative the High Court shall be well within its jurisdiction to quash the criminal proceeding.

7. What flows from the above rulings, as understood by this court, is that the material produced by the accused cannot be relied upon to quash the proceedings against him and the basis for quashing the proceedings should be only the material that is produced and which is related to the crime, the proceedings of which are sought to be quashed.

8. The counsel for the petitioner seeks to carve out an exception for the principle that only the material related to the crime can be relied upon, by relying on certain rulings. The first of it is *Rajiv Thapar's* case (supra). The apex court held that in exercise of its inherent jurisdiction under Section 482 Cr.P.C., the High Court must make a just and rightful choice. The High Court should not evaluate the truthfulness or otherwise of the allegations levelled by the prosecution/complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of

the accused are. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. It was held that this was so because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. It was also observed that the converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed by establishing his defences by producing evidence in accordance with law. It was also observed that there is an endless list of judgments rendered by this Court declaring the legal position that in a case where the prosecution/complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed material before the Court, *prima facie* evidencing the truthfulness of the allegations levelled, trial must be held. Having observed so, and having held that the Supreme Court rendered endless list of judgments to the effect that the material produced by the accused cannot be considered in a case where the complainant levelled allegations bringing out all the ingredients of the charges levelled, the apex court went on to observe as follows:

“To invoke its inherent jurisdiction under Section 482 Cr.P.C. the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material

relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.”

9. The above ruling was relied upon by the apex court in *Prashant Bharti vs. State (NCT of Delhi)*⁷. The apex court extracted the observations made in *Rajiv Thapar*’s case (supra), which reads as follows:

“29. The issue being examined in the instant case is the jurisdiction of the High Court under [Section 482](#) of the Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under [Section 482](#) of the Cr.P.C., at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution’s/complainant’s case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section - 482 of [Cr.P.C.](#) the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied

⁷ 2013(9) SCC 293

upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under [Section 482](#) of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under [Section 482](#) of the Cr.P.C.:-

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal - proceedings, in exercise of power vested in it under [Section 482](#) of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused."

10. In *Prashant Bharti's* case (supra), it was observed that the complainant did not refute the material relied upon by the accused. The court, in fact, ordered the complainant to produce documents regarding her marital status on the date of the alleged offences against the accused therein and the same were looked into by the

Court. However, that was a matter where the prosecutrix/complainant also approached the High Court for quashment of the FIR lodged by her.

11. *Bhajan Lal's* case was relied upon by both sides. However, the respondent's counsel relying on the aforesaid decision contends that powers under section 482 Cr.P.C. have to be used sparingly, under the circumstances enumerated therein, which are already extracted above. Counsel for the petitioner also relies on the said decision to convince this Court, that this case falls under the (e) and (f) categories. *Rajiv Thapar's* case also refers to *Bhajan Lal's* case.

12. The counsel for the petitioner also took the help of the ruling of the apex court in *Matajob Dobey vs. H.C.Bhari*⁸ to support his contention that when no sanction under Section 197 Cr.P.C. is obtained to prosecute the accused, who is a public servant, the proceedings need to be quashed. The above ruling is rendered by a Constitutional Bench of the Supreme Court, wherein it was held that the offence alleged to have been committed must have something to do or must be related in some manner, with the discharge of official duty and no question of sanction can arise under Section 197 Cr.P.C. unless the Act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty and there must be a reasonable connection between the act and the official duty.

13. So now, there are two aspects which have to be examined and determined in this case.

14. One is whether the material produced by the accused are such as exempted in *Rajiv Thapar's* case (supra) and whether the acts of

⁸ AIR 1956 SC 44(1)

the accused, which are alleged to be offences, constitute a part of his official duty.

15. The material that is sought to be relied upon by the counsel for the petitioner is comprised of the statements of the complainant, her mother and sister and the receipts issued by them after receiving the property, which was recovered from the accused. The counsel for the respondent does not refute the genuineness of the said material and does not dispute the fact that the receipts were issued by the complainant, her mother, and sister. The above material would undoubtedly fall under the category of the material that is permitted to be looked into by the Apex Court in *Rajiv Thapar's* case. Even if the petitioner refutes the material, it would definitely constitute justifiably unrefutable material and becomes reliable by virtue of *Rajiv Thapar's* case. The facts in *Rajiv Thapar's* case are also similar, in the sense that the father of the deceased therein gave one complaint, which in the light of the post mortem report, inquest report, and other documents, was found to be baseless. He again gave a complaint and in the quash petition filed in the said case, those documents were relied upon, to quash the subsequent complaint. As the genesis for the complaint filed in this case is the complaint filed by the complainant earlier in Crime No.401 of 2009, the same can be looked into in the foremost. She gave a list of ornaments, which were lost by her and subsequently she gave a letter to the Inspector of Police, stating that 16 tulas of gold pieces and one pearl ring, which she thought were also lost in the theft, were found in her house and that hence, she sought for deleting the above items from the report. After deleting the said items, the remaining items are 1) one necklace with enamel coating, 2) one pair matching ear studs to the necklace, 3) six sada bangles, 4) one ring out of the two rings originally reported, be it pearl ring or

betrothal ring, 5) a pair of white stone studded jukas and 7) a black bead studded chain were stolen.

16. Later, all of her gold ornaments were recovered during investigation and were handed over to her. She issued a receipt while receiving the said ornaments, which is dated 04.09.2010. The ornaments that were taken are 1) one gold necklace with enamel coat, 2) one pair of gold ear studs, 3) six sada gold bangles, 4) One gold pearl ring, which has to be considered as the betrothal ring or the ring other than the pearl ring, which was found in her house, 5) two gold jukas studded with white stones, 6) Two stringed gold black beads chain with locket. The receipt would show that the complainant has received all the ornaments, which were lost by her in the theft and she issued receipt to that effect. Further support for the above fact comes from the evidence given by her before the court, wherein she categorically stated in the cross-examination that she received the stolen property from the police station, but not from the court. She also stated that the CI of Police handed over the subject property and receipt was also obtained for the same. Hence, it is very clear from the above material that the entire property lost by her was not only recovered by the petitioner herein but was also handed over to the complainant, who is none other than the C.I. against whom allegations that he robbed the property are made. Wherefrom did she had a reason to suspect that he robbed the property cannot be deciphered.

17. The counsel for the respondent contends that there was a CID enquiry ordered against the petitioner herein and in the report submitted by the CID, departmental enquiry was ordered by holding that the petitioner committed the offence. She also expressed her grievance with regard to the non-furnishing of the CID report to her in

spite of her applying for the same under the Right to Information Act. Her grievance about the non-furnishing of the report cannot be agitated in this case. But, however, the report is not before this court. The counsel for the petitioner also filed the charge sheet in the earlier crime and also the explanation given by the petitioner herein to the Deputy Inspector General of Police, in the departmental enquiry. He mentioned about the entire investigation done by him and submits that some more items have to be recovered from the accused, who is absconding and who, according to the confession of accused No.1, is in possession of the remaining gold. The report of the mother and the sister of the complainant are also filed and the properties were recovered during investigation and handed over to the mother and sister of the complainant under the receipts issued by them. While all the items lost by her sister Chandralekha are recovered and handed over to her, two items lost by her mother are not recovered and returned to her. The reasons for the same can be gathered from the charge sheet and also the explanation given by the petitioner to the Deputy Inspector General of Police. But, however, the mother did not raise any grievance and she did not give any complaint against the petitioner. In the background of the above factual scenario, the report given by the complainant seems to be based on a total misconception and the reasons for such complaint are obscure. When she does not at all allege that she lost any cash and silver, she cannot find fault with the petitioner for not recovering the same. There is absolutely no foundation laid to make an allegation that the petitioner has committed theft of 80 Soveriegns of gold worth Rs.30 lakhs. There is absolutely no grievance that can be entertained by the complainant by the manner of investigation done by the petitioner. She must be more than satisfied with the investigation, as the property was not only recovered but also returned to the complainant, which is unusual and

unlikely in most of the many cases of theft where due to lapse of time the accused either spends away the robbed property or at least converts the gold ornaments into cash.

18. What is prevented by the Supreme Court is the evaluation of the truthfulness of the allegations levelled by the complainant. In this case, no evaluation is needed. Our Supreme Court has in a judgment *Rukmini Narvekar V. Vijaya Satardekar and others*⁹, after dealing with the larger bench judgment of the Supreme Court in *State of Orrisa V. Debedra Nath Padhi*¹⁰, distinguished between a proceeding under [Section 227](#) Cr.P.C before the trial court and a proceeding under [Section 482](#) Cr.P.C. and made a reference to the Court's power to consider material other than those produced by the prosecution in a proceeding under [Section 482](#) Cr.P.C. The Supreme Court in paragraph 38 referred to the observation of the larger bench, wherein the larger bench in paragraphs 21 and 29 of its decision did indicate that the width of the powers of the High Court under [Section 482](#) Cr.P.C. and [Article 226](#) of the Constitution is unlimited where under the High Court could in the interest of justice make such order as may be required to secure the ends of justice and to prevent abuse of the process of any court; there is no scope for the accused to produce any evidence in support of the submissions made on his behalf at the stage of framing of charge and only such materials as are indicated in [Section 227](#) CrP.C. can be taken into consideration by the learned Magistrate at that stage; however, in a proceeding taken therefrom under [Section 227](#) Cr.P.C. the court is free to consider material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained.

⁹ 2008(14) SCC 1

¹⁰ 2005(1) SCC 568

Rajiv Thapar's case makes a reference to *Rukmini Navekar's* case also.

19. The complaint in this case lays only bare facts from which the complicity of the petitioner cannot be gathered. It spells the earlier complaint, making it imminent to look into it. A mere reading of the earlier complaint would reveal the falsity of the allegations made in this complaint. The material furnished by the petitioner/accused passes the qualitative test of *Rajiv Thapar's* case and crosses all the four steps delineated by the Apex Court in the said case. The morale of a Public Servant should not be dented by false prosecutions. The freedom required for an investigating officer, to conduct proper investigation, would be under constant threat, if frivolous complaints are entertained. The documents filed by the petitioner are justifiably irrefutable, if not irrefutable. This complaint dated 16.08.2011 is filed long after the ornaments were returned to the complainant i.e., on 04.09.2010. There is an allegation in the complaint that for the loss of 120 tulas only 25 tulas was registered as the loss. But her letter, stating that 16 tulas were found in her house and that they can be removed from the list of lost articles, would suggest that the FIR was registered for the loss of whatever ornaments were stated by her, even without verifying the truth of her complaint. She had the freedom to inform the police about the errors committed by her. She could have utilized the freedom to give a letter as given for rectifying her mistake, to inform that there are some more articles lost in the theft. Her letter would show that she was keen on reporting about the exact number of articles. She did not report to any superiors of the petitioner, about his acts which were mentioned in the present report. It is obvious that no grievance was put forth till she received her lost ornaments. Her allegation that no recovery and return of any of her

lost ornaments, turns out to be an absolutely false statement, in the light of not only the receipt issued by her but also the evidence given by her in the court. The above observations would answer the vehement submission of the respondent's counsel that the complainant did not keep quite and has been agitating about the misdeeds of the petitioner.

20. The ornaments were recovered within less than one month. There is absolutely no grievance that could have been entertained by the complainant. In the departmental enquiry, initiated against the petitioner, the explanation of the petitioner was found convincing and the charges were dropped. In conclusion, it can be said that by looking into the permitted category of documents, which are not refuted by the respondent, the complaint turns out to be a frivolous one and permitting the prosecution to proceed on the basis of such complaint would be a sheer abuse of the process of law. The argument of the respondent's counsel that the complaint should not meet a sudden death and that truth should be allowed to come out by permitting the prosecution to go on, can be upheld, if the court finds the balance of credibility leaning, at least, in the slightest manner, towards the complainant. It is on the other hand, otherwise.

21. As regards the necessity of obtaining sanction under Section 197 Cr.P.C. for prosecuting the petitioner, the allegations in the report, if accepted, have to be considered only as a lapse on the part of the petitioner in conducting proper investigation. Then, it would amount to a lapse on the part of the petitioner in performing his official duties for the prosecution of which a sanction is required under Section 197 Cr.P.C. No sanction is reported to have been obtained before prosecuting the petitioner. A Constitutional Bench of the Supreme Court, in the ruling cited by the petitioner's counsel, *Sanjay Kumar*

*Thakur v. State of Bihar*¹¹ dealing with a batch of two appeals, observed that the offences alleged must have something to do with the discharge of official duty and there can be no sanction if the acts alleged do not constitute an offence. It is held that the only point to be determined is whether the act complained of is committed in discharge of his official duty and there must be reasonable connection between the act and the official duty. In this case the scope for the allegations arises due to the investigation being taken up by the petitioner, on the complaint of theft in the house of the respondent. It is not an allegation that the petitioner committed an offence which is unrelated to his official duty. What he ought to do, is complained as not done, which can, without any demur, be termed as a complaint relating to his official duty, for the prosecution of which, sanction is required. Hence, the complaint given by the complainant has to be quashed on both the counts, which are urged by the petitioner's counsel.

22. Accordingly, the Criminal Petition is allowed and the proceedings in Crime No.263 of 2011 of Tanuku Town Police Station, West Godavari District, are hereby quashed. As a sequel, the miscellaneous applications, if any, shall stand closed.

T. RAJANI, J

November 7, 2017
LMV

¹¹ AIR 1956 SUPREME COURT 44