

\$~47

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 24th August, 2018

+ CRL.M.C. 4261/2018 and Crl.M.A.30558-30559/2018

DARSHAN LAL

..... Petitioner

Through: Mr. Lalit Kumar Advocate with
Mr. Lal Bahadur Sahu, &
Mr. Aditya Kumar, Advocates

versus

STATE OF NCT OF DELHI & ANR. Respondents

Through: Mr. Akshai Malik, APP for the
State with SI Pawan, PS Kalkaji
Mr. Anirudh Sharma, Adv. for
R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. By the petition at hand, the petitioner invokes the inherent power of this court under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) to seek quashing of the proceedings in the Sessions Case No.33 of 2018 pending in the court of Special Judge (Electricity Act) for South-District of Saket Court Complex, New Delhi, it having arisen and been registered, *inter alia*, on the basis of report filed under Section 173 Cr.P.C. after conclusion of the investigation into first information report (FIR) No.597/2015, registered at the instance of second respondent of Police Station

Kalkaji for offence punishable under Section 135 of the Electricity Act, 2003.

2. The second respondent has appeared through counsel on advance notice. The State has accepted notice through Mr. Akshai Malik, Additional Public Prosecutor for the State and resists the prayer in the petition.

3. The prime grounds on which the petitioner seeks relief in the above-noted nature are that the allegations in the criminal case are unfounded, the petitioner was neither named in the FIR as the perpetrator of the offence nor was he in possession of the premises where alleged theft of electricity took place. It is also the contention of the petitioner that no evidence has been collected during the investigation to suggest that the petitioner was in any manner connected to, or associated with, the acts of commission constituting the theft of electricity.

4. The learned Additional Public Prosecutor countered these submissions with reference to the admitted position, as indicated in the petition itself, that on the basis of charge sheet the Special Judge has already taken cognizance and issued process against the petitioner, he having failed to appear in compliance, this having resulted in non-bailable warrants being issued, followed by procedure for proclamation under Section 82 Cr.P.C. also having been initiated.

5. The fact that the special court after taking cognizance of the offence under Section 135 of the Electricity Act, 2003 has issued

process under Section 204 Cr.P.C. against the petitioner, indicates that it has found sufficient grounds to proceed against him on the basis of charge sheet and the evidence submitted therewith. The petitioner has avoided to put in appearance before the Special Judge in response to the said process and instead of appearing before the competent criminal court and making his submissions there on the merits of the accusations against him, he has chosen to come up to this court by-passing the normal procedure, raising issues which essentially fall in the domain of factual inquiry.

6. The jurisdiction of this court under Section 482 Cr.P.C. is not the appropriate one to delve into issues of facts in the manner solicited by the petition at hand. The contentions on the basis of which the prayer for quashing is pressed, may be repelled by reference to the following observations of the Supreme Court in *Rajiv Thapar and Ors. Vs. Madan Lal Kapoor*, (2013) 3 SCC 330 which need to be borne in mind:

“29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, 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 CrPC, 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 CrPC 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 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

(emphasis supplied)

7. The second limb of the submission in the petition at hand is based on payment by the petitioner of what he described as “*theft bill amount*” to the second respondent. In this context, he places reliance on a decision of bench of two Hon’ble Judges of the Supreme Court in *Suresh Ganpati Halvankar vs. The State of Maharashtra & Ors.*, *Criminal Appeal No.156 of 2018*, decided on 22.01.2018

8. A bench of three Hon’ble Judges of the Supreme Court in *Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and Others v. State of Gujarat and Another*, (2017) 9 SCC 641, after taking note of the previous pronouncements concerning the contours of the power of the High Court under Section 482 Cr.P.C. culled out the law as under:-

“16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions :

16.1 Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

16.2 The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash

under Section 482 is attracted even if the offence is non-compoundable.

16.3 In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

16.4 While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.

16.5 The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.

16.6 In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

16.7 As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned.

16.8 Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

16.9 In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

16.10 There is yet an exception to the principle set out in propositions 16.8 and 16.9 above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance”.

9. Following the principles set out in the aforementioned judgment of *Parbatbhai Aahir* (supra), in a similarly placed case seeking quashing of the criminal prosecution involving offence under Section 135 of the Electricity Act, 2003, in *Maseed Mohamad Aman vs. The State (NCT) of Delhi & Ors.*, Crl.M.C.3317/2018, decided on 06.07.2018, this court held as under:-

“The payment of penalty towards the civil liability is no good reason to bring an end to the criminal prosecution which is also one of the consequences flowing from the impugned acts. The offence involved here is in the nature of economic offence concerning the financial and economic well being of the State with implications which

go beyond the domain of mere dispute between private disputants and, therefore, not a fit case for this Court to exercise the inherent power under Section 482 of Code of Criminal Procedure, 1973 in terms of the guiding principles set out in the judgment of the Supreme Court reported as “Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and Others v. State of Gujarat and Another, (2017) 9 SCC 641”.

10. Against the given backdrop, the above principle equally applies to the case at hand. The petition is dismissed.

11. Pending applications also stand disposed of.

R.K.GAUBA, J.

AUGUST 24, 2018

vk