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SUPREME COURT CASES

(2015) 16 SCC

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(BEFORE V. GOPALA GOWDA AND CHOCKALINGAM NAGAPPAN, JJ.)

SULTANA BEGUM AND ANOTHER . . . Appellants; a

Versus

STATE OF PUNJAB AND OTHERS . . . Respondents.

Criminal Appeals Nos. 389-90 of 2015[†], decided on February 25, 2015

Criminal Procedure Code, 1973 — Ss. 482, 228 and 216 — Quashment of criminal proceedings in their entirety or only partial correction required i.e. only order framing charges warranted quashment/correction b

— FIR was registered under Ss. 376, 511, 294, 354, 341, 506, 175, 186, 34 and 120-B IPC, at the instance of Appellant 2 herein against respondents — Sessions Judge framed charges, after perusing relevant material collected by IO — High Court quashed the charges and criminal proceedings — Framing of charge under S. 376 IPC against R-2 not pressed by appellants — Held, quashing of order of framing charges is correct but quashing of proceedings before trial Judge by High Court is not correct — High Court ought to have remanded the case back to trial Judge — Matter remanded back to trial Judge with a direction to examine the matter afresh in accordance with law with regard to framing of charges — Parties are at liberty to urge all possible grounds available, at the time of hearing on charges — Appeals allowed partly — Penal Code, 1860, Ss. 376, 511, 294, 506 and 107 (Paras 9 to 12) c

Jasbir Singh Ahluwalia v. State of Punjab, 2009 SCC OnLine P&H 11277, partly affirmed

Appeals partly allowed J-D/56221/SR

Advocates who appeared in this case :

Colin Gonsalves, Senior Advocate (Divya Jyoti Jaipuria, Tariq Adeeb and Ms Jyoti Mendiratta, Advocates) for the Appellants; e

Jayant K. Sud (Punjab), Advocate General, Ms Jasleen Chahal, Additional Advocate General, P. Vishwanatha Shetty, Senior Advocate [Ajay P. Tushir, Sharan Thakur, Vijay Kr. Paradeshi, Ramesh Babu M.R., Dinesh Verma, Rajat Sharma, Subhashish Bhowmick, Dr (Ms) Vipin Gupta, C.D. Singh, Ms Sakshi Kakkar and Kuldip Singh, Advocates] for the Respondents.

Chronological list of cases cited on page(s) f

1. 2009 SCC OnLine P&H 11277, *Jasbir Singh Ahluwalia v. State of Punjab* 212g-h, 215e-f

ORDER

1. Heard the learned Senior Counsel for the parties. Leave granted.

2. The correctness of the judgment and order dated 17-12-2009, passed by the High Court of Punjab and Haryana at Chandigarh in *Jasbir Singh Ahluwalia v. State of Punjab*¹, allowing the same by quashing the order dated 29-10-2002 g

[†] Arising out of SLPs (Crl.) Nos. 9890-91 of 2010. Arising out of impugned Final Judgments and Orders dated 17-12-2009 in Crl. R. Nos. 39-40 of 2003, passed by the High Court of Punjab and Haryana at Chandigarh h

1 2009 SCC OnLine P&H 11277

a passed by the learned Sessions Judge, Patiala in ordering the framing of charges against the accused under Sections 376, 511, 294, 506 and 107 of the Penal Code, 1860 (for short “the Code”), on the basis of First Information Report No. 76 dated 19-2-2002 (for short “the FIR”), registered under Sections 376, 511, 294, 354, 341, 506, 175, 186, 34, 120-B of the Code, at the instance of Appellant 2 herein, by Police Station Sadar, Patiala, has been challenged in the instant appeals urging various legal contentions.

b **3.** There is no need for us to advert to the various legal contentions urged in these appeals except noting the submissions made by the learned Senior Counsel for the parties.

c **4.** Mr Colin Gonsalves, learned Senior Counsel appearing for the appellants invited our attention to the complaint filed by Appellant 2 before the Senior Superintendent of Police, making certain allegations against the respondents herein about the offence alleged to have been committed by them on 28-1-2002 and 18-1-2002 and submitted that after adverting to certain complaints lodged by her on 6-2-2002 and 7-2-2002 against the Vice-Chancellor, Respondent 2 herein, letters addressed to the Governor, Dean of the Faculty/University and the Chairman of the National Human Rights Commission against the Vice-Chancellor, Respondent 2, to initiate the proceedings on the basis of the said complaint, the FIR was registered for the aforesaid offences with reference to the occurrence. Thereafter, the investigation had begun by recording the statements of Appellant 2 and her mother under Sections 161 and 164 of the Code of Criminal Procedure (for short “CrPC”) and the charge-sheet was filed before the learned Magistrate of the committal court. Thereafter, cognizance was taken by him and the case was committed for trial to the learned District and Sessions Judge, who has framed the charges, after perusing the relevant material collected by the investigating officer, which is the part of the charge-sheet. The learned Senior Counsel for the appellants contends that the learned District and Sessions Judge has framed the charges after applying his mind with reference to the allegations contained in the complaint, the material collected by the investigating officer during the investigation, his final report and the record of the case, and, therefore, the High Court ought not to have exercised its revisional and inherent jurisdiction to quash the proceedings against the respondents. He submitted that the High Court has exceeded its jurisdiction in quashing the proceedings.

g **5.** However, in the course of the submission, the learned Senior Counsel for the appellants very fairly submitted that framing of the charge under Section 376 of the Code against Respondent 2 is not correct as there is no such allegation made against Respondent 2 herein with regard to the said offence by Appellant 2. However, he submitted that the charges framed in relation to other offences are based on material evidence collected by the investigating officer and the same is justified and, hence, quashing of the same by the High Court is erroneous in law. He further invited our attention to the complaint, letters written by Appellant 2, the FIR, the charge-sheet, the statements of

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Appellant 2 and her mother recorded under CrPC and the order passed by the learned District and Sessions Judge, who framed the charges against the accused by recording reasons. He further contends that the High Court has not examined the justification of framing charges against the accused in the case and, therefore, the exercise of revisional jurisdiction by the High Court has rendered the order of framing charges by the learned District and Sessions Judge erroneous in law. Thus, he prayed for setting aside the same and remand the case to the trial court for conducting the trial afresh against the respondents by giving sufficient opportunity to them.

6. Mr P. Vishwanatha Shetty, learned Senior Counsel appearing for Respondent 2 rebutted the submissions made by the learned Senior Counsel appearing for the appellants, contending that the High Court, keeping in view the nature of allegations made against Respondent 2 by Appellant 2 in her complaint dated 19-2-2002, addressed to the Senior Superintendent of Police to set the criminal law in motion against the accused, the FIR registered for the offences, the order framing the charges and the criminal proceedings initiated against the accused, has rightly quashed the proceedings after perusal of the complaint, the FIR, the final report containing the statements of the appellants holding that no case is made out against the accused. He further submitted that by a careful reading of the aforesaid allegations contained in the documents referred to supra which are produced in this case it is crystal clear that the same would not constitute the aforesaid charges framed against the respondents under the provisions of the Code. According to him, the framing of charges on the basis of the material available and the report filed by the investigating officer is wholly a non-application of mind on the part of the learned District and Sessions Judge. He further submitted that statements under CrPC, particularly the statement of Appellant 1, the mother of Appellant 2, which was recorded subsequently on the basis of information given by Appellant 2 that Respondent 2 attempted to commit rape on her, is the basis for the investigating officer to file the charge-sheet on the alleged offence against Respondent 2 under Section 376 of the Code. The aforesaid material aspects available on record are not considered in a proper perspective and not examined by the learned District and Sessions Judge by applying its mind at the time of framing of charges, particularly the charge under Section 376 of the Code, against the respondents and therefore, the High Court was justified in quashing the proceedings. He next submitted that the material evidence collected by the investigating officer and the charge-sheet do not constitute any offences as alleged against the respondents is evident from the allegations made in the complaint made by Appellant 2 complainant. Therefore, framing of charges against the accused by the learned District and Sessions Judge is found to be untenable in law by the High Court and accordingly the same was rightly quashed by the High Court. Hence, there is no need for this Court to interfere with the well-reasoned judgment and order of the High Court as justice has been done to the parties.

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7. It is also contended by the learned Senior Counsel for Respondent 2 that originally this appeal has been filed by the mother of Appellant 2, who is currently in Australia, permission for which has been given by this Court and objection to which has been raised and there afterwards the complainant is considered as Appellant 2 in these proceedings. He next contended that the nature of the statements given to the investigating officer after statements under Sections 161 and 164 CrPC were recorded would clearly go to show that the false allegations are levelled against Respondent 2 and, in this backdrop, the framing of charges is totally unwarranted in this case. Therefore, he urged that the High Court is justified in quashing the proceedings, and hence the same does not call for interference by this Court in exercise of its appellate jurisdiction.

8. Arguments advanced by the learned Senior Counsel for Respondent 2 have been adopted by the learned counsel appearing for Respondents 3 and 4. The learned counsel for the State, however, sought to justify the charge framed under Section 376 of the Code against Respondent 2 by Appellant 2 placing strong reliance on the statement of the mother of Appellant 2, who has clearly stated with regard to the alleged offence of Section 376 of the Code against Respondent 2, therefore, the same cannot be found fault with by this Court at this stage of the proceedings.

9. We have very carefully considered all the material available on the record and having regard to the facts and circumstances of the case and the rival legal submissions made on behalf of the parties, we are of the considered view that framing of charge under Section 376 of the Code against Respondent 2 is not pressed into service by the learned counsel for the appellants. Therefore, in our opinion, the learned District and Sessions Judge has not applied his mind to the allegations contained in the charge-sheet with reference to the complaint lodged by Appellant 2 to the Senior Superintendent of Police against the respondents at the time of framing of charges against them, which are quashed by the High Court by passing the impugned judgment and order¹. However, quashing of order of framing charges is correct but quashing of the proceedings before the learned District and Sessions Judge by the High Court is not correct. In our considered opinion, after quashing the order of framing charges against the accused the High Court ought to have remanded the case back to the learned District and Sessions Judge with a direction to hear the learned counsel for the parties and apply his mind to the material produced by the investigating officer and the charge-sheet filed and pass appropriate order in accordance with law in respect to either frame the charges or not against the accused in exercise of his power under Section 237 CrPC after considering the legal aspect as to whether he would still have jurisdiction to frame the charge under Section 376 of the Code in view of the submissions made on behalf of the learned Senior Counsel for the appellants in this regard against Respondent 2 and whether this issue still survive for his consideration.

¹ *Jasbir Singh Ahluwalia v. State of Punjab*, 2009 SCC OnLine P&H 11277

10. In view of the above, we remand the matter back to the learned District and Sessions Judge with a direction to examine the matter afresh and decide the same after hearing the learned counsel for the parties and apply his mind to all the material available on record, the settled principles of law with reference to the question involved and pass appropriate order in accordance with law with regard to framing of charges on the alleged offences. Accordingly, we set aside the order of the learned District and Sessions Judge framing the charges against the respondents. *a*

11. We make it clear that the learned counsel for the parties are at liberty to urge all possible grounds which are available to them under law at the time of hearing on the charges by the learned District and Sessions Judge. *b*

12. With the aforesaid observations, direction and liberty these appeals are partly allowed to the aforesaid extent. *c*

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