

STATE OF RAJASTHAN

A

v.

DR. RAJKUMAR AGARWAL & ANR.  
(Criminal Appeal No. 1222 of 2012)

AUGUST 17, 2012

B

**[AFTAB ALAM AND RANJANA PRAKASH DESAI, JJ.]**

*CODE OF CRIMINAL PROCEDURE, 1973:*

*s.482 - Exercise of power by High Court to quash criminal proceedings - Explained.*

C

*s.482 - High Court quashing the FIR registered against the respondent, a Surgeon in Govt. Hospital for accepting illegal gratification - Held: In the instant case, it cannot be said that the allegations made in FIR and the evidence collected do not disclose the commission of any offence and continuance of proceedings would be abuse of the process of court - This is certainly not a case where the FIR can be quashed - High Court failed to appreciate that the wholesome power vested in it u/s 482 has to be exercised with circumspection and very sparingly - In the circumstances, the impugned judgment and order is set aside.*

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*PRACTICE AND PROCEDURE:*

*Affidavits in criminal proceedings - Held: It would be risky for the Courts to encourage the practice of filing affidavits by the witnesses at the stage of investigation or during the court proceedings in serious offences such as offences under the PC Act because it is easy for an influential accused to procure such affidavits and use them for quashing FIRs - Prevention of Corruption Act, 1988.*

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**Respondent No. 1, who was working as Junior Specialist (Surgery), in the State Government Hospital,**

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A was stated to have been caught red handed accepting a  
 bribe of Rs.1500/-, in a trap laid by the Anti Corruption  
 Bureau on the complaint of one 'SL' that respondent no.  
 1 had demanded Rs.5,000/- from him for the operation of  
 his aunt, who had been operated upon by respondent no.  
 B 1 and was waiting for her discharge from the hospital. An  
 FIR was registered u/ss 7 and 13(1)(d)(2) of the Prevention  
 of Corruption Act, 1988 against respondent 1 and  
 sanction for his prosecution was obtained from the  
 competent authority. Respondent 1 filed a petition u/s 482  
 C CrPC for quashing of the said FIR, which was allowed by  
 the High Court.

Allowing the appeal of the State, the Court

HELD: 1.1. According to the prosecution, the trap  
 D was successful. The chemically treated currency notes for  
 the purpose of trap were found with respondent 1 and the  
 test of his hand was found positive. The patient and her  
 husband have in their statements recorded u/s 161 CrPC  
 partly supported the complainant. It is also pertinent to  
 E note that when the complaint was lodged, the patient was  
 still in the hospital. Further, the police claim that they have  
 taped the conversation between the complainant and  
 respondent 1 and the latter is said to have refused to give  
 his voice sample for the purpose of investigation. How far  
 F the evidence collected by the investigating agency is  
 credible can be decided only when the evidence is tested  
 by cross examination during the trial. But, in view of the  
 contents of the FIR and nature of evidence collected by  
 the investigating agency, this is certainly not a case where  
 G the FIR can be quashed. It cannot be said that the  
 allegations made in the FIR and the evidence collected in  
 support of the same do not disclose the commission of  
 any offence and continuance of proceedings would be  
 abuse of the process of court. [para 8-9] [326-E-F, H; 327-  
 H A-D; 328-C]

*State of Haryana v. Bhajan Lal* 1990 (3) Suppl. SCR 259 = 1992 Supp. (1) 335 - relied on. A

1.2 As has been held by this court in *Shiji @ Pappu\**, plenitude of the power u/s 482 CrPC by itself makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. In the instant case, the High Court failed to appreciate that the wholesome power vested in it u/s 482 of the Code has to be exercised with circumspection and very sparingly. In the circumstances, the impugned judgment and order is set aside. [para 9 and 11] [327-H; 328-A-C; 328-F] B C D

*\*Shiji alias Pappu & Ors. v. Radhika & Anr.* 2011 (13) SCR 135 = (2011) 10 SCC 705 - referred to

2. Respondent 1 is relying on three affidavits, filed by the patient, her husband and another patient. It is difficult to quash the complaint on the basis of these affidavits. It would be risky for the Courts to encourage the practice of filing affidavits by the witnesses at the stage of investigation or during the court proceedings in serious offences such as offences under the PC Act because it is easy for an influential accused to procure such affidavits and use them for quashing FIRs. [para 8-9] [326-C; 327-E-F] E F

Case Law Reference:

1990 (3) Suppl. SCR 259	referred to	para 6	G
2010 (11) SCR 788	held inapplicable	para 7	
2011 (13) SCR 135	distinguished	para 7	

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 1222 of 2012.

From the Judgment & Order dated 10.09.2009 of the High Court of Judicature for Rajasthan at Jodhpur in S.B. Criminal Misc. Petition No. 307 of 2009.

B Dr. Manish Singhvi, AAG, Pragati Neekhara for the Appellant.

Pallav Shishodia, Mukul Kumar for the Respondents.

C The Judgment of the Court was delivered by  
(SMT.) RANJANA PRAKASH DESAI, J. 1. Leave granted.

D 2. This appeal, by special leave, filed by the State of Rajasthan is directed against judgment and order dated 10/9/2009 delivered by the High Court of Rajasthan in Cri. Misc. Petition No.307 of 2009 filed by respondent 1 herein - Dr. Rajkumar Agarwal under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code"). By the impugned judgment, a learned Single Judge of the High Court has  
E quashed the complaint filed against respondent 1 by one Sohan Lal (the complainant) alleging that respondent 1 demanded Rs.5,000/- as illegal gratification for performing the operation of Smt. Sita Devi, whom he treated as his aunt. The question before this court is whether the exercise of powers  
F under Section 482 of the Code by the High Court to quash the complaint was warranted in the facts of this case.

3. The facts, briefly stated, are as follows:

G Respondent 1 was working as Junior Specialist (Surgery), Government Hospital, Suratgarh, District Sriganganagar, Rajasthan. On 11/12/2007, the Complainant submitted a written complaint to the Police Station, Anti Corruption Bureau (for short, "the ACB") Chowki, Sriganganagar stating that on 7/12/2007, respondent 1 performed the operation of uterus of his aunt - Smt. Sita Devi w/o. Navranglal in a Government Hospital  
H at Suratgarh. According to the complainant, respondent 1

demanded Rs.5,000/- as bribe for the operation and for better treatment. The complainant gave a sum of Rs.2,500/- at the time of operation. The complainant stated that his aunt was still in the hospital and respondent 1 was demanding the remaining sum of Rs.2,500/-. According to the complainant, he did not want to give the money but he apprehended that respondent 1 may cause harm to his aunt, if he does not pay the amount.

4. It is the case of the petitioner that on the same day at about 11.00 a.m., a blank cassette "A" was inserted in a small tape-recorder and handed over to the complainant at the ACB Office. The complainant was explained about its functioning. Mr. Jagdish Rai, Ct.No.179 was sent along with the complainant to Suratgarh for verification of the demand of bribe. At 5.00 p.m., both the complainant and Mr. Jagdish Rai returned to the ACB office. The tape-recorder was played and the demand was found corroborated. Its memo was prepared and the cassette was sealed and labelled. It is the case of the appellant that preparation for trap was made. Two independent witnesses i.e. Mr. Darshan Singh, Assistant Engineer and Mr. Kripal Singh, Assistant Project (Samanvayak) Office, Sarva Shiksha Abhiyan, Sriganganagar were introduced to the complainant. Currency notes of Rs.1,500/- produced by the complainant which were to be handed over to the appellant were smeared with phenolphthalein powder. The necessary procedure was followed. A new blank cassette was inserted in the tape recorder and it was handed over to the complainant. On 12/12/2007, the Additional Superintendent of Police along with the complainant, the two independent witnesses and others left for Suratgarh. The complainant was given necessary direction for contacting respondent 1. The trap party waited there. The complainant came out of the residence of respondent 1 and gave fixed signal to the Additional Superintendent of Police. The raiding party along with the independent witnesses went to the complainant, who stated that respondent 1 had kept the bribe money of the complainant in the drawer of his table. The conversation of respondent 1 and the complainant was heard

A on the tape recorder. Thereafter, the raiding party, two  
 independent witnesses and the complainant went inside the  
 house of respondent 1. Upon being questioned, respondent 1  
 stated that he had kept the money in the drawer of his table.  
 The money was recovered and hand wash of respondent 1 was  
 B taken which turned pink. After following the necessary  
 formalities, FIR came to be registered under Sections 7 and  
 13(1)(d)(2) of the Prevention of Corruption Act, 1988 (for short,  
 "the PC Act") at Police Station, ACB Chowki, Sriganganagar,  
 against respondent 1. Sanction for prosecution was obtained  
 C from the competent authority on 23/6/2009.

5. As stated above, respondent 1 filed petition under  
 Section 482 of the Code for quashing of the said FIR. The High  
 Court has quashed the said FIR. The State of Rajasthan is in  
 appeal before us.

D 6. Mr. Manish Singhvi, Addl. Advocate General for the  
 appellant submitted that the High Court has fallen into a grave  
 error in quashing the FIR. Counsel submitted that the High Court  
 misinterpreted the ratio of the judgment of this court in *State of*  
 E *Haryana v. Bhajan Lal*, 1992 Supp. (1) 335. Counsel  
 submitted that the FIR and the other material collected by the  
 prosecution prima facie make out a strong case against  
 respondent 1.

F 7. Mr. Pallav Shishodia, learned senior advocate for  
 respondent 1, on the other hand, submitted that the High Court  
 has rightly quashed the complaint. He pointed out that Smt. Sita  
 Devi was not related to the complainant. Therefore, the  
 complainant's case that he went to respondent 1 in connection  
 with the uterus operation of Smt. Sita Devi and the amount was  
 G demanded by respondent 1 from him is inherently improbable.  
 Counsel submitted that the complainant owns a Chemist shop  
 near the hospital in which respondent 1 is working. The  
 complainant does not have the necessary licence to run the  
 Chemist shop. The illegalities committed by the complainant  
 H were known to respondent 1 and, therefore, the complainant

has falsely implicated respondent 1 in this case. Counsel pointed out that in their statements recorded under Section 161 of the Code, Smt. Sita Devi as well as her husband have stated that they were not aware whether the appellant demanded any money from respondent 1. In fact, Smt. Sita Devi and her husband have filed affidavits stating that respondent 1 never asked for money and his behaviour towards Smt. Sita Devi was good and the allegations made by the complainant are false. In support of his submission, counsel relied on the judgments of this court in *V.P. Shrivastava v. Indian Explosives Limited & Ors.* (2010) 10 SCC 361 and *Shiji alias Pappu & Ors. V. Radhika & Anr.* (2011) 10 SCC 705. Counsel submitted that since Smt. Sita Devi and her husband have not supported the prosecution case, the prosecution has become a lame prosecution and in all probability the case will end in acquittal. Therefore, the High Court has rightly quashed the complaint because if the proceedings are allowed to continue, that will be an abuse of the process of court. Counsel submitted that in any case, even if this court comes to a conclusion that the complaint discloses a prima facie cognizable offence, considering the fact that the offence is of the year 2007; that respondent 1 is on the verge of retirement and that he has suffered the agony of investigation and possibility of a criminal trial from 2007 onwards till today, this court may take a kindly view of the matter. Counsel submitted that in the facts of this case, ends of justice would be met if the High Court's order is confirmed.

8. We find no substance in Mr. Shishodia's submissions. It is true that the complainant is not related to Smt. Sita Devi but nothing has been brought on record to even prima facie establish that the complainant holds any grudge against respondent 1 because respondent 1 had knowledge about the alleged irregularities in respect of his Chemist shop. Since Mr Shishodia has referred to statements of Smt. Sita Devi and Navrang Lal recorded under Section 161 of the Code, we have perused them. In these statements, Smt. Sita Devi and Navrang

A Lal have stated that the complainant was treating Smt. Sita Devi as his aunt and he had admitted her to the hospital. Navrang Lal has stated that because of his work he had to leave Suratgarh and therefore, the complainant admitted Smt. Sita Devi in the hospital. So far as the alleged demand for money B made by respondent 1 is concerned, they have stated that respondent 1 did not demand any money from them and they were not aware whether respondent 1 demanded any money from the complainant. Thus, these statements support the complainant's case that he was treating Smt. Sita Devi as his C aunt; that he had admitted her to the hospital and that he had dealt with respondent 1. Respondent 1 is relying on three affidavits. Affidavits have been filed by Smt. Sita Devi, Navrang Lal and another patient by name Devcharan Bhagat. Surprisingly, in these affidavits, Smt. Sita Devi and Navrang Lal D have given a totally contrary version. They have gone on to say that the complainant has lodged a false complaint against respondent 1. In his affidavit Devcharan Bhagat, another patient of respondent 1, has given a certificate to respondent 1 that he is an expert doctor and he had never taken any money from him for treatment. At this stage, we do not want to give any final E opinion on these affidavits but we find it difficult to quash the complaint on the basis of these affidavits. As we have already noted, Smt. Sita Devi and her husband have in their statements recorded under Section 161 of the Code partly supported the complainant. Apart from these statements there is another F prima facie clinching circumstance against the appellant. The police claim that they have taped the conversation between respondent 1 and the complainant. We have read the transcript of this tape recorded conversation. It is not possible for us to agree with the High Court that the transcription does not G corroborate the FIR. Prima facie, we feel that if it is read against the background of the other facts, it is apparent that it relates to the operation of Smt. Sita Devi and the demand pertains to the said operation. Besides, according to the prosecution, the trap was successful. Money smeared with phenolphthalein H powder was found with respondent 1. The notes recovered from



the respondent 1 tallied with the notes given by the complainant to the police for the purpose of trap and respondent 1's hand wash turned pink. It is also pertinent to note that when the complaint was lodged, Smt. Sita Devi was still in hospital, probably because after the money was handed over, she was to be discharged, and in fact, her discharge card was found on the table of respondent 1. It is also the case of the appellant that respondent 1 refused to give his voice sample for the purpose of investigation. How far the evidence collected by the investigating agency is credible can be decided only when the evidence is tested by cross examination during the trial. But, in our opinion, in view of the contents of the FIR and nature of evidence collected by the investigating agency, this is certainly not a case where the FIR can be quashed. If we examine the instant FIR in light of the principles laid down by this Court in Bhajan Lal it is not possible to concur with the High Court that the allegations made in the FIR and the evidence collected in support of the same do not disclose the commission of any offence.

9. There is yet another and a very sound reason why we are unable to quash the instant FIR. It is risky to encourage the practice of filing affidavits by the witnesses at the stage of investigation or during the court proceedings in serious offences such as offences under the PC Act. If such practice is sanctioned by this Court, it would be easy for any influential accused to procure affidavits of witnesses during investigation or during court proceedings and get the FIR and the proceedings quashed. Such a practice would lead to frustrating prosecution of serious cases. We are therefore, wary of relying on such affidavits. So far as the judgment cited by Mr. Shishodia in **V.P. Shrivastava** is concerned, it is purely on facts and can have no application to this case. **Shiji @ Pappu** also does not help respondent 1. That case involved a civil dispute. Parties had settled their civil dispute and therefore, the complainant was not ready to proceed with the proceedings. It is against this background that in **Shiji @ Pappu**, this Court

A held that exercise of power under Section 482 of the Code was justifiable. However, this court added that the plentitude of the power under Section 482 of the Code by itself makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself  
B demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. We feel that in the instant case, the High Court failed to appreciate that the wholesome power  
C vested in it under Section 482 of the Code has to be exercised with circumspection and very sparingly. It is not possible for us, on the facts of this case, to come to a conclusion that no offence is made out at all against respondent 1 and continuance of proceedings would be abuse of the process of court.

D 10. Mr. Shishodia submitted that respondent 1 is on the verge of retirement. He has suffered the agony of investigation since 2007 and therefore, this court may take a kindly view of the matter. Rampant corruption is seen in every walk of our life. People, particularly those holding high office, are frequently  
E seen accepting illegal gratification. In such serious cases showing mercy at this stage may send wrong signals. We are, therefore, unable to accede to Mr. Shishodia's request.

F 11. In the circumstances, we set aside the impugned judgment and order. It is not necessary for us to say the obvious that all observations made by us are prima facie observations and the court which may be seized of this matter shall deal with it strictly on merits and in accordance with law.

G 12. The appeal is disposed of in the afore-stated terms.

R.P.

Appeal allowed.