

STATE OF BIHAR AND ANR.

A

v.

MD. KHALIQUE AND ANR.

NOVEMBER 28, 2001

[K.T. THOMAS AND S.N. PHUKAN, JJ.]

B

Criminal Law :

Code of Criminal Procedure, 1973—Sections 482, 156 and 157—Investigation by police—Interference by High Court—Held, when prima facie case is made out against the accused and cognizable offence disclosed, High Court not justified in quashing the investigation—Power to quash to be exercised in rarest of rare cases—Penal Code, 1860 Sections 120B, 419, 420 and 467.

C

Jamindari of ex-intermediary of one 'R' vested in the State Government. Officers of the Government in collusion with the respondent carried out official assessment of the asset without proper jurisdiction and forged some documents while preparing the annual income of the ex-intermediary. On these allegations FIR was lodged against the accused persons. Writ petition was filed and the High Court quashed the entire investigation holding that there were no specific allegation. Hence the present appeal.

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Allowing the appeal, the Court

HELD : In view of the specific allegations of forgery of the assessment order of compensation payable under the Bihar Land Reforms Act, 1955, fraud played while verifying the interest of the Jamindari and conspiracy against the respondents made in the FIR, a *prima facie* case was made out against the accused persons and a cognizable offence was disclosed. Thus the High Court ought not to have interfered with the investigation and should have permitted the police to complete it. [357-D; F; H]

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State of Haryana and Ors. v. Bhajan Lal and Ors., [1992] Supp. 1 SCC 335, relied on.

H

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1217 of 2001.

From the Judgment and Order dated 9.12.99 of the Patna High Court in C.R.W.J.C. No. 243 of 1996.

B B.S. Singh for the Appellants.

N.P. Midha for Bharat Sangal, Adv. for the Respondents.

The Judgment of the Court was delivered by

PHUKAN, J. Lave granted.

C In this appeal by special leave the appellants have assailed the judgment dated December 09, 1999 of the High Court of Judicature at Patna passed in CRWJC No. 243 of 1996. By the impugned judgment, the High Court quashed the investigation of a case, which was registered under Sections 419, 467, 420 and Section 120B of the Indian Penal Code. The first information report was filed against eight accused out of which six were Revenue Officers and two were private persons. Two private persons filed a writ petition before the High Court and the High Court by the impugned order quashed the entire investigation ignoring the fact that there were six government officials.

Briefly stated the facts are as follows :

E The Jamindari of ex-intermediary viz. Raghu Mahto vested in the State Government in terms of the provisions of the Bihar Land Reforms Act, 1955. It was alleged that the Government had to submit official assessment of the asset, which was made without proper jurisdiction by the six officers of the Government in collusion with the respondents with the *malafide* intention of their vested interest. Documents were forged while preparing the annual income of the ex-intermediary. On these allegations, the FIR was lodged in the police station. The High Court quashed the investigation *inter alia* holding that there was no specific allegation and overt act alleged against the writ petitioners except that in collusion with the officials of the department the excess amount was withdrawn. According to the High Court no excess amount was paid in view of the earlier judgment of the High Court in a writ petition.

H Law is well settled regarding interference by the High Court with an investigation of a case. In the leading case of this Court in *State of Haryana and Ors. v. Bhujan Lal and Ors.*, [1992] Supp. 1 SCC 335, this Court by way of illustration stated seven categories of cases where the extraordinary power

under Article 226 or inherent power under Section 482 Cr. P.C. can be exercised by the High Court either to prevent abuse of process of any court or otherwise to secure the ends of justice. Out of seven categories two categories are relevant for our present purpose viz.:

“(1) 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR 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.”

In the FIR there are categorical allegations of forgery of the assessment order of compensation payable under the Bihar Land Reforms Act, 1955 and also allegations of fraud played while verifying the interest of the Jamindari in paragraph (d) there is a specific allegation of conspiracy against two writ petitioners, which is quoted below :

“It also appears that the entire proceedings of the conspiracy of said misappropriation has been done by Ex-landlord late Raghu Mahto’s son Satya Narayan Mahto. Power of Attorney holder Shri Mohd. Khalif in connivance with the concerned officer. In this way intermediary was helped in illegal manner by which State money was embezzled.”

In view of the specific allegations made in the FIR it cannot be said that no *prima facie* case was made out against the accused persons including the writ petitioners and that it did not disclose a cognizable offence.

In *Bhajan Lal’s* case (supra) this Court has also held that the power of quashing a criminal proceeding should be exercised sparingly and with the circumspection and that too in the rarest of the rare cases. The present case is not rarest of the rare case.

In view of the settled legal position and as offences have been disclosed in the FIR, the High Court ought not to have interfered with the investigation and should have permitted police to complete it. We, accordingly, hold that

A the High Court has committed a grave error in quashing the entire proceeding and ought not to have thwart the prosecution.

B Only respondent No. 2, namely, Satya Narain Mahto has resisted the appeal. Learned counsel has pleaded that respondent No. 2 may be granted pre-arrest bail and has assured that he would co-operate with the investigation. We accept the submission of the learned counsel. We therefore, direct that, if arrested, respondent No. 2 shall be released on furnishing a bond with adequate sureties in the like amount to the satisfaction of the arresting authority. He shall make himself available for interrogation, whenever necessary.

C Appeal is accordingly allowed by setting aside the impugned judgment of the High Court.

N.J.

Appeal allowed.