ILR 2007 KAR 3040

V. JAGANNATHAN, J

S. Mariswamy and Another vs S. Venkanna Rao*

INDIAN PENAL CODE, 1860-SECTIONS 499 AND 500-CODE OF CRIMINAL PROCEDURE, 1973-SECTION 482-Issue of process-Taking cognizance of the offence-Challenge to-Prayer for compensation of Rs.30 lakhs-ON FACTS, HELD, The complainant has not alleged any particular offence against the petitioners-The complaint reveals that it is in the nature of public interest litigation-Therefore, nature of the relief sought, brings the case more within the category of a case of civil nature rather than a criminal case-No private complaint can be entertained which is civil in nature-The Trial Court mechanically proceeded to take cognizance and directed the issue of process which cannot be sustained in law and the action of the complainant squarely falls within the ambit of the expression "Abuse of the process of law"-Impugned order taking cognizance is liable to be quashed.

Criminal petitions are allowed.

CASES REFERRED: **AT PARA**

1. *2006 (1) SCC (Cri.) 432*
   Rakesh Kumar Mishra vs
   State of Bihar and Others *(Ref) 12*

* CRL.P No. 5784/2006 C/W. CRL.P No. 43/2007. Dated: 19th June, 2007

2.	*2006 (2) SCC (Cri) 593* *Romeshial Jain vs Naginder Singh Rana and Others*	*(Ref) 12*
3.	*2005 SCC (Cri.) 135* *N. Bhargavan Pillai (Dead) by LRs and Another vs State of Kerala*	*(Ref) 12*
4.	*AIR 1992 SCW 237* *State of Haryana and Others vs Bhajanlal and Others*	*(Ref) 15*
5.	*AIR 1996 SCC 309* *Mrs. Rupan Deol Bajaj and Another vs Kanwar Pal Singh Gill an Another*	*(Ref) 15*
6.	*2006 (7) SCC 188* *C.B.I. vs Ravishankar Srivastava, IAS and Another*	*(Ref) 15*
7.	*ILR 1998 KAR 3599* *Pepsi Foods Limited and Another vs Special Judicial Magistrate and Others*	*(Ref) 18*

Sri H.S. Chandramouli, S. Doreraju, SPP, Advocates for Petitioners;
Sri S. Venkanna Rao, Party in person, for Respondent.

ORDER

Jagannathan, J

The petitioners are aggrieved by the issuance of process by the learned Trial Judge following a private complaint lodged by the respondent herein. Aggrieved by the cognizance taken by the Trial

Court, the petitioners are before this Court in these petitions under Section 482 of the Code of Criminal Procedure.

2. Brief facts are to the effect that, the respondent herein filed a private complaint in PCR No. 886/2006 before the 5th Additional Chief Metropolitan Magistrate, Bangalore and the allegations made in the said complaint are to the effect that the petitioners herein have caused untoward hardship and harassment to the complaint and several false cases were registered against the complainant and all those cases ended in acquittal. It is also alleged in the complaint that the Police department in general has not performed its duties properly and the complainant was brought to the Police Station and was abused in front of several persons and was even sent to jail. Having been a former employee of the Police department and having worked with diligence, sincerity and honestly, the complainant has been harassed by the Police officers because he complained that several cases of corruption were not brought to light. The complainant questioned the manner of functioning of Police department and the officers concerned and he even wanted to convene a meeting to expose the dark deeds of the Police department. But, his effort was nipped in the bud by sending the complainant to jail. There are several instances of bribe having been taken to close the criminal cases. Therefore, the Police officers with the aid of lawyers have resorted to deceit, cheating, mal-administration. All these actions on the part of the Police officers have led to the complainant suffering in reputation in the public eye. Therefore, in the complaint, the prayer made was to compensate the complainant by the ordering Rs. 30.00 lakhs to be paid to him. The said complaint mentioned at the very beginning that it is a petition for

demanding compensation for having defamed the complainant and pursuant to Section 499 and 500 of the Indian Penal Code, the said petition is filed.

3. The Learned Additional Chief Metropolitan Magistrate of the Trial Court recorded the sworn statement of the complainant and passed the impugned order dated 28-8-2006 taking cognizance of the offence and ordered process being issued to the petitioners herein. Aggrieved by the said order of taking cognizance and issuance of process against them, the petitioners are before this Court.

4. The petitioners in criminal petition No. 43/2007 are accused No. 1 to 4 and the petitioners in criminal petition No. 5784/2006 are accused No. 5 and 6. Since a common order has been passed by the Trial Court, I deem it fit to dispose of these two petitions by this common order.

5. I have heard the submissions made by the learned State Public Prosecutor Sri S. Dorerju on behalf of the petitioners in criminal petition No. 43/2007 and the learned Counsel Sri H.S. Chandramouli for the petitioners in criminal petition No. 5784/2006 and also heard the respondent-party in person.

6. The Learned State Public Prosecutor Sri S. Doreraju submitted that the petitioners are all government servants and working in Police department. The 1st petitioner is a Police Inspector, 2nd petitioner is a Police Sub-Inspector, 3rd petitioner is an Assistant Sub-Inspector and the 4th petitioner is a Writer (Police Constable).

Therefore, at the outset, it was submitted that the Learned Judge was totally in error in taking cognizance on the basis of a private complaint filed and in issuing the process. As the petitioners are still in service, the bar under Section 197 of the Code of Criminal Procedure comes into picture and therefore the Trial Court could not have taken cognizance when there is an express bar in respect of public servants. Without sanction being there against the petitioners, neither the private complaint nor the order of the Trial Court taking cognizance can be sustained in law. Secondly, it was submitted that the allegations in the private complaint are more in the nature of general complaint and are, according to the complainant himself, in the nature of public interest litigation and further the very prayer in the complaint is for paying compensation and therefore the complaint could not have been filed before the Trial Court and at best, the remedy is to approach the civil Court for compensation. For all these reasons, the order passed by the Trial Court reveals lack of application of mind and hence the said order is liable to be set-aside and all proceedings pursuant to the order are liable to be quashed.

7. The Learned Counsel Sri H.S. Chandramouli for the petitioners in criminal petition No. 5784/2006 submitted that 1st petitioner is a retired I.P.S. Officer and the 2nd petitioner is working as Deputy Commissioner of Police and therefore, it was incumbent on the part of the Trial Court to have ensured that necessary sanction under Section 197 of the Code of Criminal Procedure ought to have been obtained before prosecuting the petitioners and on this ground itself, the cognizance taken is liable to be set-aside. All the proceedings are liable to be quashed. Apart from the said ground, it was submitted that a plain reading of the complaint would make it clear that no offence

has been made out against the petitioners and a complaint of general nature has been filed without indicating the specific acts of the petitioners. Therefore, for lack of necessary particulars and as no offence has been made out against the two petitioners, the Trial Court ought to have dismissed the private complaint at the threshold itself. But, by not doing so, the Trial Court has unnecessary put the petitioners at a risk and has caused more harm and damage to the petitioners. Another submission made is that, whatever action the petitioners have taken while they were in service was in course of their official duty and therefore, in the absence of any specific allegations being made against the petitioners, the entire complaint is vexatious, mischievous and therefore the Trial Court was totally in error in taking cognizance and ordering issuance of process. It is submitted that on the basis of the bald complaint, the trial Court could not have taken cognizance and hence the action on the part of the trial court is nothing but an indication of total lack of application of mind to the facts and circumstances of the case. The Learned Counsel also submitted that so far as the written submission that is placed by the respondent is concerned, a bare reading of the said written submission will also establish that the respondent has got no regard for the judiciary and therefore this Court has to view the said submission seriously.

8. On the other hand, the respondent-party in person on his part defended the order of the Trial Court by contending that he has been harassed by the Police Officers and the Police department as mentioned in the complaint and also an mentioned in the written statement. Several complaints given by the respondent were not acted upon by the Police and he has been subjected to harassment and cruel treatment and was even sent to jail as he intended to expose the

misdeeds of police officers and Police department. Therefore, the complainant has suffered great loss to his reputation and as such compensation has been sought to be paid to him. As far as the averments made in the written statement are concerned, the respondent-party in person after hearing the submission made by the Learned Counsel Sri H.S. Chandramouli submitted that, if there is any mistake in the written submission, the same may be pardoned and he is ready to withdraw the written submission and he has no intention to bring down the reputation of the Courts or the Judiciary. As such, he submitted that he be permitted to withdraw the said written submission.

9. In the light of the submissions made by the Learned Counsel for the petitioners and the respondent-party in person, the only point the arises for consideration is;

> "Whether the order passed by the Trial Court in taking cognizance and issuing process to the petitioners can be sustained in law?"

10. The first point to be considered is;

> "Whether sanction under Section 197 of the Code of Criminal Procedure and Section 170 of the Karnataka Police Act ought to have obtained before prosecuting the petitioners and for want of obtaining necessary sanction, the trial Court could have proceeded to take cognizance or not?"

11. As far as this aspects is concerned, except the 1st petitioner in criminal petition No. 5784/2006, all other petitioners are in service in Police department in one or the other capacities. The 1st petitioner in criminal petition No. 5784/2006 is a retired I.P.S. officer. Section 197 of the Code of Criminal Procedure provides that no Court shall take cognizance of an offence except with previous sanction and in respect of an act alleged to have been committed by a public servant while acting or purporting to act in the discharge of his official duty, it is necessary to have previous sanction. Sub-clause (a) and sub-clause (b) further make it clear that the necessity of obtaining sanction applies not only in case of a public servant who is in service but also in respect of a public servant who was in service.

12. As far as the prosecution of retired public officer is concerned, in the case of *RAKESH KUMAR MISHRA vs STATE OF BIHAR AND OTHERS*[1], the Supreme Court has held that, sanction is applicable even in case where a retired public servant is sought to be prosecuted. As far as a public servant who is in service is concerned, dealing the requirement of obtaining necessary sanction, the Apex Court in the case of *RAMESHLAL JAIN vs NAGINDER SINGH RANA AND OTHERS*[2] observed that, sanction is required to be obtained when the offence complained of is attributable to the discharge of public duty or has direct nexus therewith. In the very same decision, the Court also ruled that in a case where ex-facie no order of sanction has been issued when it is admittedly a pre-requisite for taking cognizance of the offences or where such an order apparently has been passed by the authority not competent therefor, that Court

1. 2006 (1) SCC (Cri.) 432
2. 2006 (2) SCC (Cri) 593

may take note at the outset. In another decision reported in *N. BHARGAWAN PILLAI (DEAD) BY LRs AND ANOTHER vs STATE OF KERALA*[3], the Apex Court dealt with the question of obtaining sanction in respect of retired public servant and held that sanction is essential in case where Section 197 of the Code of Criminal Procedure has application.

13. From the aforesaid decision of the Apex Court, it is therefore clear that without there being a previous sanction, no Court can take cognizance of an offence against a public servant who is in service or a retired public servant in respect of an act attributed to them in the discharge of their official duties. Another decision referred to by the Learned Counsel Sri H.S. Chandramouli reported in AIR 2000 SC 2952 is to the effect that, if a Police officer while dealing with law and order on duty, uses force against unknowing persons for his own defence or to others defence, the offence that arise out of the said act falls within the ambit of Section 197 of the Code of Criminal Procedure as well as Section 74(3) of the Karnataka Police Act. Section 170 of the Karnataka Police Act, 1963 also is to the effect that no prosecution or suit shall be entertained against a Police Officer except the previous sanction of Government in respect of any act done under the colour or in excess of any such duty by the Police Officer concerned.

14. From the above position in law, it is clear that cognizance could not have been taken against all the petitioners herein when there is a specific bar under Section 197 of the Code of Criminal Procedure and Section 170 of the Karnataka Police Act. The Trial Court totally

3. 2005 SCC (Cri.) 135

missed this important aspect of the matter while taking cognizance on the complaint filed by the respondent herein.

15. Coming to the scope of Section 482 of the Code of Criminal Procedure, the Apex Court has laid down the guidelines to be followed and in the case of *STATE OF HARYANA AND OTHERS vs BHAJANLAL AND OTHERS*[4], which was also quoted with approval in *Mrs. RUPAN DEOL BAJAJ AND ANOTHER vs KANWAR PAL SINGH GILL AND ANOTHER*[5], wherein it has been held that where there is an express bar engrafted in any of the provisions of the Code or the concerned Act to the institution and continuance of the proceedings and / or where there is a specific provision in the Code or for the concerned Act, providing efficacious redress for the grievance of the aggrieved party, the High Court can quash an F.I.R. or a complaint in exercise of its power under Article 226 of the Constitution of India or under Section 482 of the Code of Criminal Procedure. In the case on hand, as there is an express bar contained under Section 197 of the Code of Criminal Procedure and Section 170 of the Karnataka Police Act, the Trial Court could not have taken cognizance of the offence based on the complaint filed by the respondent herein. Apart from laying down the above proposition of law, the Apex Court in a recent decision in the case of *C.B.I. vs RAVISHANKAR SRIVASTAVA, IAS AND ANOTHER*[6] has dealt with the scope of Section 482 of the Code of Criminal Procedure and has observed thus:

> "Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the

4. AIR 1992 SCW 237
5. AIR 1996 SCC 309
6. 2006 (7) SCC 188

rules. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to any order under the Code, (ii) to prevent abuse of the process of Court and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enhancement dealing with procedure can provide for all cases that may possibly arise. The Courts, therefore, have inherent powers apart express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the Section which merely recognises and preserves inherent powers of the High Courts.

While exercising powers under the Section the Court does not function as a Court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the Courts exist.

> In exercise of the powers of the Court would be justified to quash any proceedings if it finds that initiation/continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, which is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto. It is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusation made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge."

16. Keeping the above settled principles of law in mind, if we examine the materials placed in the case on hand, no doubt will arise in any ones mind as to the vexatious or mischievous nature of complaint filed by the respondent herein. Not only no offence has been made out against any of the petitioners herein in the whole of the complaint, but as rightly submitted by the Learned Counsel Sri H.S. Chandramouli, the Court was expected to take cognizance of the offence but not of

the person. But, seen in this light, no offence in particular has been alleged against any one of the petitioners herein. The complaint is more of general in nature without indicating specific act committed by each of the petitioners herein and therefore, the Trial Court failed to notice this important aspect while taking cognizance for the offence alleged against the petitioners. That apart, the complaint also reveals that it is in the nature of public interest litigation as the complainant seems to have been disappointed and disgusted with the functioning of the Police Department is general. Therefore, such complaint ought not to have entertained by the Trial Court.

17. One other serious infirmity in the complaint is that the relief sought for by the complainant is for award of compensation to him. Therefore, the nature of the relief sought, brings the case more within the category of a case of civil nature rather than a criminal case. It is also a settled position in law that no such private complaint can be entertained which is civil in nature. Merely because a private complaint is filed before the criminal Court in the garb of a criminal case, in respect of the relief which is to be granted by a Civil Court, such a petition should not have been entertained by the Trial Court.

18. Another important aspect which was lost sight of the Trial Court is that criminal law cannot be set into motion as a matter of course. The Supreme Court in case of *PEPSI FOODS LIMITED AND ANOTHER vs SPECIAL JUDICIAL MAGISTRATE AND OTHERS*[7] has observed thus:

> "Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a

7. ILR 1998 KAR 3599

matter of course. It is not that the complaint has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complaint to succeeded in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers find out the truthfulness of the allegations or otherwise and then examine if any offence is prima-facie is committed by or any of the accused."

19. Having regard to the above proposition of law laid down by the Apex Court, in the case on hand, the Learned Trial Judge erred in not keeping in view, that the complainant was seeking to set the criminal law into motion and therefore the Court ought to have taken all care and caution and ought to have applied its mind to the propositions of the law bearing on the point and without doing such an exercise, the Trial Court in the instant case, has mechanically proceeded to take cognizance and has issued the process. The said act on the part of the Trial Court therefore cannot be sustained in law.

20. For the aforesaid reasons, I am of the considered opinion that cognizance taken by the Trial Court and the consequent issuance of process cannot be sustained in law and the case falls squarely within the ambit of the expression "abuse of the process of law". As such this Court has no hesistation to exercise its inherent powers under Section 482 of the Code of Criminal Procedure, in the face of guidelines laid down by the Apex Court in the case of STATE OF HARYANA AND OTHERS vs BHAJANLAL AND OTHERS referred to above. The impugned order of the Trial Court taking cognizance is therefore liable to be quashed.

21. One last word as far as the averments in the written statement is concerned, in view of the respondent-party in person submitting that he is withdrawing the written statement and the averments made therein, realising his mistake, I do not deem it necessary to go into the said aspect of the matter.

22. In the result, these petitions are allowed. The impugned order of the learned Trial Judge taking cognizance in C.C.No. 25358/2006 and all further proceedings consequent to the said order stand quashed.