REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 730 OF 2009

(Arising out of SLP (Crl.) No. 1529 of 2007)

V.V.S. Rama Sharma & Ors. ..…Appellants

Versus

State of U.P. & Ors. …..Respondents

JUDGMENT

Dr. Mukundakam Sharma, J.

1. Leave granted.

2. This appeal arises out of the final order dated 3.8.2006 passed by the High Court of Allahabad at Allahabad in Criminal Misc. Writ Petitions Nos. 8967, 10514 and 7227 of 2004 whereby the above three separate writ petitions filed by the appellants herein were dismissed. In the said writ petitions the appellants herein challenged the FIR registered against them under Sections 420 and 409 of the

Indian Penal Code, 1860 (in short 'IPC') and under Sections 64 and 69 of the Indian Stamp Act, 1899 (in short 'Stamp Act').

3. Brief facts necessary for the purpose of disposal of present appeal are as follows:

Appellants herein were working as officers in different capacities at relevant point of time in the Life Insurance Corporation of India (in short 'LIC') and were then posted in different offices in the State of Uttar Pradesh. All the three appellants have since retired from the service of the LIC.

1. It has been stated that various branch offices of the LIC in the course of their business have to purchase large quantity of adhesive stamps for affixation on their policies and for issuing receipts etc. While the stamps used for receipts are the normal revenue stamps, the stamps used in respect of the policies issued by LIC are special 'insurance stamps' which are affixed at the rates fixed under the Stamps Act.

2. For the purposes of execution of insurance policies by the LIC, under the law at the relevant point of time, on a sum of Rs. 1,000/- the rate of 'stamp duty' is fixed at 40 paise on each policy. In order

to execute the insurance policies promptly, from time to time, heavy purchases of insurance stamps are stated to be done by the LIC. The LIC used to purchase the same from the Treasury in any district as well as from authorised licensed stamp vendors.

3. On 30.07.2004, a First Information Report (in short 'FIR') bearing Crime No. 271/04 was lodged against the appellants at Police Station Bhelupura, Tehsil Sadar, District Varanasi for the offences punishable under Sections 420/409 of IPC and under Sections 64/69 of the Stamps Act in relation to the purchase of certain stamps. A perusal of the FIR shows that it was lodged on the basis of a letter bearing No. 11912/Stamps-693(P)/2002-2003(83-84) dated 26.06.2004 written by the Commissioner, Stamps, U.P., Allahabad and letter No. 237245-6 (2003-04) Mu, Ra, La. dated 28.7.2004 written by the Commissioner, Varanasi Division, Varanasi. It has been stated in the FIR that the Divisional Office of the LIC, Varanasi has not purchased the Insurance Stamps from the Treasury office of U.P. but the same was purchased from the Stamp Vendors, outside of State, which caused loss of Rs. 1,67,21,520.00/- to the State Government.

4. The appellants herein approached the Allahabad High Court for quashing of the aforesaid FIR. However, the High Court on 03.08.2006 dismissed all the three writ petitions vide three separate but identical orders holding that the FIR prima facie discloses the commission of cognizable offence and there was no ground of interference.

5. Aggrieved by the said orders of the High Court, the appellants have preferred the present appeal. It was contended by the appellants that the FIR was lodged only on the directions of the higher authorities for the purpose of arresting the present appellants so as to humiliate and harass them. It has been submitted that the provisions of the Stamp Act and relevant provisions of Constitution clearly indicates the untenability of the allegations made in the FIR.

6. It is the case of the appellant that purchasing of stamps assumes urgency because the insurance contract must be executed along with insurance policies at the earliest possible time and immediately on receipt of the first premium and if there is any delay in issuing the insurance stamps and if in the meantime there is a death of life assured, then difficulties arise regarding payment of insurance money/claim. As there are various sources for purchase of insurance

stamps viz. from the Treasury of any district throughout the State and also from any duly authorised licensed stamp vendors, the LIC is entitled to purchase the insurance stamps from any such stamp vendors throughout the country. It has been submitted that there is no prohibition under the law and in the Stamp Act which mandates that the LIC will purchase the insurance stamps only from a particular district or from a particular State.

7. On the other hand, it is the case of the respondent that if the stamps are permitted to be purchased from any other State other than the State in which the instrument is to be first executed, it shall not only cause huge loss of revenue to the State in which the instrument is executed but would also render the rules framed by the State Government for regulation of sale and supply of the stamps and the administrative machinery established therein as futile and meaningless. It is also the case that it would further prevent the State Government from examining as to whether the stamps are fake or genuine.

8. The law which governs the rate of payment of 'stamp duty' in respect of policies of insurance and certain other transactions has been

dealt under Entry 91 of List 1(Union List) of 7th Schedule to the Constitution of India (in short 'Constitution'). It reads as follows:

> **"91**. Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts."

1. Our attention has been drawn towards Entry 63 of List II (State List) of 7thSchedule which provide for power to the State Legislatures in regard to the rate of 'stamp duty' other than those specified in List I (Union List).

> **"63.** Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty."

1. Other relevant entry which has been cited is Entry 44 of List III (Concurrent List) which excludes 'rates of stamp duty'.

> **"44.** Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty."

1. The above-mentioned various entries in the three lists are the fields of legislation with regard to stamps. They are designed to

define and delimit the respective areas of legislative competence of the Union and State Legislatures. Under Entry 44 of List III, the power to levy stamp duty on all documents, is concurrent. But the power to prescribe the rate of such levy is excluded from Entry 44 of List III and is divided between Parliament and the State Legislatures. If the instrument falls under the categories mentioned in Entry 91 of List I, the power to prescribe the rate will belong to Parliament, and for all other instruments or documents, the power to prescribe the rate belongs to the State Legislature under Entry 63 of List II. Therefore, the meaning of Entry 44 of List III is that excluding the power to prescribe the rate, the charging provisions of a law relating to stamp duty can be made both by the Union and the State Legislature, in the concurrent sphere, subject to Article 254 in case of repugnancy.

2. With regards to the polices of life insurance the rates of stamp duty have been stipulated by Parliament in the Schedule I to the Stamp Act though the proceeds thereof are assigned to the States under Article 268 of the Constitution. It reads as follows:

> **"268. Duties levied by the Union but collected and appropriated by the States.-**

(1) Such stamp duties and such duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied by the Government of India but shall be collected-
(a) in the case where such duties are leviable within any [Union territory], by the Government of India, and (b) in other cases, by the States within which such duties are respectively leviable.

(2) The proceeds in any financial year of any such duty leviable within any State shall not form part of the Consolidated Fund of India, but shall be assigned to that State"

1. Now, it would be useful at this stage to discuss relevant provisions of the Stamp Act.

"27. Facts affecting duty to be set forth in instrument - (1) The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

64. Penalty for omission to comply with provisions of section 27 - Any person who, with intent to defraud the Government, -

(a) executes any instrument in which all the facts and circumstances required by section 27 to be set forth in such instrument are not fully and truly set forth ; or

(b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances ; or

(c) does any other act calculated to deprive the Government of any duty or penalty under this Act,

shall be punishable with fine which may extend to five

thousand rupees.

69. Penalty for breach of rule relating to sale of stamps and for unauthorized sale-

(a) Any person appointed to sell stamps who disobeys any rule made under section 74, and

(b) any person not so appointed who sells or offers for sale any stamp (other than a [ten naye paise or five naye paise] adhesive stamp),

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both."

1. Section 64 of the Stamp Act provides for the penalty in case of omission to comply with the provisions of Section 27. On the other hand, Section 69 deals with the penalty to be imposed for breach of rule relating to sale of stamps and for unauthorised sales.

2. Pursuant to rule making powers given to States under Section 74 and 75 of the Stamp Act, the State of U. P. has made rules called the United Provinces Stamp Rules, 1942 (in short 'Stamps Rules'. Our attention has been drawn towards Rule 3 of the Stamp Rules which provides the description of stamps as follows:

"Rule 3. Description of Stamps. - (1) Except as otherwise provided by the Indian Stamp Act, 1899 or by these rules-

(i) all duties with which any instrument is chargeable shall be paid and such payment shall be indicated on such instrument by means of stamps issued by the Government for the purposes of the Act, and

(ii) a stamp which by any word or words on the face of it is appropriated to any particular kind of instrument shall not be used for an instrument of any other kind.

(2) There shall be three kinds of stamps for indicating the payment of duty with which instruments are chargeable, namely:-

(a) impressed stamps, that is to say stamped papers bearing the words 'Indian non- judicial' printed thereon, which have been sold by a person duly authorised in that behalf as hereafter provided to any person for his use in accordance with these rules:

Provided that no stamp shall be deemed to be sold unless it is clearly bears the name and address of the authorised vendor thereof and of the person to whom it is sold;

(b) impressed stamps bearing the word 'Hundi' printed or embossed thereon; and

(c) adhesive stamps bearing the words 'Special adhesive', 'Insurance', 'Foreign Bill', 'Share Transfer', 'Notarial', 'Brokers note', 'agreement' or 'revenue' printed thereon:

Provided always that the stamps of the above descriptions over-printed with the words 'Uttar Pradesh' or the letters 'U.P.' shall continue to be used for payment of duty till such time as the State Government does not prohibit their use."

(emphasis underlined)

1. Further, Rule 115-A of the Stamps Rules provides for the mode of sale of such stamps. It reads as follows:

"Rule 115-A. Stamps which are the property of the central

> Government and which are required to be sold to the public through post offices, e.g., Central Excise, Revenue stamps, Defense/or National savings stamps, shall be obtained by post offices from local and branches and depots and sold to the public in the same manner as ordinary postage stamps.
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> Tobacco Excise duty labels and insurance agent license fee stamps shall be sold to the public of local and branch depots at which they are stocked."

1. Placing reliance on the above-mentioned rules, it was contended on behalf of the State of U.P. that the acts of the appellants of purchasing insurance stamps from outside the State was contrary to above-mentioned rules. However, one cannot lose sight of the fact that the Stamp Act being a central legislation is covered under List I (Union List) of the 7th Schedule of the Constitution. Rule making power has been given to the States under Section 74 and 75 of the Stamp Act which deals with 'power to make rules relating to sale of stamps' and 'power to make rules generally to carry out Act' respectively. The scope of such rule making power of the State are only upto the extent as provided under the central law i.e. Stamp Act.

2. In the case at hand, the Stamp Rules were framed by the U.P. Government in the year 1942. A perusal of the statement of object of the said Rules shows that the such Rules was framed in exercise of

the powers conferred by the Stamp Act and in pursuance of the powers conferred by the notification of the Government of India, Finance Department (Central Revenues) No. 9/Stamps, dated the 13th November, 1937, and in supersession of all previous notifications of the Government of India and the Provincial Government in this behalf. Undoubtedly, when these Rules were framed the present constitutional scheme was not in place.

3. As mentioned earlier, Under Entry 44 of List III, the power to levy stamp duty on all documents, is concurrent. But the power to prescribe the rate of such levy is excluded from Entry 44 of List III and is divided between Parliament and the State Legislatures. If the instrument falls under the categories mentioned in Entry 91 of List I, the power to prescribe the rate will belong to Parliament, and for all other instruments or documents, the power to prescribe the rate belongs to the State Legislature under Entry 63 of List II. Therefore, the meaning of Entry 44 of List III is that excluding the power to prescribe the rate, the charging provisions of a law relating to stamp duty can be made both by the Union and the State Legislature, in the concurrent sphere, subject to Article 254 in case of repugnancy. So, in the case at hand, it is Entry 91 of List I of the 7th Schedule which

would be applicable and the States does not have the power to circumvent a central law.

4. As far as quashing of FIR is concerned, the scope of power under Section 482 CrPC has been explained in a series of decisions by this Court. In **Nagawwa v. Veeranna Shivalingappa Konjalgi**, (1976) 3 SCC 736, it was held that the Magistrate while issuing process against the accused should satisfy himself as to whether the allegations in the complaint, if proved, would ultimately end in the conviction of the accused. It was held that the order of Magistrate issuing process against the accused could be quashed under the following circumstances: (SCC p. 741, para 5)

> "(*1*) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;
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> (*2*) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;
>
> (*3*) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(*4*) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like."

1. In **State of Haryana v. Bhajan Lal**, 1992 Supp. (1) SCC 335, a question came up for consideration as to whether quashing of the FIR filed against the respondent Bhajan Lal for the offences under Sections 161 and 165 IPC and Section 5(2) of the Prevention of Corruption Act was proper and legal. Reversing the order passed by the High Court, this Court explained the circumstances under which such power could be exercised. Apart from reiterating the earlier norms laid down by this Court, it was further explained that such power could be exercised where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. It observed as follows in para 102:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently

channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

1. This Court in the case of **Indian Oil Corpn. v. NEPC India Ltd.**, (2006) 6 SCC 736, at page 747 has observed as under :

> "**12.** The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few—Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, State of Haryana v. Bhajan Lal, Rupan Deol Bajaj v. Kanwar Pal Singh Gill, Central Bureau of Investigation v. Duncans Agro Industries Ltd., State of Bihar v. Rajendra Agrawalla, Rajesh Bajaj v. State NCT of Delhi, Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., Hridaya Ranjan Prasad Verma v. State of Bihar, M. Krishnan v. Vijay Singh and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque-. The principles, relevant to our purpose are:
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> (i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.
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> For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.
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> (ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

1. This Court has recently in **R. Kalyani v. Janak C. Mehta and Others**, (2009) 1 SCC 516, observed as follows:

> **"15.** Propositions of law which emerge from the said decisions are:
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> (1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a First Information Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.

16. It is furthermore well known that no hard and fast rule can be laid down. Each case has to be considered on its own merits. The Court, while exercising its inherent jurisdiction, although would not interfere with a genuine complaint keeping in view the purport and object for which the provisions of Sections 482 and 483 of the Code of Criminal Procedure had been introduced by Parliament but would not hesitate to exercise its jurisdiction in appropriate cases. One of the paramount duties of the superior courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint."

1. In the case at hand, it has been stated in the FIR that the Divisional Office of the LIC, Varanasi has not purchased the Insurance stamps from the Treasury office of U.P. but the same was purchased from the Stamp Vendors, outside of State, which caused loss to the State exchequer to the tune of Rs. 1,67,21,520.00/- to the state government. So, the sole allegation against the appellants is that they have purchased the insurance stamps from outside the State

of UP. However, as we have already noted that the said act of the appellant cannot be said to be inconsistent with any provisions of the Stamp Act or any other rules. So, the allegation made in the FIR even if proved by the prosecution does not constitute any offence.

2. Further, the registration of FIR shows complete non-application of mind as the said FIR also brings within its ambit purchase of insurance stamps done within the State of U.P. There cannot be any dispute with regard to the insurance stamps which has been duly purchased from the State of U.P. itself. As already noted, the State of U.P. has sought to invoke Section 64 (c) of the Stamp Act to contend that the action of appellants was 'calculated to deprive the Government of any duty or penalty', but there is no denial of the fact that appellants were indeed paying the duties, and by no means 'depriving the government of any duty or penalty'. So, the act of the respondent is nothing but clear a case of its mala fide intention to harass the appellants herein. It is wholly immaterial whether appellants are purchasing the insurance stamps from the State of U.P. or from any other State. In fact, as mentioned earlier, Rules 115-A of the U.P. Stamp Rules itself declares that 'Stamps which are the property of the central Government'. That being the legal

position, it is legally untenable to contend that the insurance stamps must be purchased from the State of U. P. only. Further, it must be kept in mind that Section 69 of the Stamps Act will also have no application as, admittedly, the appellants are neither the stamp vendors nor doing any unauthorised sale of the insurance stamps. Keeping this in mind, the High Court ought to have quashed the criminal proceedings launched against the appellants.

3. Hence, the decision of the High Court is liable to be set aside and accordingly, we set it aside. The appeal is accordingly allowed.

……..J.

[S.B. Sinha]

...……J.

[Dr. Mukundakam Sharma]

New Delhi

April 15, 2009