Bula Sarkar Vs State of Assam and Another

Court: Gauhati High Court

Date of Decision: March 5, 2012

Acts Referred: Constitution of India, 1950 â€" Article 226
Criminal Procedure Code, 1973 (CrPC) â€" Section 155, 155(2), 156(1), 482
Penal Code, 1860 (IPC) â€" Section 34, 349, 350, 351, 352

Citation: (2012) 3 GLD 175 : (2012) 2 GLT 937

Hon'ble Judges: Iqbal Ahmed Ansari, J

Bench: Single Bench

Advocate: Z. Kamar, Advocate PP, for the Respondent

Final Decision: Dismissed

Judgement

I.A. Ansari, J.
By making this application, u/s 482 CrPC., the petitioner, who is accused in Bijni Police Station Case No.89/2007

(corresponding to GR Case No. 143/2007), under Sections 448/352/427/34 IPC, presently pending in the Court of learned Sub-Divisional

Judicial Magistrate, Bijni, has sought for setting aside and quashing of the entire proceeding including the First Information Report, which gave rise

to the registration of the said case. None has appeared on behalf of the petitioner. However, heard Mr. Z. Kamar, learned Public Prosecutor,

Assam.

2. While dealing with the merit of the present criminal petition, the case of the informant, as discernible from the First Information Report (in short,

"the FIR") may, in brief, be described thus: On 23.09.2007, at about 12.10 p.m., the present petitioner, accompanied by her two children, who

were also ex-students of Holy Child School, Bijni, came into the office of the Principal, Holy Child School, Bijni, and assaulted the informant, who

is the Principal of the said school, the staff of the school and damaged the office room and some of the properties, lying in the office of the said

school, thereby intimidating the students, staff and Vice President of the school and, even while leaving the school, she abused whoever she found

on her way.

3. Before entering into the merit of the present criminal petition, it is necessary to point out that the law with regard to the quashing of criminal

complaint or FIR is no longer res integra. A catena of judicial decisions has settled the position of law on this aspect of the matter. I may refer to

the case of R.P. Kapur Vs. The State of Punjab, , wherein the question, which arose for consideration, was whether a first information report can

be quashed u/s 561A of the Code of Criminal Procedure, 1898. The Court held, on the facts before it, that no case for quashing of the proceeding

was made out; Gajendragadkar, J, speaking for the Court, however, observed that though, ordinarily, criminal proceedings, instituted against an

accused, must be tried under the provisions of the Code, there are some categories of cases, where the inherent jurisdiction of the Court can and

should be exercised for quashing the proceedings. One such category, according to the Court, consists of cases, where the allegations in complaint

or the FIR, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases, no question

of appreciating evidence arises and it is a matter merely of looking at the complaint or the FIR in order to decide whether the offence alleged is

disclosed or not. In such cases, observed the Court, it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the

process of the criminal court to be issued against the accused.

4. From the case of R.P. Kapoor (supra), it becomes abundantly clear that when a mere look into the contents of a complaint or FIR shows that

the contents thereof, even if taken at their face value and accepted to be true in their entirety, do not disclose commission of offence, the complaint

or the FIR, as the case may be, shall be quashed.

5. As a corollary to what has been discussed above, it is also clear that if the contents of a complaint or an FIR constitute offence, such a

complaint or FIR cannot be quashed except where the complaint or the FIR is, otherwise also, not sustainable in law.

6. Laying down the scope of interference by the High Court in matters of quashing of FIR or complaint, the Supreme Court, in the leading case of

State of Haryana and others Vs. Ch. Bhajan Lal and others, , observed as follows :-

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 of the inherent powers u/s

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 the 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 of 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

entirely, do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations made 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 u/s 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 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 allegation 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 u/s 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 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 of the accused and with a view to spite him due to private and personal private grudge.

(Emphasis is added)

7. In the case of Bhajanlal (supra), the Supreme Court gave a note of caution on the powers of quashing of criminal proceeding in the following

words:

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with

circumspection and that too in the rarest of rare cases: that the Court will not be justified in embarking upon an enquiry as to the reliability or

genuineness or otherwise of the allegations made in the FIR or the complaint and that the extra ordinary or inherent powers do not confer an

arbitrary jurisdiction on the Court to act according to its whim or caprice.

(Emphasis is added)

8. It is clear from a close reading of the principles laid down in the case of R.P. Kapoor (supra) and Bhajanlal (supra) that broadly speaking,

quashing of a First Information Report or a complaint is possible (a) when the allegations made in the First Information Report or the complaint,

even if taken at their face value and accepted in their entirely as true, do not prima facie constitute any offence or make out a case against the

accused; (b) when the uncontroverted allegations, made in the FIR or complaint and evidence collected in support of the same, do not disclose the

commission of any offence and/or make out a case against the accused; and (c) when the allegations, made in the FIR or complaint, are so absurd

and inherently improbable that on the basis of such absurd and inherently improbable allegations, no prudent person can ever reach a just

conclusion that there is sufficient ground for proceeding against the accused.

9. In the present case, when the FIR is read, as a whole, it becomes clear that according to what the informant alleges, the petitioner, accompanied

by her children, entered into the said school and assaulted the Principal of the school, its office staff and damaged the office room and some

properties lying there. If these allegations are true, whether these allegations would constitute offence u/s 352 IPC and/or offence u/s 427 IPC ?

10. While considering the present criminal petition, what also needs to be noted that there is no dispute that so far as offences under Sections 352

and 427 IPC are concerned, both are non-cognizable offences and, hence, no case, under the said two penal provisions, could have been

registered by the police, in the present case, on the basis of the FIR if the FIR does not disclose a case of commission of any cognizable offence,

more particularly, an offence u/s 448 IPC, which is cognizable, whereunder too, the case has been registered.

11. The question, therefore, which arises for determination, in the present case, is: Whether the FIR discloses commission of an offence u/s 448

read with Section 34 IPC?

12. While considering the question posed above, it needs to be noted that Section 448 IPC makes an offence of house trespass punishable. What,

then, house trespass is ? When a person commits criminal trespass by entering into, or remaining in, any building, tent or vessel, used as a human

dwelling, or any building, used as a place for worship, or as a place for the custody of property, he commits, according to Section 442 IPC, the

offence of house trespass.

13. From what Section 442 IPC defines as house trespass, it becomes more than abundantly clear that house trespass is merely one of the modes

of criminal trespass. The question, which necessarily arises, is: What a criminal trespass is ?

14. Section 441 IPC defines ''criminal trespass''. According to Section 441 IPC, whoever enters into or upon property in the possession of

another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or if such a person, having

lawfully entered into or upon such property, remains there unlawfully with intent thereby to intimidate, insult or annoy any such person, or with

intent to commit an offence, he commits the offence of ''criminal trespass''.

15. In other words, when a person enters into or upon a property in the possession of another with intent to commit an offence or to intimidate,

insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with

intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, he is said to have committed criminal trespass.

16. When a person, as indicated above, commits criminal trespass by entering into, or remaining in, any building, tent or vessel, used as a human

dwelling, or any building, used as a place for worship, or as a place for the custody of property, he commits, according to Section 442 IPC, the

offence of house trespass.

17. Having indicated above as to what house trespass means, let me, in the backdrop of the accusations made in the FIR, turn, first, to Section

349 IPC, which defines, ''force''. From a bare reading of Section 349 IPC, it becomes clear that anyone, who causes motion, change of motion, or

cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that

substance into contact with any part of that other''s body, or with anything which that other wearing or carrying, or with anything so situated that

such contact affects that other''s sense of feeling, shall be treated to have used ''force'' provided that the person, causing the motion, or change of

motion, or cessation of motion, causes that motion, change of motion, or cessation of motion, in one of the three ways, one of such ways being ''by

his own bodily power''.

18. Bearing in mind what ''force'' means, I, now, turn to Section 350 IPC, which defines ''criminal force''. According to this penal provision,

whoever intentionally uses force to any person, without that person''s consent, in order to the committing of any offence, or intending, by the use of

such force, to cause, or knowing it to be likely that by the use of such force, he will cause, injury, fear or annoyance to the person to whom the

force is used, is said to use ''criminal force'' to that person.

19. Thus, from the definition of criminal force'', as given in Section 350, IPC, it becomes clear that whoever intentionally uses force to any person

without that person''s consent intending, by the use of such force, to cause or knowing it to be likely that by use of such force, he will cause, injury,

fear or annoyance to the person to whom the force is used, he would be said to use ''criminal force''. In short, as long as a person intentionally uses

''force'' to any person without that person''s consent in order to commit any offence, such use of force'' has to be regarded as ''criminal force''.

Illustration (d), appended to Section 350 IPC, which is relevant in the present case, reads as under:

(d) A intentionally pushes against Z in the street. Here, A has, by his own bodily power moved his own person so as to bring it into contact with Z.

He has, therefore, intentionally used force to Z; and if he has done so without Z''s consent, intending or knowing it to be likely that he may thereby

injure, frighten or annoy Z, he has used criminal force to Z.

20. From the illustration given above, it becomes abundantly clear that when A pushes Z, without Z''s consent, with intention to cause injury, fear

or annoyance to Z, or knowing it to be likely that he (A) may, thereby, injure, frighten or annoy Z, A would be said to have used ''criminal force''

to Z.

21. Similarly, ''criminal force'' becomes ''assault'', according to Section 351, IPC, when a person makes any gesture, or any preparation intending

or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he, who makes that gesture or

preparation, is about to use ''criminal force'' to that person. Thus, whoever makes even a gesture intending or knowing it to be likely that such

gesture or preparation will cause any person present to apprehend that he, who makes that gesture or preparation, is about to use ''criminal force''

to that person, is said to commit an offence of ''assault''.

22. What, now, needs to be pointed out is that Section 352 IPC punishes both ''assault'' as well as use of ''criminal force''.

23. Coupled with the above, one may also note that Section 425 IPC, which defines ''mischief'', lays down that whoever, with the intent to cause,

or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such

change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits ''mischief''.

24. From the definition of ''mischief'', what becomes clear is that when a person, with an intent to cause, or knowing that he is likely to cause,

wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the

situation thereof as destroys or diminishes its value or utility, or affects it injuriously, he commits ''mischief''. In short, thus, when a person, with an

intent to cause damage to the public or any person, causes destruction of any property or any change in any property, which would destroy or

diminishes its value or utility, the person is said to have committed ''mischief''.

25. It may also be noted that when a person commits ''mischief'' and thereby causes loss or damage to the amount of fifty rupees or upwards, he

shall be punished with imprisonment of either description for a term, which may extend to two years, or with fine, or with both.

26. In the present case, this Court has to consider the maintainability and sustenance of the present application, made u/s 482 CrPC, on the

assumption that the allegations, made in the FIR, in question, are true. When so assumed, what transpires is that, according to the informant, the

petitioner, accompanied by her children, entered into the said school and assaulted the Principal of the school, his office staff and damaged the

office room and some properties lying there. In the face of these allegations, the petitioner, at this stage, shall be treated, albeit tentatively, to have

committed the offences of ''criminal force'', ''assault'' and ''mischief''. When a person commits ''criminal force'' without provocation, he/she

becomes liable for punishment u/s 352 IPC. In the present case, since the petitioner has allegedly committed the offences of ''criminal force'' and

''assault'', without any provocation, it becomes clear that her acts prima facie make out a case u/s 352 IPC. The damage, allegedly caused to the

school''s properties, makes out a prima facie case against her u/s 427 IPC too.

27. Because of the fact that the FIR reflects that the petitioner''s very entry into the school was with intent to commit the offences aforementioned,

it can be safely held, at this stage, that the petitioner is prima facie shown to have committed criminal trespass, as defined by Section 441 IPC, and

since she is shown to have committed the offence of criminal trespass by entering into the building of the school, she cannot, but be held, at this

stage, to have committed prima facie an offence of house trespass, as defined u/s 442 IPC, which is, as already indicated above, punishable u/s

448 IPC and cognizable too.

28. What crystallizes from the above discussion is that the FIR discloses prima facie commission of an offence u/s 448 IPC and there was no legal

impediment, on the part of the Officer-in-Charge, Bijni Police Station, to register, on the basis of the FIR, in question, a case against the petitioner

and her children under Sections 448/34 IPC, which is a cognizable offence inasmuch as according to sub-Section (4) of Section 155 CrPC, if a

case relates to two or more offences of which, at least, one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding the

fact that the other offences are non-cognizable.

29. In the case at hand, since the FIR could have been registered u/s 448 IPC, it follows that though offences under Sections 352 and 427 IPC

are non-cognizable offences, the police have the power, and did have the power, to register and investigate the case, which had both the penal

provisions, namely, cognizable as well as non-cognizable.

30. Considered in the light of what have been pointed out above, this Court has no hesitation in holding that the petitioner has not been able to

make out any case for quashing of the FIR, in question, by taking recourse to this Court''s power u/s 482 CrPC.

31. In the result and for the reasons discussed above, this criminal petition fails and the same shall accordingly stand dismissed. Send back the

LCR.