

(2006) 11 GAU CK 0036

Gauhati High Court

Case No: None

Yumpi Padu

APPELLANT

Vs

Firoj Ahmed

RESPONDENT

Date of Decision: Nov. 23, 2006

Acts Referred:

- Constitution of India, 1950 - Article 226
- Criminal Procedure Code, 1973 (CrPC) - Section 155, 156, 397, 401, 482
- Penal Code, 1860 (IPC) - Section 34, 341, 379, 427, 447

Citation: (2007) 2 GLR 574

Hon'ble Judges: I.A. Ansari, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

I.A. Ansari, J.

By making this application, u/s 482 read with Sections 397 and 401 of the Code of Criminal Procedure, the petitioner herein, who is an accused in CR Case No. 6241C/2005, has sought for setting aside the order, dated 1.10.2005, passed therein, by the learned Judicial Magistrate, Kamrup, taking cognizance of offences under Sections 447, 427, 341, 379 and 506 IPC read with Section 34 IPC against the present petitioner and some others and also directing issuance of summons to them.

2. I have heard Mr. S Ali, learned Counsel for the petitioner, and Mr. A Sattar, learned Counsel appearing on behalf of the complainant-opposite party.

3. The law with regard to quashing of criminal complaint is no longer res integra. A catena of judicial decisions have 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; but

Gajendragadkar, J speaking for the Court 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 the FIR or the complaint, 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 FIR or the complaint in order to decide whether the offence alleged is disclosed or not. In such cases, said 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. From the case of R.P. Kapoor (supra), it becomes abundantly clear that when a mere look into the contents of a complaint shows that the contents of the complaint, even if taken at their face value and accepted to be true in their entirety, do not disclose commission of offence, the complaint shall be quashed. As a corollary to what has been discussed above, it is also clear that if the contents of the complaint constitute offence, such a complaint cannot be quashed.

4. Laying down the scope of interference by the High Court in matters of quashing of FIR or complaint, the Apex Court in [State of Haryana and others Vs. Ch. Bhajan Lal and others](#), laid down 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 channellised 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 entirety, 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 1.1.1 constitute only a non-cognizable offence, cc.; 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 on... the accused, and with a view

5. In the case of Bhajanlal (supra), the Apex Court gave a note of caution on the power of quashing of criminal proceeding in the following words:

703. 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 extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

(emphasis is added)

6. 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 the First Information Report or the 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 entirety 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.

7. In other words, when the allegations made in a complaint disclose commission of an offence, such a complaint cannot be quashed by relying upon some other

materials on which will depend the defence of the accused, for, in such cases, truthfulness or otherwise of the allegations contained in the complaint or the probability of the defence plea can be determined only by effective investigation or at the trial. I am also guided to take this view from the case of State of Bihar and Anr. v. Mohd. Khalique and Anr. reported in (2002) SCC 652, wherein the Apex Court, while dealing with the question of quashing of FIR, observed as follows:

7. In Bhajanlal case, this court has also held that the power of quashing a criminal proceeding should be exercised sparingly and with circumspection and that too in the rarest of rare cases. The present case is not rarest of rare case.

8. 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 the police to complete it. We, accordingly, hold that the High Court has committed a grave error in quashing the entire proceedings and ought not to have thwarted the prosecution. See also [Ram Pratap Yadav Vs. Mitra Sen Yadav and Another](#), Kailash Chandra Pareek v. State of Assam reported in (2003) 2 GLR 305.

(emphasis is added)

8. While considering the present application, what needs to be noted, at the very outset, is that the petitioner is not the sole accused in the complaint case aforementioned and, hence, the complaint proceeding, as a whole, cannot be quashed. The petitioner can, at best, ask for setting aside the impugned order, dated 1.10.2005, to the extent that the same directs issuance of summons to the petitioner on the basis of the cognizance of offences already taken.

9. Turning to the question as to whether the impugned order needs interference, what may be pointed out is that the petitioner challenges the veracity and truth of the allegations made against her and other accused by the complainant. It is not possible, while entertaining an application u/s 482 Cr.P.C, to determine truth or falsity of an accusation made in a complaint, for, the question as to whether the allegations, contained in a complaint, are or are not true is a question, which can be decided only at the trial. In the present case, nothing could be submitted, on behalf of the petitioner, to show that the allegations made against her in the complaint are false or improbable.

10. Because of what have been pointed out above, I do not find that the impugned order needs any interference at this stage.

11. In view of the above, this revision is not admitted and the same shall accordingly stand dismissed.