

Shri Dilip Kumar Saha and others Vs Shri Pradyut Kumar Choudhury.

Court: Gauhati High Court

Date of Decision: July 17, 2012

Acts Referred: Constitution of India, 1950 " Article 226

Criminal Procedure Code, 1973 (CrPC) " Section 133, 145, 155(2), 156(1), 202

Penal Code, 1860 (IPC) " Section 143, 294, 34, 427, 447

Citation: (2012) 4 GLT 539

Hon'ble Judges: Iqbal Ahmed Ansari, J

Bench: Single Bench

Advocate: A.K. Purkayastha, for the Appellant; G.P. Bhowmik, R. Hazarika and Mr. J. Purkayastha, for the Respondent

Judgement

I.A. Ansari

1. With the help of this application, made u/s 482 Cr.P.C., read with Section 397 and 401 Cr.P.C., the petitioners, who are accused in Complaint

Case No. 265C/2004, have put to challenge the sustainability of the complaint, in question, and also the order, dated 20-02-2004, passed by the

learned Special Judicial Magistrate, Assam, Guwahati, directing issuance of process is, under Sections 447/ 427/ 143/ 294/ 506/ 34 IPC, against

the accused-petitioners. I have heard Mr. AK Purkayastha, learned counsel for the accused-petitioners, and Mr. GP Bhowmik, learned counsel

for the opposite party.

2. The case of the complainant, as discernible from the complaint, in question, may, in brief, be set out as under:

(i) The complainant, a Government employee, has been residing, in the locality concerned since the year 1996, by constructing his dwelling house

there. In front of the complainant's land, there is a public road. The complainant left 8" feet land from his own land for widening the public road,

but the accused No. 5, namely, Sri Dilip Bhattacharjee, who resides just opposite the complainant's land, encroached upon the public road and, in

consequence thereof, the breadth of public road got narrowed down to 11" feet from 16" feet. This led to an altercation between the complainant

and the accused No. 5, namely, Sri Dilip Bhattacharjee. Though the complainant had been using the road, in question, peacefully and without

obstruction from any quarter, yet in the later part of 1999, when the complainant started developing his land by filling earth, the accused-

petitioners, suddenly stopped the complainant's loaded trucks from proceeding over the road and demanded money from the complainant. Finding

no alternative, the complainant paid Rs. 1,000/- to the accused-petitioners and the accused-petitioners issued receipt in the name of a Samitee

(Committee), though there is no such Committee in the locality concerned, namely, Gobinda Nagar. From time to time, the accused persons had,

thus, been demanding money from the complainant in the name of the development of the road, but instead of developing the road, they had been

misappropriating the money. In the first week of January, 2004, when the complainant started filling his part of the land with earth in same way, as

have been done by others in the locality, the accused-petitioners wrongfully restrained the driver of the truck from coming to the road and did not

allow the driver to drive the truck. The complainant was not even allowed to carry his goods by pull cart. Finding no other option, the complainant

filed a petition, u/s 133 Cr.P.C., before the Sub-Divisional Magistrate, Kamrup, Guwahati, for removing the obstruction and the learned Sub-

Divisional Magistrate, Kamrup, Guwahati, passed an order, on 13-01-2004, directing removal of the obstruction. However, the accused persons

did not obey the direction of the Court. After communication of the order, dated 13-01-2004, at about 6 am, a persons, in furtherance of their

common intention trespassed into the complainant's land, damaged and removed his boundary fencing, cut fruit trees standing thereon, assaulted

his labourers and forcibly taken away about three fourth portion of truck of stones from his compound. When the complainant offered resistance,

he too, was assaulted and the accused Nos. 5, 1, 3 and 8, namely, Shri Dilip Bhattacharjee, Shri Dilip Kumar Saha, Shri Biplab Tolapatra and

Shri Tunu Basar respectively, rebuked the complainant in filthy language and committed rioting by assembling within the land of the complainant. In

fact, on 17-01-2004, too, the accused persons trespassed into the complainant's house and rebuked him in filthy language and threatened him not

to report the matter to the police or else, he would have to face dire consequences.

(ii) Based on the above complaint and on examination of the complainant and upon holding enquiry u/s 202 Cr.P.C., the learned Court below, on

finding that a prima facie case has been made out, as against the accused-petitioners, under Sections 447/ 427/ 143/ 294/ 506/ 34 IPC, directed

issuance of summons against the accused-petitioners by order, dated 20-02-2004, aforementioned. Aggrieved by the act of taking of cognizance

of the offences aforementioned and the act of directing issuance of processes as mentioned hereinbefore, the accused-petitioners are, now, before

this Court seeking to get, as already mentioned above, the complaint, in question, quashed and the impugned order, dated 20-02-2004, set aside.

3. Appearing on behalf of the accused-petitioner, Mr. AK Purakayastha, learned counsel, has submitted that the road, which the complainant

refers to, is a public road and though the complainant had obtained an order, u/s 133 Cr.P.C., for removal of alleged obstruction, the said order

had been stayed by this Court. This apart, according to Mr. Purakayastha, the complainant had initiated a proceeding u/s 145 Cr.P.C., in respect

of the disputed land and the same culminated into an order, whereby the parties to the proceeding were directed to institute appropriate suit for

remedy of their claim and counter-claims. The allegations made against the accused-petitioner are, according to Mr. Purakayastha, learned

counsel, wholly false, concocted and made with ulterior motive to drag the accused-petitioners in false criminal case and if such a complaint is

allowed to proceed, it would be nothing, but abuse of the process of Court causing thereby serious miscarriage of justice.

4. Countering the submissions made on behalf of the accused-petitioners, it has been contended by Mr. GP Bhowmik, learned counsel for the

complainant-opposite party, that the complaint, when read as a whole, discloses commission of offences and the learned Court below committed

no error of law in taking cognizance of the offences, which the complaint, in question, discloses and in directing issuance of processes against the

accused-petitioners. In these circumstances, according to Mr. Bhowmik, no case for quashing of complaint can be said to have been made out by

the accused-petitioners.

5. While considering the present application made u/s 482 Cr.P.C., it needs to be noted that the law, with regard to quashing of criminal complaint,

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, 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, in R. P. Kapur (supra), 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 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. Similarly, where an FIR does not disclose commission of an

offence, the FIR has got to be quashed.

6. As a corollary to what has been discussed above, it is also clear that if the contents of the complaint disclose commission of offence, such a

complaint cannot be, ordinarily, quashed nor can an FIR be, ordinarily, quashed if the FIR discloses commission of a cognizable offence.

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

8. In the case of Bhajanlal (supra), the Supreme Court gave a note of caution, on the powers of quashing of criminal proceedings, 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).

9. 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 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.

10. In other words, when the allegations, made in an FIR, disclose commission of a cognizable offence, such an FIR cannot, ordinarily, 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 FIR or the probability of the defence plea can be determined only by effective investigation or at the trial.

11. However, in *Harshendra Kumar D. Vs. Rebatilata Koley Etc.*, , the Supreme Court has made it clear that it is not an absolute rule of law that

the High Court, while exercising its jurisdiction u/s 482 CrPC, or, while exercising its revisional jurisdiction u/s 397 CrPC, cannot, under any

circumstances, look into the nature of public document or such materials, which are beyond suspicion or doubt, in order to ascertain if the criminal

prosecution should or should not be allowed to proceed. In fact, the Supreme Court has also made it clear, in *Harshendra Kumar D. (supra)*, that

no greater damage can be done to the reputation of a person than dragging him in a criminal case. The Supreme Court has, therefore, held, in

Harshendra Kumar D. (supra), that the High Court fell into grave error in not taking into consideration the uncontroverted documents relating to

the appellant's resignation from the post of director of the company, which, if looked into, would have made it clear that the appellant's resignation

from the post of director of the company was much before the cheques had been issued by the company. The relevant observations, which

appear, in this regard, at paragraph 25 and 26, in *Harshendra Kumar D. (supra)*, read as under:

25. In our judgment, the above observations cannot be read to mean that in a criminal case where trial is yet to take place and the matter is at the

stage of issuance of summons or taking cognizance, materials relied upon by the accused, which are in the nature of public documents or the

materials which are beyond suspension or doubt, in no circumstance, can be looked into by the High Court in exercise of its jurisdiction u/s 482 or

for that matter in exercise of revisional jurisdiction u/s 397 of the Code. It is fairly settled now that while exercising inherent jurisdiction u/s 482 or

revisional jurisdiction u/s 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the

defence of the accused or embark upon an inquiry in respect of merits of the accusations. However, in an appropriate case, if on the face of the

documents - which are beyond suspension or doubt - placed by the accused, the accusations against him cannot stand, it would be travesty of

justice if the accused is relegated to trial and he is asked to prove his defence before the trial court. In such a matter, for promotion of justice or to

prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on the matter at prima facie stage.

26. Criminal prosecution is a serious matter; it affects the liberty of a person. No greater damage can be done to the reputation of a person than

dragging him in a criminal case. In our opinion, the High Court fell into grave error in not taking into consideration the uncontroverted documents

relating to the appellant's resignation from the post of Director of the Company. Had these documents been considered by the High Court, it

would have been apparent that the appellant has resigned much before the cheques were issued by the Company.

(Emphasis is supplied)

12. From the law laid down in Harshendra Kumar D. (supra), it becomes clear that when the High Court is approached for quashing of a criminal

prosecution in exercise of its extra-ordinary jurisdiction u/s 482 CrPC, or in exercise of its revisional jurisdiction u/s 397 CrPC, the High Court has

to bear in mind that criminal prosecution affects the liberty of a person and there can be no greater damage done to the reputation of a person than

dragging him in a criminal case. There is, therefore, no absolute bar, on the High Court's power, to take into consideration any uncontroverted

document, which may have come on record, for the purpose of arriving at a decision as to whether a criminal prosecution should or should not be

allowed to continue and, if the Court, on the basis of any public or uncontroverted document, comes to the conclusion that allowing the criminal

prosecution to proceed, in such a case, would amount to abuse of the process of the Court, the High Court has the duty to quash such a

proceeding.

13. It is, no doubt, true that while exercising its inherent jurisdiction u/s 482 CrPC, or its revisional jurisdiction, u/s 397 CrPC, where a complaint

or FIR is sought to be quashed, it is not proper, on the part of the High Court, to consider the defence of the accused or enquire into the

correctness or veracity of the accusations made against the accused. Nonetheless, in appropriate cases, if, in the face of the documents placed by

the accused, which are beyond suspicion or doubt, the accusations against the accused cannot stand, it would be travesty of justice if the accused

is asked to face trial, for, if it is so done, it would amount to denial of justice and would be tantamount to preventing justice from being done. This

would be nothing short of abuse of the process of the Court.

14. Coupled with the above, there is no doubt that an FIR or a complaint may be quashed if the same is found to be actuated by mala fide (See.

Hira Lal and Others Vs. State of U.P. and Others,) or if the FIR or the complaint makes accusations, which are so absurd or inherently

improbable that no reasonable man would accept the allegations, made in the FIR or the complaint, as the case may be, as true and/or in a case,

where the FIR and/or the complaint, as the case may be, is lodged as a counterblast. (See. M.N. Ojha and Others Vs. Alok Kumar Srivastav and

Another,). The FIR or a complaint may even be quashed, when the same is used as a weapon of harassment or persecution (See. State of

Karnataka Vs. L. Muniswamy and Others, ; but an FIR or a complaint shall be quashed, as held in Bhajanlal (supra), very sparingly and with great

circumspection and that too, in the rarest of rare cases.

15. In the case at hand, when the complaint is read, one cannot really say that the complaint does not disclose commission of offences, which the

learned Court below has taken cognizance of. In fact, to a pointed query made by this Court, even Mr. Purakayastha, learned counsel for the

accused-petitioners, did not contend that the contents of the complaint do not disclose commission of any offence. What has been contended, on

behalf of the accused-petitioners, is, as already indicated above, that the allegations made against the accused-petitioners are false. The question as

to whether the allegations, made against the accused-petitioners, are true or false is naturally a question of fact or, at least, a mixed question of fact

and law. The truth or veracity of the allegations, which have been made by the complainant, has to be determined in the trial and not in this

quashing proceeding. Merely because of the fact that the complaint, in question, cannot be quashed, it does not necessarily mean that the

complainant's case is true. However, so long as the complaint discloses commission of an offence, which is within the competence of the Court to

take cognizance of, the complaint cannot be quashed unless it is shown that the allegations, made in the complaint, are absurd or so inherently

improbable that no rational person would assume the allegations to be correct or true. When the complaint is read carefully and dispassionately, it

clearly transpires that the complaint contains sufficient allegations constituting offences, cognizance whereof has been taken and nothing contained

therein can be said to be so absurd or improbable that no rational mind accept the allegations made therein. The impugned complaint cannot,

therefore, be set aside and quashed.

16. Because of what have been discussed and pointed out above, this Court does not find that the accused-petitioners have been able to make out

any case warranting interference with the impugned order, dated 20-02-2004, nor can it be said that the accused-petitioners have been able to

make out a case for quashing of complaint, in question. This Court does not find any infirmity, legal or factual, in the impugned order, whereby

processes have been directed to be issued against the accused-petitioners. This revision, therefore, fails and the same shall accordingly stand

dismissed.

17. In order to expedite the disposal of the complaint case, in question, the parties to the complaint are hereby directed to appear, in the learned

trial Court, on 22-08-2012 and, on their appearance, the learned Court below shall proceed with the complaint and dispose of the same in

accordance with law.

18. The interim directions passed in this revision staying further proceeding of the Complaint Case No. 265C/2004, shall accordingly stand

vacated.

19. With the above observations and directions, this revision petition shall stand disposed of. Send back the LCR along with a copy of this

judgment and order.