(2014) 09 GAU CK 0011

Gauhati High Court

Case No: Criminal Petition 67/2010

Dhruba Das		APPELLANT
	Vs	
Zakir Hussain Khan		RESPONDENT

Date of Decision: Sept. 16, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 154, 154(3), 156, 200, 202
- Penal Code, 1860 (IPC) - Section 34, 341, 352, 384, 406

Citation: (2014) 09 GAU CK 0011

Hon'ble Judges: K. Sreedhar Rao, Acting C.J.

Bench: Single Bench

Advocate: J. Roy, Advocate for the Appellant

Judgement

K. Sreedhar Rao, Actg. C.J.

1. Heard Mr. J. Roy, learned counsel for the petitioners.

2. The petitioners are the accused. The respondent-complainant alleged that the 709 TATA bus in question bearing Registration No. AS-02-B-6427 is financed by M/s. Sri Ram Transport Finance Company and one Md. Faziuddin is the registered owner. The petitioners are said to be officers of the Finance Company. The complaint allegations discloses that the registered owner had some financial problems. Therefore, he handed over the bus to the complainant for running the same and there was also an understanding for sale of the vehicle without transfer of the Registration Certificate. But, however, a Power of Attorney was given to the complainant to take the possession and run the bus. It is said that on 24.10.2009 at 6.30 am, the complainant had stationed the bus in Nagaon Bus Stand and was permitting the passengers to board the bus. At that point of time, accused Nos. 1-3 and the petitioners came and demanded delivery of possession of the bus. When the complainant refused, the accused persons boarded the bus and started the bus with a duplicate key. The passengers fled away. The accused

persons threatened the complainant with dire consequences and took signatures on blank papers and forms. The complainant informed the matter to the registered owner. However, the accused persons took the vehicle with them. The complainant went and informed the Nagaon Police. The Nagaon police did not take any action. Hence, a private complaint is filed alleging commission of offences under Sections 341/ 406/ 384/ 506/ 352 IPC read with Section 34 IPC.

3. The learned Magistrate took cognizance and recorded sworn statement of the complainant. The gist of the sworn statement discloses that the registered owner had delivered the vehicle to the complainant and he was paying the installments regularly. In the month of October, 2009, one Dipu Singh, who is accused No. 1, took Rs. 44,000/- towards installment due but never returned the policy. On 24.10.2009, at 6.30 am, when he was boarding passengers in his bus, accused Dipu Singh along with Dilwar Hussain and Dhruba Das forcibly took away the bus by starting the bus with a duplicate key. When he protested, he was told to come to the office. Branch Manager, Srimanta Sharma, one of the petitioner herein, when contacted, they threatened him with dire consequences and they also took some signatures on blank papers. The complainant visited Branch Office, Tezpur Branch, and he was told that an arrear of Rs. 1,20,000/- was to be payable and if the complainant pays Rs. 50,000/-, they would release the vehicle. The complainant paid Rs. 50,000/- to Dipu Singh but no receipt was given in spite of insistence. On 18.12.2009, Rs. 50,000/- was again paid. Then also, no receipt was given and the bus was not delivered to him. The complainant went to Nagaon Police Station but the police did not take any action.

4. The contents of the sworn statements if juxtaposed with the allegations made in the complaint, there appears to be great variance and discrepancy in the events that have been spoken to in the complaint and stated in the sworn statement. The complainant along with the complaint has also filed a Hire-Purchase Agreement and other documents relating to the contract between the financer and the registered owner. In the context of the facts and material, it becomes evident that the allegations of extortion and criminal intimidation are not substantially corroborated. On the other hand, the transactions appear to be purely of civil nature.

5. The contention of the complainant that he paid Rs. 50,000/- on two occasions after the bus was seized by the financier is not substantiated. The offence appears to be purely of civil nature. Therefore, the order of the Magistrate in taking cognizance without proper corroboration appears to be bad in law. Accordingly, the petition is allowed.

6. It is pertinent to note that in a stereotype manner, in all private complaints filed under Section 200 Cr. PC., the Magistrates, after taking cognizance, record statement of the complainant and issue summons without proper verification of the corroborative material to substantiate the allegations made in the complaint. A victim of a crime in law as per the provisions of the Code of Criminal Procedure can either give complaint to the police, which will be registered as FIR and investigation be taken up or he can pursue the matter

by filing a private complaint.

7. Under Section 154 Cr. PC., when a report is given to the police regarding commission of a cognizable offence, if the police do not take any action under Section 154(3), the aggrieved has to report such refusal to the Superintendent of Police by a written communication. In the instant case, the present complaint is drafted by a lawyer and the complainant is assisted by a lawyer. There does not seem to be exhausting the recourse to an action under Section 154(3) Cr. PC of reporting to the Superintendent of Police, the private complaint is filed.

8. When a private complaint is filed under Section 200 Cr. PC., it is not mandatory on the part of the Magistrate to take cognizance and hear the case as a private complaint. The Magistrate has the choice of referring the complaint under Section 156 Cr. PC to the police for investigation when it is a cognizable offence. Otherwise, he can take cognizance and still direct a limited enquiry by police under Section 202 Cr. PC to verify the correctness of the allegations made in the complaint and to seek a proper corroboration for taking further action in the matter. The third choice would be that he can allow the complainant to lead evidence and to prove the case by examination of the witnesses.

9. In case where the complaint allegations disclose that the offence committed is one triable by the Sessions, it is mandatory that the Magistrate has to examine all the witnesses cited. In either cases, only some of the witnesses could be examined. However, a Magistrate when he records the sworn statement of the complainant and the witnesses, if any, he has to satisfy himself that the allegations are prima facie established by sufficient substantive corroborative materials apart from the self-serving oral statement of the witnesses.

10. The stereotype routine of taking cognizance in a private complaint recording sworn statement only of the complainant and issuance of summons not only causes many a time unwanted harassment to the accused against whom summons are issued and it also results in unnecessary filing of petitions under Section 482 or 397 Cr. PC. It is, therefore, directed that henceforth, the Magistrates entertaining complaint under Section 200 Cr. PC should be careful enough to exhaust the procedure of either reference of the complaint under Section 156 to the police for investigation or if the complainant insists that he should be permitted to lead evidence and to prove the allegations, in such circumstances, when there is no substantive corroborative material, a limited investigation under Section 202 Cr. PC to be directed to collect proper material if any available to proceed in the matter. The present court practice of recording sworn statement of the complainant and issuing summons has to be avoided as far as possible.

11. It is, however, to be noted that the Magistrate should keep in mind that for certain kinds of offences, which are to be triable only by way of private complaint, such case should never be referred to police under Section 156 Cr. PC. However, the Magistrate

can direct a limited investigation and report under Section 202 Cr. PC. In cases, where offences are triable only by way of private complaint, more particular, offence like bigamy punishable under Section 494 IPC, the Magistrate should refer the matter for limited enquiry under Section 202 to collect necessary material to enable the helpless woman, who file complaint only on the basis of some information about bigamy. In such cases, the Court should be proactive in directing the police for limited enquiry under Section 202 and any material so collected in such enquiry would be usefully used by the complainants, who are victims of bigamy.

12. Registry is directed to circulate this order to all the Magistrates in the State for strict compliance of the directions given.