

(2006) 05 JH CK 0058

In the Jharkhand High Court

Case No : Criminal M.P. Case No. 4938 of 2001 with Cr. M.P. No. 1179 of 2005

Aveek Sarkar and Another and Gullu Mirchandani

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 09-05-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 156(2), 156(3), 173

Penal Code, 1860 (IPC) — Section 120B, 153, 153A, 153B, 293

Prevention of Corruption Act, 1988 — Section 5(1), 5(2)

Citation : (2007) 1 CurCrIR 162 : (2006) CriLJ 4211 : (2006) 3 JLJR 447 :
(2006) 3 JCR 421 : (2006) 3 EastCriC 520 : (2006) 48 AllIndCas 237 : (2006) 3
AIRJharR 202 : (2007) 5 RCR(Criminal) 348

Hon'ble Judges : D.K. Sinha, J

Bench : Single Bench

Advocate : Nilesh Kumar and S.P. Roy, app, for the Appellant; A.K. Sahani,
Rajesh Kumar, D.K. Bharti and Amita Sarkar, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Sinha, J.—The petitioners have preferred their petitions u/s 482, CrPC for the quashing of Kotwali (Ranchi) P.S. Case No. 376 and 2000 as also the order passed by the CJM, Ranchi whereby and whereunder it was directed to issue warrants of arrest against them with further prayer to quash the entire criminal proceeding.

2. To re-capitulate, the brief facts of the case are that a Complaint Case No. 572 of 2000 was filed by the Complainant Ram Prakash Tiwari, National President of Vishwa Hindu Sanatan Dharma Prachar Prasara Sewa Trust ie. the Opposite Party No. 2 in both the petitions herein alleging inter alia that on 8.9.2000 while he was organizing a meeting at Branch Office, Ranchi a copy of the English Daily "The Telegraph," Calcutta Edition dated 8.1.2000 was made over to him and on perusing the same he was shocked to see an advertisement of ONIDA TV showing Goddess Durga carrying various models of ONIDA T.V. manufactured by

M/s Mire Electronics Ltd in her hands. It was alleged that by the said advertisement the accused persons of the complaint case jointly and deliberately used Goddess Durga as a model for displaying their product which hurt the complainant and destroyed, damaged and defiled his sentiments as well as his religious feelings since the Goddess had been exhibited as model like other models therefore, the advertisement in question was an insult to Hindu religion which malignantly provoked the Hindu people knowing it to be likely that such provocation will cause the offence of rioting, breach of public tranquility to which a legal notice was sent to the accused persons of the complaint on 15.9.2001 and thereafter the complainant approached the Kotwali Police to lodge a case which was refused and only thereafter the complaint case was filed in the Court of CJM, Ranchi on 22.9.2000 which was forwarded to the Kotwali PS u/s 156(3) of the CrPC to institute and investigate the case and accordingly it was registered as Kotwali P.S. Case No. 376/ 2000 on 19.11.2000 for the offence under Sections 153/153A/153B/295(A)/293/297/298/501/504/505(2)/120B of the Indian Penal Code as against the accused persons.

3. It was submitted on behalf of the petitioner, Gullu Mirchandani, Managing Director-cum-Chairman of M/s Mire Electronics Ltd., manufacturer of ONIDA T.V. that by publication of advertisement in the English Newspaper, "The Telegraph", commercial endeavour was made by the Advertising Company to promote the sale of T.V. and there was no malicious intention to hurt the religious feelings of the concerned. All the accused persons viz. petitioners herein are Hindu by religion and faith and therefore, it was beyond their comprehension even to think that they ever intended to sully the image of their God or Goddess and the underlying object of the advertisement in question apparently was only to promote the sale of the products. In any Company, advertisements are entrusted to advertising agencies and in the present case also it was entrusted to accused No. 5 (not the petitioners) i.e. the owner of advertising agency namely, "Ogilvy and Mateur". It was nowhere alleged that the petitioner Managing Director-cum-Chairman herein had vetted the advertisement in question nor it was produced before him for approval. The traders used to name their products after God/Goddess in their belief that they may succeed in their venture with their divine blessings. Similarly no criminal conspiracy has been depicted in the complaint petition as against to hurt the religious feelings of others and accordingly the advertisement in question was published. As a matter of fact the present case was brought about with the vested interest, personal benefit and cheap popularity.

4. Advancing his argument, learned Counsel for the petitioner submitted that none of the alleged Sections in which the complaint case/FIR was lodged is applicable as against any of the petitioners in the present case hence the entire criminal proceedings initiated as against the petitioners was an abuse of process of Court as absolutely no criminal charge was made out against any of them.

5. learned Counsel further submitted that Sections 153, 153A and 153B are not

at all application in the instant case against the petitioners as because not a single ingredient of the said offences has been attracted against the petitioners in the Complaint Petition. As a matter of fact the Investigating Officer never investigated the matter properly and they did not approach the petitioners for the recording of the statements, on the contrary, all of a sudden petition filed before the CJM for issuance of the warrant of arrest against them. Similarly in view of the provisions of Section 196(1) (a)(b) of the Code of Criminal Procedure, no Court shall take cognisance for the offence under Sections 153A, 153B, 295A, 505(2) and 120B of the Indian Penal Code without prior sanction of the Government and in the present case no prior sanction has been obtained by the Investigating Officer before filing an application for issuance of the warrant of arrest against the petitioners.

6. Similarly the offence under Sections 293, 297, 298, 501, 504 and 505 are not applicable against the petitioners in any manner.

7. learned Counsel contended that the petitioners Aveek Sarkar is the Editor of the Daily Newspaper "The Telegraph" whereas the petitioner Bijit Kumar Sahu is the printer and publisher of the said newspaper. Similarly the petitioner Gullu Mirchandani is the Chairman-cum-Managing Director of M/s Mire Electronics Ltd, manufacturer of ONIDA T.V. In this manner all the petitioners are responsible persons in their different fields and they had no intention to harm, damage the sentiments of the people of the society at large, They were doing their duties within their limits. Admittedly there is no whisper, averments or allegation In the complaint petition about any conspiracy being entered into amongst the accused persons Including the petitioners herein and also to publish the advertisement being defamatory in nature.

8. learned Counsel submitted that the learned Chief Judicial Magistrate without applying the judicial mind and in a very mechanical manner and also without considering the material in the complaint case as to whether any offence was made out or not against the petitioners/accused forwarded the Complaint Petition to the Police u/s 156(3) Cr PC for institution of police case and investigation.

9. In Shalibhadra Shah and Others Vs. Swami Krishna Bharati and Another, , the Supreme Court of India held that,

The offences enumerated in Section 196(1) Criminal P.C. in respect of which prior sanction has been made mandatory deal with matters relating to public peace and tranquility with which the State Government is concerned. Those offences are of a serious and exceptional nature. It is, therefore, provided that previous sanction of the Government shall be required so that prosecutions which may be themselves generate class feelings can be avoided. In the instant case, the offence punishable u/s 295-A of the Penal Code is far more serious than the offence punishable u/s 298, Penal Code. Therefore, there can be little doubt that those who complain of the commission of the offence punishable u/s 298 stand on a different footing from those who complain of the commission of an offence

u/s 295A, IPC....

Section 298, Penal Code relates to oral words uttered in the presence of a person with the intention of wounding his religious feelings. Where the grievance of the complainant relates to an article in a weekly which was not written in his presence or of anyone else. Section 298 is not attracted.

10. A Division Bench of Bombay High Court in Bhau Shankarrao Suradkar and another Vs. State of Maharashtra and others, held that,

It is a fact that photographs of God and Goddesses of Hindu religion are being pasted on the fire crackers. This is not happening for the first time, but this practice is going on since last many years and up-till-now nobody has raised any objection regarding this practice. That has happened only because nobody thought it objectionable, nobody's feelings were hurt on seeing the fire crackers bursting and the photographs destroying because the photographs on the fire crackers were not being looked at as photographs of God and Goddesses but just some prints to attract the attention of the customers. There" was no intention that anybody's feelings should be hurt by selling such fire crackers or by bursting such fire crackers. Now al- together new dimension is being given to this matter. Nobody from Hindu community up-till- now has thought over on this issue in this way. It is just whim of the petitioners and for that they have come before the Court. This is nothing but wasting time, money and energy....

The petitioners here should have utilized their time, money and energy for some constructive social work which would have helped the society at large. For filing such frivolous writ petition, we actually intend to impose heavy costs on the petitioners. However, the learned Counsel for the petitioners states that the petitioners have taken hint from this matter and they would not indulge in such activities henceforth.

The Supreme Court of India in Manoj Rai and Others Vs. State of M.P., held that,

Since the learned Counsel for the State fairly states, on instructions, that no sanction was given in accordance with Section 196(1) of the Criminal Procedure Code to prosecute the appellants for the offence u/s 295-A of the Indian Penal Code, we allow this appeal and quash the impugned proceedings. Let the written instructions received by the learned Counsel for the respondent-State in this regard be kept on record as desired by him.

11. On the other hand, the learned Counsel for the Opposite Party No. 2 submitted that the question of sanction u/s 197 Code of Criminal Procedure can be raised at any time and at any stage of trial, may be even at the time of conclusion of trial or after conviction and for that reliance has been placed on the decision of the Supreme Court reported in P.K. Pradhan Vs. The State of Sikkim represented by the Central Bureau of Investigation, . From the perusal of the said proposition of law it is evident that it relates to sanction u/s 197(1) of the Code of Criminal Procedure and not the sanction u/s 196(1) (a) (b) of the Code

of Criminal Procedure as has been urged under the facts and circumstances of the case of the present case.

12. Emphasis has been laid that the matter is under investigation before the police and the I.O. has not submitted the final form u/s 173 of the Code of Criminal Procedure and hence it would be too early to quash the entire criminal prosecution in the present case against the accused persons. The offences are cognizable in nature and therefore the statutory power of police in investigating the case cannot be interfered with in exercise of the inherent power by the High Court for which reliance has been placed upon the decision of the Supreme Court in *Union of India and others Vs. B.R. Bajaj and others*, .

These are some of the important allegations in the FIR which make out a cognizable offence at that stage and the registration of an FIR is only the beginning of the investigation. That being the case, the High Court has grossly erred in quashing the FIR itself when several aspects of the allegations in the FIR had still to be investigated. The learned Judge of the High Court while coming to the conclusion that the allegations in the FIR do not disclose any offence, has taken into consideration several aspects including the guidelines, normal duty of Shri B.R. Bajaj etc. and went further and investigated whether the offences u/s 120-B read with Sections 418, 468, IPC and Section 5(2) read with 5(1)(d) of the Prevention of Corruption Act have been made out. Suffice it to say that the learned Judge has treated the whole matter as though it was an appeal against the order of conviction and that should never be the approach in exercising the inherent power u/s 482, Cr PC particularly at the stage of FIR when the same discloses commission of a cognizable offence which had still to be investigated thoroughly by police.

13. With reference to a decision reported in *State of Haryana and others Vs. Ch. Bhajan Lal and others*, , The Apex Court in famous *Choudhary Bhajan Lal's* case devised certain guidelines to the High Court in exercise of the powers conferred under Article 226 of the Constitution of India or u/s 482 of the Code of Criminal Procedure to be exercised sparingly and that too in the rarest of rare cases as follows :

(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 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 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 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 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.

(8) Where allegations in the complaint did constitute a cognizable offence justifying registration of a case and investigation thereon and did not fall in any of the categories of cases enumerated above, calling for exercise of extraordinary powers or inherent powers, quashing of FIR was not justified.

14. learned Counsel for the O.P. No. 2 further contended that the Hon''ble Supreme Court in famous Bhajan Lal's case (supra) held,

The investigation of a cognizable offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Code and the Courts are not justified in obliterating the track of investigation when the investigating agencies are well within their legal bounds as aforementioned.

15. Finally it has been submitted that the matter is under investigation before the police but charge-sheet has not been filed under the appropriate provision of penal law. The accused persons have undoubtedly- ly hurt the religious sentiments and feelings of the O.P. No. 2 and the other people at large impeaching the Hindu faith since the accused has projected the Goddess Durga as model in the advertisement which was published in the daily "The Telegraph" possessing different models of ONIDA TV. in her different hands and therefore, they have committed cognizable offence which does not require interference of this Court in any manner when the investigation is in progress and the charge- sheet is yet to be submitted u/s 173. CrPC. As held by the Hon''ble Supreme Court of India, the question of sanction can be raised at any time of the trial of case and at the time of taking of cognizance and therefore the present petition u/s 482 of the Code of Criminal Procedure for the quashing of the entire criminal proceeding including the First Information Report in connection with Kotwali (Ranchi) P.S. Case No.

376 of 2000 corresponding to G.R. No. 2581 of 2000 arising out of the Complaint Case No. 570/2000 is premature and not sustainable in the eyes of law.

16. From the rival contentions of the parties the facts which emerge are that the complainant/informant/O.P. No. 2 herein had filed complaint against the petitioners and two others namely, Ashok Batra, Marketing Director ONIDA TV. and the owner of Advertising Agency M/s Ogilvy and Mateur for the various allegations as noted and discussed in the foregoing paragraphs that he was very much shocked to see the advertisement of ONIDA TV. showing Goddess Durga carrying various models of ONIDA T.V. which was manufactured by M/s Mire. Electronic Limited and It was published in the english daily newspaper "The Telegraph" on 8th September, 2000. It was further alleged that such advertisement injured the religious feelings of Hindu people.

17. learned Counsel for the petitioner vehemently argued that without sanction u/s 196(1) (a) (b) of the Code of Criminal Procedure, no Court shall take cognizance for the offence under Sections 153A, 153B, 295A, 505(2) and 120B of the Indian Penal Code. Similarly the other offence under Sections 293, 297, 298, 501, 504 and 505(2) are not applicable against the petitioners in any manner as per provision of law which is not attracted against any of the accused herein.

18. In the present case after institution of complaint case No. 572 of 2000 it was sent to the Kotwali Police Station u/s 156(3) of the Code of Criminal Procedure and pursuant to that Kotwali (Ranchi) P.S. Case No. 376/2000 was registered and the police proceeded with the investigation. Since most of the Sections in which the offence was reported were cognizable offence, prayer was made by the Investigating Officer for the issuance of the warrant of arrest against the persons who have been figured as accused in the present case including the petitioners herein.

19. Sanction under Sections 196 and 197 of the Criminal Procedure Code is sine qua non for proceeding against the accused in various provisions of law including one in the Indian Penal Code and for want of which accused cannot be convicted.

20. In the present case, some of the offence reported against the petitioners and other accused are under Sections 153A, 153B, 295A, 505(2) and 120B of the Indian Penal Code and for which sanction u/s 196(1) (a) (b) of the Code of Criminal Procedure is essential for proceeding against the accused and according to judicial propositions the sanction may be obtained at any stage of the investigation or trial.

21. The Investigating Officer has not submitted the Final Form u/s 173 of the Code of Criminal Procedure before the Court of C.J.M., Ranchi and accordingly to cognizance of the offence has been taken, therefore, it would be premature to suppose or speculate that the Investigating Officer would file the Final Form in the relevant Sections of the Indian Penal Code, as aforesaid without obtaining sanction as required u/s 196(1) (a) (b) of the Cr.PC.

22. In the other words it may safely be held that the present petition filed by the petitioners u/s 482 of the Cr PC is premature for an order of this Court for quashing the entire criminal proceeding against them and accordingly this petition is dismissed.

23. However, in view of prima facie facts that the petitioners herein Cr MP Case No. 4938 of 2001 and Cr M.P. No. 1179/ 2005 are not directly responsible for the alleged offence, subject to the materials being collected in course of investigation and the substantive evidence of the prosecution witnesses recorded in course of trial, no coercive step shall be taken against them. But at the same time the petitioners herein and the other accused would cooperate in investigation of the matter as well as the Court concerned, otherwise, the Court below would be at liberty to pass appropriate order in accordance with law.