(2020) 06 GAU CK 0029

In the Gauhati High Court

Case No : Criminal Petition No. 562 Of 2019

Bisu Alom And 2 Ors — APPELLANT

Vs

State Of Assam And Anr — RESPONDENT

Date of Decision : 12-06-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 482
Indian Penal Code, 1860 — Section 405, 406, 415, 420
Constitution Of India, 1950 — Article 226

Citation : (2020) 06 GAU CK 0029

Hon'ble Judges : Manish Choudhury, J

Bench : Single Bench

Advocate : M K Choudhury

Final Decision : Allowed

Judgement

1. This criminal petition under Section 482, Code of Criminal Procedure, 1973 (â??the Codeâ?? and/or â??the CrPCâ??, for short) has been

preferred seeking quashing of the criminal proceeding of G.R. Case no. 216/2019, arising out of Karimganj Police Station Case no. 93/2019 registered

for the offences under Section 420 and Section 406 of the Indian Penal Code (IPC).

2. The 3 (three) petitioners are named as accused no. 2, accused no. 1 and accused no. 3 respectively in the First Information Report (FIR) lodged

before the In-Charge, Longlai Police Patrol Post, Karimganj on 23.01.2019. On receipt of the FIR, the In-Charge, Longlai Police Patrol Post entered

the same vide Longlai Police Patrol Post General Diary Entry no. 364 dated 23.01.2019 and by forwarding the FIR to the Officer In-Charge,

Karimganj Police Station to register the case, had taken up the investigation of the case himself. On receipt of the FIR, the Officer In-Charge, Karimganj Police Station directed the In-Charge, Longlai Police Patrol Post to conduct an inquiry into the matter, to check all related documents and

to submit a report. On 01.02.2019, the In-Charge, Longlai Police Patrol Post informed the Officer In-Charge, Karimganj Police Station that he had

locally enquired into the matter and opined that there were sufficient evidence against the accused persons named in the FIR and accordingly, a case

was required to be registered. It was thereafter on 01.02.2019, the Officer In-Charge, Karimganj Police Station, registered the FIR as Karimganj

Police Station Case no. 93/2019.

3. The case projected on behalf of the petitioners is that the petitioner no. 1 (hereinafter referred to as â??the accused no. 2â??, at places, for easy

reference) and the petitioner no. 2 (hereinafter referred to as â??the accused no. 1â??, at places, for easy reference) are the Managers (Export

Sales) of Pran-RFL Group, a manufacturer of beverages and food products. The petitioner no. 3 (hereinafter similarly referred to as â??the accused

no. 3) is the Assistant General Manager, North-East India of Pran-RFL Group. All the three accused persons are citizens of the Peoples Republic of

Bangladesh and engaged in India for supervision of the sales and marketing of the beverages and food products of Pran-RFL Group which are sold

and marketed in the entire North-East India. It is further stated that the accused nos. 1 and 2 are presently staying in India for business purposes and

the accused no. 3 is currently serving the company in its Dhaka branch. The presence of the accused persons in India to supervise the sales and

marketing of the products of Pran-RFL Group are on the strength of multiple Visas and valid passports.

4. Heard Mr. M. Sarma, learned counsel for the petitioners and Ms. S. Jahan, learned Additional Public Prosecutor for respondent no. 1, State of

Assam.

5. The informant has been impleaded as respondent no. 2 and notice was issued to the respondent no. 2 (hereinafter referred to as â??the

informantâ??, at places, for convenience). Notice sent to the informant had returned unserved with remark that he refused to accept the notice.

Accordingly, this Court on 19.08.2019 had accepted the notice as served on respondent no. 2-informant. When the case was listed on 19.08.2019,

26.09.2019, 06.05.2020, 27.05.2020 and 05.06.2020, none had appeared on behalf of the informant on those occasions. On 05.06.2020, the learned

counsel for the petitioner and the Additional Public Prosecutor for the State were heard. The case was posted to 05.06.2020 finding that the informant

was absent. Today also, none has appeared for the informant. Accordingly, the case is taken up for final consideration.

6. It is contended on behalf of the petitioners that even if the entire averments and allegations made in the FIR are taken at its face value and

accepted to be true, none of the ingredients of the offences under Section 406, IPC and Section 420, IPC can be said to be disclosed. The relationship

between the accused persons with the informant was purely contractual in nature. From the contents of the FIR, nothing can be inferred to the effect

that there was initial deception on the part of the accused persons. Moreover, the accused persons had acted in their official capacities for and on

behalf of their employer, M/s Pran-RFL Group and not in their personal capacities while dealing with the informant. In such view of the matter also,

the accused persons should not be arraigned as accused without making any allegations against the company.

7. Ms. Jahan, learned Additional Public Prosecutor has submitted that a reading of the FIR discloses that the informant and his colleague were

engaged to carry out works on behalf of the employer of the accused persons and the FIR itself discloses that a part-payment was made. The

allegations, in essence, are to the effect that there remains outstanding balance to be paid to the informant.

8. I have heard the learned counsel for the parties and also considered the materials available on record.

9. The petitioners have sought invocation of inherent jurisdiction under Section 482 of the Code seeking quashing of the First Information Report

lodged against them. The inherent jurisdiction available under Section 482 of the Code has envisaged three circumstances for its exercise : (i) to give

effect to an order under the Code; (ii) to prevent abuse of the process of court; and (iii) to otherwise secure the ends of justice. The parameters for

consideration to exercise the inherent jurisdiction under Section 482, CrPC are well settled. Although the scope and ambit of inherent power is wide,

the same is to be exercised with a great deal of caution and circumspection. The wide power available under Section 482 of the Code should not be exercised to stifle a legitimate prosecution. At the same time, the jurisdiction under Section 482, CrPC can be exercised when the

initiation/continuance of any criminal proceeding is found to be in abuse of the process of the Court or to secure the ends of justice. When a

prosecution at the initial stage is sought to be quashed, the primary test for the Court is see whether the uncontroverted allegations, as made in the

First Information Report, prima facie establish the offence.

10. In Bhajan Lal vs. State of Haryana, reported in 1992 Supp (1) SCC 335 t,he Supreme Court had the occasion to visualize various situations and to

examine earlier decisions enunciated by the Court relating to the exercise of the inherent power under Section 482 of the Code. After a detailed

deliberation, the Supreme Court has, by way of illustration, identified seven categories of cases wherein such inherent power can be exercised either

to prevent abuse of the process of the Court or otherwise to secure the ends of justice. It has been observed as under :-

â??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 extra-ordinary power under Article 226 or the inherent powers under

Section 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 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 or 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 in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence,

justifying an investigation by police officers under Section 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 F.I.R. 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 under Section 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.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 F.I.R. 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.â??

11. Keeping the above parameters in consideration, the FIR lodged in the instant case is required to be examined.

12. The informant is a resident of District â?" Karimganj, Assam. The averments of the informant are to the effect that the accused persons came to

his house on 05.01.2017 and engaged him and his colleague viz. Abdul Kadir as painters for painting works which were to be done in the districts of

Barak Valley and also in the State of Mizoram and Tripura for advertisement of their company products. On being so engaged, the informant and his

colleague along with others had done the jobs of painting walls, shutters, etc. for a period of about two years. For such works, the amount to be paid

by the accused persons became Rs. 4,25,000/-. It is alleged by the informant that they were paid only Rs. 50,000/- during the continuation of the

works in three installments and the balance amount of Rs. 3,75,000/- had remained unpaid. When the informant and others approached the accused

persons to clear their outstanding dues, they were not paid the balance amount. It is alleged that the accused persons told them to visit Bangladesh

where the outstanding balance would be paid. Another accusations that is made is that if the informant goes to Bangladesh and join an international

association having head office at Bangladesh, he would be a rich man. Alleging misappropriation of their outstanding balance and cheating, the FIR

was lodged by the informant, which has been registered for offences punishable under Section 406, IPC and 420, IPC.

13. Section 415, IPC is offence of cheating and Section 420, IPC is cheating and dishonestly inducing delivery of property. Section 415, IPC and

Section 420, IPC read as under : -

â??415. Cheating.â?"Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any

person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he

would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind,

reputation or property, is said to â??cheatâ??.

Explanation.â?" A dishonest concealment of facts is a deception within the meaning of this section.â??

420. Cheating and dishonestly inducing delivery of property. - Whoever cheats and thereby dishonestly induces the person deceived to deliver any

property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is

capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven

years, and shall also be liable to fine.â??

14. Section 405, IPC defines criminal breach of trust and an offence of criminal breach of trust is punishable under Section 406, IPC. Section 405, IPC

and Section 406, IPC read as under :-

â??405. Criminal breach of trust.â?"Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly

misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing

the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust,

or wilfully suffers any other person so to do, commits â??criminal breach of trustâ??.

406. Punishment for criminal breach of trust.â?"Whoever commits criminal breach of trust shall be punished with imprisonment of either description

for a term which may extend to three years, or with fine, or with both.â??

15. The ingredients which constitute the offence of criminal breach of trust can be stated as : (1) a person is entrusted with property or with dominion

over property, (ii) that person on whom property is entrusted (a) dishonestly misappropriates or converts that property to his own use: or (b)

dishonestly uses or disposes of that property or wilfully suffers any other person so to do in violation (i) of any direction of law prescribing the mode in

which such trust is to be discharged or (ii) of any legal contract made touching the discharge of such trust. The ingredients of an offence of cheating

are: (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii) (a) the person so deceived should be induced to deliver

any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do

or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii) (b), the act of omission should be

one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

16. There is a fine distinction between a mere breach of contract and the offence of cheating. It depends upon the intention of the accused at the time

of inducement which can sometimes be judged by his subsequent conduct also but such subsequent conduct alone is not the sole test. Mere breach of

contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown to be in existence right at the beginning

of the transaction, that is, the time when the offence is said to be committed. Thus, it is the intention of the accused which is the gist of the offence.

To hold a person guilty of cheating, it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his

mere failure to keep up a promise subsequently such a culpable intention right at the beginning, that is, when he made a promise cannot be presumed.

To deceive is to induce a person to believe that a thing is true which is false and which the person practicing the deceit knows or believes to be false.

It is not every breach of trust which results in an offence of criminal breach of trust. To term an act as criminal breach of trust, there shall be

entrustment and there shall be evidence of dishonest misappropriation. It is settled that a given set of facts may make out purely a civil wrong; or

purely a criminal offence; or a civil wrong as well as a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a

cause of action for seeking remedy in civil wrong may also involve a criminal offence in situations when there was fraudulent or dishonest intention

with practice of deception at the time of entering the transaction and similarly, when after entrustment there was dishonest misappropriation or

conversion of the property entrusted.

17. On a reading of the FIR at issue, the accusations appear, in essence, to the effect that the informant and his colleague were engaged by the

accused persons to carry out the jobs of painting walls, shutters, etc. for advertisement of the products of the company, M/s Pran-RFL Group and the

accused persons in so engaging the informant and others, had acted in their capacity as officials of the said company. As a result of such engagement,

an amount of Rs. 4,25,000/- became due to be paid to the informant and his colleagues but they were paid only Rs. 50,000/-. As a result, an amount of

Rs. 3,75,000 had become outstanding. When the accused persons were asked to pay the same, the accused persons did not pay the same. Apart from

these allegations, an insinuation is made as regards a proposal to him for going to Bangladesh which appears to be without any basis.

18. In Vesa Holdings Private Limited and Another vs. State of Kerala and others, reported in (2015) 8 SCC 293, it has been observed as under :-

â??12â?¦â?¦â?¦â?¦â?¦â?¦.. every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would

amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In other words for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had

fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the

part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under

Section 420 of the Penal Code, 1860 can be said to have been made out.

13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the

complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal

offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused

persons to cheat which is a condition precedent for an offence under Section 420 IPC. In our view the complaint does not disclose any criminal

offence at all. The criminal proceedings should not be encouraged when it is found to be malafide or otherwise an abuse of the process of the court.

The superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police

investigation to continue would amount to an abuse of the process of the court and the High Court committed an error in refusing to exercise the

power under Section 482 of the Criminal Procedure Code to quash the proceedings.â??

19. Upon consideration of the fact situation obtaining in the case in hand and the law laid down as regards quashing of a criminal proceeding which

amounts to abuse of the process of Court, this Court is of the unhesitant opinion that no offence either of cheating or of criminal breach of trust is

found to be made out on reading of the contents of the FIR lodged by the informant even after accepting everything contained therein at face value

and as true. The only allegation that can be said to have emerged is that the accused persons were engaged for doing jobs of painting for a period of

two years and though a part-payment was made, an amount had remained outstanding. Mere failure to make a payment at a subsequent point of time

cannot be presumed in a sense that the accused persons had fraudulent or dishonest intention at the time of inception, that is, at the time of engaging the informant for the jobs. The dispute between the parties appears to be purely civil in nature and no case is made out for proceeding with the criminal case. In such view of the matter, the initiation and continuance of the criminal prosecution against the accused persons i.e. the petitioners herein are found out to be in abuse of the process of Court and to cause harassment to the accused persons in order to coerce to make payment of the outstanding dues. If any dues have remained outstanding, the informant definitely has a remedy in civil law.

20. Resultantly, this criminal petition is allowed. Consequently, the criminal proceeding of G.R. Case no. 216/2019, arising out of the First Information Report lodged on 23.01.2019 and registered on 01.02.2019 as Karimganj Police Station Case no. 93/2019 and the First Information Report (FIR) of Karimganj Police Station Case no. 93/2019 are quashed. The accused persons are treated to be discharged of the charges under Section 406, IPC and Section 420, IPC. There shall, however, be no order as to cost.