
(2009) 01 GAU CK 0005
In the Gauhati High Court

Gangadhar Kalita

APPELLANT

Vs

State of Assam and Another

RESPONDENT

Date of Decision : 21-01-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 482, 561A
Gauhati Municipal Corporation Act, 1971 — Section 417A

Citation : (2009) 5 GLR 477 : (2010) 3 GLT 589

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, Cr.PC read with Article 226 of the Constitution of India, the petitioner, who is accused in CR case No. 7774C/2007, has sought for setting aside and quashing the complaint, which has been filed by the Guwahati Municipal Corporation ("the GMC"), whereby the complainant has sought for prosecution of the present petitioner, as accused, u/s 417A(ii) of the Guwahati Municipal Corporation Act, 1971 ("the GMC Act"), and also directing issuance of process against the petitioner as accused.

2. The ground of challenge to the sustainability of the complaint, in question, is that Section 417A(ii) of the GMC Act has come into force on 21.8.2006, which provides that if any builder or promoter or owner erects or constructs or occupies any building in contravention of the provisions of the GMC Act, the rules and bye-laws made thereunder, except the provisions of compoundable limit as provided in the bye-laws, he shall be liable to be punished with imprisonment for a term of six months along with a fine of rupees ten thousand. According to the present petitioner, the construction of the building, in question, was already over before Section 417A(ii) came into force. In other words, what the petitioner contends is that for the contravention, if any, of the provisions of the GMC Act, rules and bye-laws relevant to the construction of the said building, the

petitioner cannot be prosecuted u/s 417A(ii), because the contravention, if any, had existed, according to the petitioner, prior to the coming into force of Section 417A(ii).

3. I have heard Mr. S. Ali, learned Counsel for the accused-petitioner, and Mr. B.S. Singh, learned Additional Public Prosecutor, Assam. I have also heard Mr. D Saikia, learned Standing Counsel, GMC.

4. Before entering into the merit of the present petition, what needs to be noted is that the case of the complainant, as reflected from the complaint, in question, is, in brief, thus: The petitioner, while undertaking the construction of the apartment, known as Naboday Apartment, has raised construction, in violation of the permission granted and thereby contravened the provisions of the GMC Act, 1971, and the building bye-laws relevant thereto, the violation having taken place even as late as in the year 2007.

5. From what have been pointed out above, it becomes clear that while it is the case of the complainant that the present petitioner has violated the conditions imposed on him, while granting him permission to raise the construction, in question, such violation having been done even after the Section 417A(ii) had come into force, the contention of the accused is that the violation, if any, was done by the petitioner before Section 417A(ii) had come into force and, hence, his prosecution is not permissible in law.

6. There is no dispute before me that if the alleged violation was committed by the present petitioner before Section 417A(ii) came into force, the petitioner cannot be prosecuted for having raised the construction, though he might have been prosecuted, had he occupied and continued to have occupied, as an occupant, the building constructed in contravention of the provisions of the GMC Act, 1971, the rules and bye-laws made thereunder.

7. 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, however, 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 or FIR shows that the contents thereof, even if taken at their face value and accepted to be true in their entirety, do not disclose commission of offence, the complaint or the FIR, as the case may be, shall be quashed.

8. As a corollary to what has been discussed above, it is also clear that if the contents of a complaint or an FIR constitute offence, such a complaint or FIR cannot be quashed except where the complaint or the FIR is, otherwise also, not sustainable in law.

9. Laying down the scope of interference by the High Court in matters of quashing of FIR or complaint, the Apex Court, in the leading case of State of Haryana and others Vs. Ch. Bhajan Lal and others, observed 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 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 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.

(emphasis is added)

10. In the case of Bhajanlal (supra), the Apex Court gave a note of caution on the powers of quashing of criminal proceeding 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).

11. 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.

12. It is, thus, clear that in a quashing proceeding, it is not, within the ambit of the powers of the High Court, u/s 482 Cr.PC, to determine the truth, veracity, correctness or otherwise of the accusations made in the FIR or a complaint. In the case at hand too, therefore, this Court has to proceed on the assumption that the allegations made in the FIR are true and, then, determine whether the contents of the FIR, if assumed to be true, disclose commission of an offence u/s 417A(ii) of the GMC Act or not.

13. In the light of the law as discussed above, let me, now, turn to the factual aspects of the present case. It was on 6.5.2002 that the petitioner applied to the

GMC for constructing a multistoried RCC building (Ground + 5) Floor located at Chinaki Path, Guwahati. The permission was accordingly granted on 2.7.2003. The petitioner claims to have cast the first slab on 10.11.2003, second slab on 13.12.2003, third slab on 18.1.2004, 4th slab on 19.3.2004, 5th slab on 18.4.2004 and 6th slab on 28.6.2004. On casting the 5th floor slab, the petitioner applied to the GMC, on 6.4.2004, for permission to construct the 6th floor of his building. The permission was accordingly granted on 28.3.2005. The petitioner claims that he undertook the construction of 6th floor and cast the 7th floor slab, i.e., the slab on the 6th floor, in the month of September 2005.

14. What is, now, required to be pointed out is that a Public Interest Litigation, bearing No. PIL 65/2005, was filed by some residents of the area, where the petitioner was raising the construction. In this PIL, a Division Bench of this Court, while issuing, on 11.11.2005, notices to the parties concerned, directed status quo to be maintained in respect of the construction of the building, in question, more particularly, boring of well there. This order to maintain status quo was not vacated; rather, a Division Bench, on 7.12.2005, directed, inter alia, the petitioner not to make any construction whatsoever and it further directed the GMC as well as the GMDA to take appropriate steps and prevent further construction until further order. Though the petitioner prayed for vacating the interim directions so passed, the interim directions have been continued. It is in this backdrop of the facts that the present petition for quashing needs to be considered.

15. What may, now, be pointed out is that pursuant to the order, dated 7.12.2005, the GMC, admittedly, served a notice on the petitioner to stop construction of the said RCC building with further direction to the petitioner to produce, before the authorities concerned, for perusal, the No Objection Certificate issued by the GMC and the approved plan. Pursuant to the order, dated 7.12.2005, aforementioned, the GMC authorities filed a status report in the said PIL. This, status report reads as under:

As desired by the High Court, I have visited the site and it is seen that the RCC framework up to GF parking + 6th have been completed.

The brick work on second floor has been completed and the brick work on 4th floor is under construction.

The wood work is going on FF level. No other correction of the deviation has been made.

16. In course of time, an order was passed, on 26.9.2007, by the Commissioner, GMC, stating to the effect, inter alia, that on inquiry made, on the basis of the complaint received, some variations in the deviation, which had been earlier noticed, were found, the variations having been found by the inspection team on 24.8.2007. What, in effect, the order, dated 26.9.2007, states is that fresh deviations into the plan of construction have been made by the present petitioner in the construction of the said building. According to the complaint and the

documents, which the complainant has relied upon, the first inspection, at the construction site, took place on 19.5.2006 and the second inspection was carried out, at the said site, on 24.8.2007. Thus, the second inspection having found some further variation in the deviations, which had already been noticed at the time of the first inspection, i.e., on 19.5.2006, an order was passed, on 26.9.2007, by the Commissioner, GMC, on the representation made by the petitioner, indicating to the effect, inter alia, that the petitioner was shown to have caused further deviation in the sanctioned plan and that this deviation had come to the notice on 24.8.2007. From the narration of events as embodied in the complaint and various materials, which the complainant has relied upon, it is clear that as far as the complainant is concerned, the petitioner has caused deviation in the sanctioned plan even after Section 417A(ii) had come into force, because, according to the complainant, the deviations are found to have been caused by the petitioner even after 13.6.2007; whereas Section 417A(ii) had come into force on 17.8.2006. That is to say, the said penal provisions were made before the alleged contravention took place. These assertions of the complainant may or may not be true; but the truth or falsity of an accusation, made in a complaint, can be determined only at the trial and not in this quashing proceeding, particularly, when it remains a disputed question, of fact as to whether the variations, in the sanctioned plan, have been caused by the petitioner before Section 417A(ii) came into force. The petitioner has not placed, in this proceeding for quashing, any such undisputed material, which can make the court hold, at this stage, that the allegation that the deviations, had been committed by the petitioner even after 13.6.2007, is wholly incorrect or completely untrue.

17. Because of what have been discussed and pointed out above, I find absolutely no merit in this criminal petition. This criminal petition, therefore, fails and the same shall accordingly stand dismissed.