

**(2005) 09 GAU CK 0036**

**In the Gauhati High Court**

**Case No : Cril. Revision Petition No. 8 of 2005**

Hare Ram Singh and Others

APPELLANT

Vs

State of Manipur

RESPONDENT

**Date of Decision : 08-09-2005**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 39, 40, 482, 565(1)  
Foreigners Act, 1946 — Section 6(2)  
Land Acquisition Act, 1894 — Section 10(2)  
Penal Code, 1860 (IPC) — Section 176, 40, 43  
Registration Act, 1908 — Section 82, 84  
Succession Act, 1925 — Section 317(3)

**Citation : (2005) 4 GLT 415**

**Hon'ble Judges : M.B.K. Singh, J**

**Bench : Single Bench**

**Advocate : H.N.K. Singh and K.H. Babulindro, for the Appellant; Ibohal, Addl. P.P., for the Respondent**

## **Judgement**

M.B.K. Singh, J.—This is a petition filed u/s 482 Code of Criminal Procedure praying mainly for quashing the proceedings of the Cril. (C) Case No. 15 of 2005 u/s 176 IPC pending before the learned CJM, Imphal. The Petitioners are the accused persons in the said Cril. (C) Case No. 15 of 2005 which was registered by the learned CJM, Imphal after taking cognisance of the alleged offences u/s 176 IPC on 10.3.2005 on the basis of a complaint filed by the OC Imphal Police Station. The learned CJM, Imphal vide order passed on 12.5.2005, held to the effect that there was sufficient basis for proceeding as against the accused (the present Petitioners) for the commission of the offence u/s 176 IPC. On the same day, the learned CJM read over and explained the nature and particulars of the offences u/s 176 IPC to the accused persons in the language known by them. The pleas of the accused persons to the effect that they pleaded not guilty were also taken.

2. Being aggrieved at the said proceeding as against them, the accused persons

(the present Petitioners) have filed this petition praying for quashing it mainly on the ground that there is no prima facie case for proceeding as against them in respect of the said offence u/s 176 IPC inasmuch as no case for the offence u/s 176 IPC is made out on the basis of the said complaint. According to the Petitioners, to allow the CJM, Imphal to proceed with the said proceedings on the basis of the materials before him is only to allow him to abuse the process of the Court.

3. I have heard Mr. H. NK Singh, learned Sr. Counsel appearing on behalf of the Petitioners and Mr. Ibohal, learned Addl. P.P. appearing on behalf of the Respondents.

4. Section 482 of the Code of Criminal Procedure does not confer any new powers on the High Court. It only saves the inherent powers which the Court possesses before the enactment of the Code. As per this section, the inherent jurisdiction may be exercised in three circumstances, namely, (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. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. The Supreme Court in *Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others*, held:

While exercising powers under the section, the Court does not function as a Court of appeal or revision. Inherent jurisdiction under the section, though wide, has to be exercised sparingly and carefully with caution and only when such exercise is justified by the test specifically laid down in the section itself. It is to be exercised *ex debito j ustitiae* to do real and substantial justice for the administration of which alone Courts exist. Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has powers to prevent abuse. It would be an abuse of process of the Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, Court would have justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of facts. When a complaint is sought to be quashed, it is permissible to look into the materials to access what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

5. Supreme Court, after referring to its earlier decisions in *R.P. Kapur Vs. The State of Punjab*, *Janata Dal Vs. H.S. Chowdhary and Others*, *Dr. Raghubir Sharan Vs. The State of Bihar*, held in *Zandu Pharmaceutical Workers Ltd.* (Supra) as follows at para 11 (only the relevant portion):

It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would

be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the materials before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognisance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers u/s 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the Trial Court to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court.

6. Keeping in view the above said principles of law, the allegations made in the said complaint to the CJM, Imphal are required to be examined in order to ascertain if the complaint does not disclose any offence or is frivolous, vexatious or oppressive. The said complaint is reproduced below:

The brief of the case is that on 8.3.05 at 5.00 P.M. the complaint noted in Clause (2) received a reliable information from source that some members of the prescribed U.G organisation of KYKL had forcibly given a good number of the copy of stencil form-detention due to non-production of form Sister Tutor 35-36 having the signature of Taxation Inspector, Chingkhams Kunjakeshor Singh and line seal of the Superintendent of taxes, Taxation Check Post, Kangpokpi to the persons noted in Column (4) on 5.3.05 with the intention to facilitate collection of money from the transport Agencies by the members of the U.G. organisation of KYKL. The number of forms given to each Transport Agency is 100 (one hundred) sets of Rs. 5000/- (Rupees five thousand) each which comes to a total of Rs. 5,00,000/- (Rupees five lakhs) for each Transport Agency thereby the total amount to be collected by the UG Organisation from the transport Agencies comes to Rs. 95,00,000/- (Rupees ninety five lakhs). One set each having 100 (one hundred) copies of the said stencil paper-detention due to non-production of form Sister Tutor 35-36 were seized on prosecution by each of the persons/transporters noted in Column (4) on 8.3.05 by preparing a formal seizure memo. Hence the case and investigated into. Examined the seizure witnesses and they also supported the case. It has been established that the prescribed members of UG of KYKL organisation had given 100 (one hundred) copies each of the said stencil paper to each of the transporters/persons noted in Column (4). The detention due to non-production of form Sister Tutor 35-36 are to be used for collection of money by the members of UG Organisation of KYKL. However, none of the transporters/persons noted in Column (4) had given information to any police station of such fraudulent documents being possessed by them and

thereby intentionally omits to give information in the manner and at the time required by law. So, the persons noted in Column (4) have committed offence punishable u/s 176 IPC which is non cognisable to police.

In the light of the above facts and circumstances, the Hon'ble Magistrate is therefore, prayed to kindly take up cognisance of the case against the persons noted in column (4) for further legal steps.

The names and particulars of the present Petitioners are mentioned in the said column (4) as the accused persons.

7. Assuming that the allegation of the complainant that on 5.3.05, some members of the prescribed organisation of KYKL had forcibly given a set of 100 forms - detention due to non-production of form ST 35-36 having signatures of Taxation Inspector, Chungkham Kunjakeshor Singh and line seal of the Superintendent of Taxes, taxation Check Post, Kangpokpi to the present Petitioners with the intention to facilitate collection of Rs. 5 lac from each of them and the Petitioners never informed the police about the said fraudulent documents are true, the question is if a case for proceeding for the commission of the offence u/s 176 IPC has been made out as against the Petitioners or not.

8. Section 176 IPC is one of the penal provisions in Chapter X of the IPC which is intended to enforce obedience to the lawful authority of public servant. This section applies to persons upon whom an obligation is imposed by law to furnish certain information to public servant and the penalty which the law provides is intended to apply to persons who commit an intentionally breach of such obligation. For convenience Section 176 IPC is reproduced below:

176. Omission to give notice or information to public servant by person legally bound to give it. - Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

Or, if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

Or, if the notice or information required to be given is required by an order passed under Sub-section (1) of Section 565 of the Code of Criminal Procedure, 1898 (5 of 1898), with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

9. There is no dispute that this section requires;

(1) that a person must be legally bound to give any notice or to furnish information on any subject to a public servant and (2) that he has intentionally omitted to give such notice or information in the manner and at the time required by law.

10. The learned CJM, Imphal was of the view that the accused persons (the present Petitioners) who had received the said forms from some members of the UG organisation were legally bound to give information to the police as well as to the Taxation Department. It is already seen that as per allegations of the complainant, the said forms had been forcibly given to the accused persons with intention to facilitate collection of Rs. 5 lac from each of them. The learned CJM, Imphal is not found to have quoted any provision of law under which the Petitioners/accused persons were legally bound to inform the police or the Taxation Department as and when they received the said type of forms from an unauthorized source.

11. As per provisions of Section 43 of the IPC a person is said to be "legally bound to do" whatever it is illegal in him to omit. Further, the word, "illegal" is applicable to everything which is an offence or which is prohibited by law or which furnishes grounds for a civil action. Reading Section 176 IPC with Sections 40 and 43 of the IPC, it can safely be concluded that one who fails to furnish information, which he is legally bound to furnish is punishable u/s 176 IPC, that he is legally bound to furnish what it is illegal for him to omit, that it is illegal for him to omit what is an offence and that an offence is what is punishable under the Code or under any special or local law when punishable under such law with imprisonment for a term of 6 months or upwards.

12. Before proceeding against a person for the alleged commission of offence u/s 176 IPC, there must be materials to show prima facie that the said person is bound to give information or notice on a subject to a public servant under the provisions of any law. There are several Acts which have imposed obligations on persons to give notice or information to public servant, for example - Section 6(2) of the Foreigner Act of 1946, Section 317(3) of the Indian Succession Act, 1925, Section 10(2) of the Land Acquisition Act, 1894, Sections 39 and 40 of the Code of Criminal Procedure 1973 and Sections 82 and 84 of the Indian Registration Act, 1908 etc.

13. However, in respect of the said complaint before the learned CJM, Imphal, it is not disclosed under what provision of law, the Petitioners/accused were bound to give information either to police or to any authority about the said forcible handling over of the said type of forms to them by some members of the UG organisation. On 12.5.05 when the learned CJM, Imphal decided to proceed against the accused persons/Petitioners, he nowhere stated that the said accused persons (the present Petitioners) were bound under any specific provisions of any law to inform the police about the said matter. The complaint also does not disclose under what provision of law, the accused persons (the present Petitioners) were bound to inform the police on receipt of the said type of forms

from some members of the UG organisation. No provision of law is brought to the notice of this Court under which the accused persons (the present Petitioners) were bound to inform the police about the said matter. Section 39 of the Code of Criminal Procedure requires every person aware of commission of or of the intention of any person to commit certain offences specified therein to inform the nearest Magistrate or police of such commission or intention. Learned Addl. P.P. appearing on behalf of the Respondents fails to show that the present Petitioners/accused persons were aware of commission or of the intention of any person to commit any of the offences specified in Section 39 of the Code of Criminal Procedure. As per records of the learned CJM, Imphal, the present Petitioners/accused persons were never informed as to under what provision they were bound to give information about the matter to the police. In the absence of any provision of law under which the present Petitioners/accused persons were bound to give information to police about the matter and in view of the commission to state clearly in the complaint petition as well as at the time of explanation of the offence under what specific provision of law the present Petitioners were bound to inform the police about the matter, it cannot be said that they were legally bound to inform the police about the matter. Accordingly, in my opinion, one of the essential conditions for proceeding for the alleged commission u/s 176 IPC as against the present Petitioners has not been fulfilled.

14. In the absence of anything either in the complaint of the OC, IPS or in the explanation of the alleged offence made by the learned CJM, Imphal, to show prima facie, as to under what provision of law, the Petitioners/the accused persons were legally bound to inform the police, there was no sufficient basis for proceeding for the alleged commission of the offence u/s 176 of the IPC as against them. The allegations set out in the complaint do not constitute the offence u/s 176 IPC of which cognisance has been taken by the learned CJM, Imphal and as such to allow the learned CJM, Imphal to proceed with the trial will cause injustice. It would be an abuse of the process of Court to allow any action which could result in injustice and prevent promotion of justice. In exercise of the inherent power, it will be proper and just on the part of this Court to quash the said proceeding of Criminal (C) No. 15 of 2005 before the learned CJM, Imphal inasmuch as the said proceeding is found to have been initiated and continued improperly and illegally in absence of anything to show prima facie about the existence of one of the essential elements of the alleged offence. Accordingly, in the interest of justice and also to prevent abuse of the process of the Court, the proceeding of Cril. (C) Case No. 15 of 2005 before the learned CJM, Imphal is hereby quashed.

15. With the above observation and direction, this Cril. Revision petition is disposed of.