
(2004) 05 GAU CK 0061
In the Gauhati High Court
Case No : Criminal Revision No. 272 of 2004

Joyjit Bhaduri

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 14-05-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 127, 155, 251A, 482
Essential Supplies (Temporary Powers) Act, 1946 — Section 7
Penal Code, 1860 (IPC) — Section 323, 325, 34, 341, 379

Citation : (2005) 2 GLT 155

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : R.D. Lal, S. Das and J. Paul, for the Appellant; P.P., for the Respondent

Final Decision : Allowed

Judgement

P.G. Agarwal, J.—This is an application u/s 482 Code of Criminal Procedure filed by the Petitioners praying for quashing of the proceeding in G.R. No. 2142/ 02 arising out of Dispur P.S. Case No. 487/ 02 at present pending before the Judicial Magistrate, 1st Class, Kamrup, Guwahati.

2. On 07.05.2002, the informant, Dipankar Deb, filed a written FIR alleging house trespass, assault and forcible taking away of Rs. 1,000/- and damage of goods in the shop, Dispur P.S. Case No. 487/02 was registered under Sections 448/325/379/427/ 34 IPC against the two accused Petitioners, namely, Joyjit Bhaduri and Janamco Bhaduri. After conclusion of the investigation, police submitted charge-sheet under Sections 448/325/379/427/34 IPC. hereafter, on receipt of summons from the Court, the accused appeared and furnished copies of document u/s 127 Code of Criminal Procedure. The Court took cognizance of the offences under Sections 341/323/34 IPC and when particulars of the offences were explained to the accused persons, vide order dated 01-10-03, the accused persons pleaded not guilty and claim to be tried.

3. In the revision petition, the Petitioners have alleged that the offence u/s 323 IPC is non-cognizable under the provisions of the Code of Criminal Procedure and, as such, the police had no power and jurisdiction to investigate into the case registered u/s 323 IPC. It is stated that although police had jurisdiction to investigate an offence u/s 448 IPC, but as the learned trial Magistrate has not taken cognizance of the offence u/s 448 IPC, and instead took cognizance of the offence u/s 341 IPC, the entire investigation suffers from illegality. It is also stated that although the offence u/s 341 IPC was explained by the learned Magistrate but the materials on record does not disclose commission of any offence u/s 341 IPC.

4. On perusal of the copy of the FIR, we find that the informant had made specific allegations of house trespass, assault, theft and mischief, and the police accordingly registered a case under the relevant sections of law; however, during investigation no evidence was forthcoming as regards theft and mischief and police thereafter submitted charge-sheet u/s 448/323 IPC.

5. Where an information discloses cognizable as well as non-cognizable offence, police has jurisdiction to investigate the same without prior permission from the Magistrate. The law on this point was settled by the Apex Court in the case of *The State of Madras represented by The Collector of Ramanathapuram Vs. Karumuthu Thiagarajan Chettiar*, and in the case of *State of Punjab Vs. Brij Lal Palta*, In *Pravin Chandra Mody* (Supra), the Apex Court held:

Where the information discloses a cognizable as well as non-cognizable offence, the Police Officer is not debarred from investigating any non-cognizable offence which may arise out of the same facts. He can include the non-cognizable offence in the charge-sheet which he presents for a cognizable offence. Police investigated an offence u/s 7 of the Essential Supplies Act along with Section 420, IP Code. The Trial could proceed for the said offence u/s 251A, Code of Criminal Procedure and the investigation is valid.

6. The matter was clarified by insertion of Clause (4) of Section 155 Code of Criminal Procedure which reads as follows:

Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.

7. The matter was considered by the Apex Court in the case of *State of Haryana and others Vs. Ch. Bhajan Lal and others*, and it was held:

Under the newly introduced Sub-section (4) to Section 155, Code of Criminal Procedure where a case relates to two offences to which at least one is cognizable, the case shall be deemed to be a cognizable case notwithstanding that the other offences are non-cognizable and, therefore, under such circumstances the Police officer can investigate such offences with the same powers as he has while, investigating a cognizable offence.

8. In view of the above, we hold that the investigation of the case by the police and subsequent taking of the cognizance of the offence by the trial Court does not suffer from any infirmity or illegality. There is no merit in this revision and the revision petition accordingly dismissed.