(2019) 05 GAU CK 0071

In the Gauhati High Court

Case No : Criminal Petition No. 904 Of 2017

Joymuddin Seikh And 2 Ors — APPELLANT

Vs

State Of Assam And Anr — RESPONDENT

Date of Decision : 20-05-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 482
Indian Penal Code, 1860 — Section 406, 420

Citation : (2019) 05 GAU CK 0071

Hon'ble Judges : Rumi Kumari Phukan, J

Bench : Single Bench

Advocate : P Sarma, A B Siddique

Final Decision : Allowed

Judgement

1. The present petition is preferred under Section 482 CrPC for quashing the FIR pertaining to Bongaigaon PS Case No.252/2017 registered under Section 420/406 IPC against the petitioners.

2. The case of the petitioners is that they are belong to Islamic faith and they do not have any activity or connection with Hinduism. On the basis of the information given by one Raghubir Singh from New Delhi that one person, namely, Rajesh Munda @ Joymuddin has cheated him in the year 2014 for the amount of Rs.8 Lakh (approx.) taken from him in the name of purchase of pooja materials and spiritual activities for success in business and prosperities in his life, by showing some magical tricks and assured that if he was not able to give any pooja materials, he will return the total amount back. It is further contended that the informant daily contacted Joymuddin Sheikh either for money or for materials but he postponed the same on one pretext or other. As regards the mode of payment, it is stated that as asked by the said person, the informant deposited the aforesaid amount in the Bank Account of 9 (nine) persons including the present 3 petitioners. But the said money was not returned. The statement of those Bank Accounts where the money was deposited is mentioned

in the said information.

3. The aforesaid information has been registered as FIR by Bongaigaon Police Station. The petitioners assailed the authenticity of the FIR itself and the very legal basis to proceed for investigation on the following counts:

i) The informant has given the name of some persons with their Bank Account numbers in which accounts money was paid but there is no proof of any such payment, hence such statement can hardly be believed.

ii) As per allegation incident has taken place in the year 2014 but no date has been given when such offence took place and there is no explanation as regards the delay in lodging the information.

iii) The informant has taken the help of higher authorities in initiating such criminal proceeding, without personally presenting the FIR.

iv) Without filing any formal FIR, a FAX message dated 16.11.2015 has been forwarded to police by one Mr. AR Sundaram with the help of Dr. Satyapal Singh, former Director General of Police, presently MP of Loksabha, addressing the Inspector General of Police, Guwahati and thereafter present FIR has been registered, on being forwarded the said communication by one Advocate of New Delhi, namely, Mr. RS Agarwal (vide Annexure-3).

v) The informant is a resident of New Delhi but his address is not mentioned in his communication neither the same was addressed to the Officer-in-Charge concerned and the same has been registered as FIR. Even the signature of the so called informant is not found in the FIR.

vi) Only on the pressure of higher officials, Bongaigaon Police has registered the case illegally without any approach by the person concerned/informant to the police station concerned.

4. With the above contentions, the present petitioners come forward with a prayer to quash the aforesaid FIR as the contentions made in the FIR does not constitute any offence against the present petitioners and such an FIR is not legally sustainable in the given background of the case.

5. Learned counsel for the petitioners Mr. Sarma has drawn attention of this Court to the contents of the information that has been registered as Bongaigaon PS Case No.252/2017 vide Annexure-1 and the letter issued by Mr. AR Sundaram and another letter by one Advocate, namely, Mr. RS Agarwala and a letter issued by the Superintendent of Police, Bongaigaon vide Annexure-2,3 & 4 respectively and on the basis of said communications, FIR has been registered. It has been contended by the learned counsel for the petitioners that the requirement for registration of a formal FIR is not fulfilled in the present case in absence of any earlier GD Entry that may have been recorded at first point of time. Further, no FIR can be registered only on the basis of political high handedness and no such criminal proceeding can be continued while the informant himself is not in the

picture. Over and above, there is no allegation against the present petitioners that they ever induced the so called informant to deliver money to them.

6. Referring to a decision of this Court 2012 (2) GLT 994, it has been submitted that as per Rule 53 of Part-V of Assam Police Manual, in-charge of police station is under obligation to record proper general diary entry as regards the occurrence but the same is not found in the present case.

7. Case Diary pertaining to the present case was called for to consider the authenticity of the allegation and to appreciate the contention that has been raised in the present petition. First and foremost it is to be noted that in fact there is no formal FIR in the present case which is a very basis for enunciation of a criminal proceeding. The letter on the basis of which the aforesaid FIR has been registered bears no address of the informant neither it indicates to whom it was addressed. For ready reference, said letter is quoted here-in-below:

"From Raghubir Singh, 09810055558

NEW DELHI

Dear Sir,

As per discussion with you that person name Rajesh Munda urf (JAIMUDIN S/o KCEFTULA RES- VILL. PUB BADRA GAON- PART II, PO & POLICE THANA-BIDAPUR, DISTT. BAGAIGAON) R/o Dalabari- Tea Bagan, Badra Gaon, Didapur, Distt.- Bagaigaon (Kokrajhar) Ph.: 08254092523, 08471931248, 08254805431, 08822651709, 08812967502, 08723054640, 08812900535, 08472832023, had cheated and forged me in the year 2014 for the amount of Rs. 8 Lakhs (approx) taken from me is the name of Pooja/Purchase of materials and spiritual activities for success in Business and Prosperity on my life by showing some magical trick and assured me that if he was not able to give any Pooja materials he will return the total amount back.

Sir daily I used contact to him but every time he told me that he will return my money next week or next month. But till date he had neither gave any materials nor any money back. Everytime he used scare and threaten me that if I take any action against him, then me and my family will be in trouble etc.

Sir, every time he made telephone call to me stating the he was in serious trouble & require immediate money & accordingly I deposited money as per the details given to me in his Bank Account number immediately & inform them through mobile phone.

Sir, I had deposited an amount of Rs. 5 Lakhs as per details given by (Rajesh Munda (Jaimudin). The name & Bank Account Number & Details of Bank deposit amount list Annexures attached.

Recommended the following Name by Rajesh Munda (Jaimudin)

1. Abdul Rahim, Bagaigaon (Assam)

Bank of India, A/C No.500610110003385 (Dist. Bagaigaon)

2. Swadhin Chandra Singha, Vill. Digdari, Bagaigaon (Assam) State

Bank of India, A/c No. 10284550411 (Dist.Bagaigaon)

3. Agiran Bibi, Bagaigaon (Assam)

Bank of India, A/C No.5800610110003383 (Dist. Bagaigaon)

4. Banirul Islam, Bagaigaon (Assam)

State Bank of India, A/c No. 20055576479

Sir, in view of above case another man Azurul Hoque Molla R/o Near Bartalowa Bazar, PS- Dhaligaon, Distt. Chirang, BTAO, Dhaligaon- Bagaigaon (Assam) was also involved and he take a cash of Rs.3 Lakhs from me for giving me some Pooja Material, he showed some magical tricks with their another group having 5 persons sitting within their house. There name and Phone Number given blew:

1. Azarul Hoque Molla R/o Baktar, Bortalowa Bazar, PS- Dhaligaon (Near Bagaigaon Assam) Ph.:08812967502, 08723054640

2. Sadik Ali (08822651

3. Ram Chander Mukhiya (08472832023, 09707432458)

4. Rajesh Munda (Jamudin) (08254092523, 08471931248,08812900535)

5. Barman Rajvanshi (09864212245)

(All above are stay at District Bagaigaon- Kokrajhar)

I asked him to refund my money back or else I will have to take action against you.

Sir, in view of the above it may be seen that all the above culprits had wilfully and intentionally extorted heard earned money from me by way of cheating, fraud and Hypnotize.

Sir, it is therefore humbly requested to kindly get to refund of my hard earned money to me. So that I may able to overcome with mental trauma and financial crisis.

With kind regards,

Raghubir Singh

9810055558....................."

8. No particulars of the informant has been furnished in the FIR and how such information was registered as FIR is also not clearly made out in the Case Diary. The Officer-in-Charge, Bongaigaon Police Station in his letter to the Superintendent of Police, Bongaigaon dated 12.05.2017 has mentioned that on

the basis of the complain of Raghubir Singh of New Delhi the said case was registered. In the said letter, Officer-in-Charge has also mentioned that he asked the said complainant over mobile number that was given in the information, to appear before him to record his statement under Section 161 CrPC but he replied that he is unable to appear and as such his statement could not be recorded. Thereafter, further investigation was carried out against the persons named in the so called FIR and some accused persons were arrested.

9. Case Diary reveals that during the course of the investigation although some of the persons named in the FIR has been examined by the Investigating Officer regarding the amount deposited in their Bank accounts as mentioned in the FIR and they have also admitted certain transaction with one person at Delhi but no clear picture is made out as regards the actual aspect of the matter. Such an investigation insofar as regard the accused persons will entail no result inasmuch the actual facts and circumstance and allegation is not brought on record by the informant himself, in support of the allegation made in the FIR. From the conduct of the said informant, it depicts that he is reluctant to come forward to record his statement despite repeated approach by the Investigating Officer of the case vide subsequent communication dated 19.03.2018 with a request to Mr. RS Agarwal, Advocate (who forwarded the written communication of said Raghubir Singh) to give his statement and to produce the relevant original document in connection with the case. But, despite the repeated communication neither the Advocate, who forwarded the complain nor the informant himself has turned up. In his note, the Investigating Officer has recorded that they in search of the informant, sent WT message on repeated occasions but there is no response. Evidently, while the informant himself has not come forward to substantiate his allegation since filing of the complain, a criminal proceeding cannot stand. The communication pertains to the year 2015, referring to the incident of 2014 and the FIR got registered in 2017 but the informant did not turn up before the Investigation Officer, the entire claim of the informant appears to be doubtful. Further continuance of such proceeding on the basis of an unauthentic information, an FIR certainly cannot sustain in the eye of law. A criminal proceeding cannot run at the whims and caprice of third person concerned where the real victim person never came to picture to substantiate his allegation. The alleged occurrence is of 2014, FIR registered in 2017 and now in the year 2019, there appears no general diary entry regarding the earlier message that was sent by the persons named in Annexure-2 & 3. The entire proceeding has been vitiated and non-est in law.

10. Continuance of such criminal proceedings in the given circumstances will be nothing but abuse of the process of law. A criminal offence cannot anyway be proved /established until and unless the complainant/aggrieved person substantiate his claim by oral and documentary evidence. The inaction shown by the informant to substantiate his allegation will render his case to be unauthentic so as to carry out any lawful investigation.

11. I found sufficient force in the contentions raised by the petitioners in the present petition and resultantly, FIR pertaining to the Bongaigaon PS Case No. 252/2017 registered under Section 420/406 IPC and further proceeding is hereby set aside and quashed.

12. The criminal petition stands allowed. Return the Case Diary to learned Public Prosecutor, Assam.

