

(2003) 03 GAU CK 0039
In the Gauhati High Court
Case No : Criminal Revision No. 579 of 2002

Kailash Chandra Pareek

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 10-03-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401, 482
Penal Code, 1860 (IPC) — Section 122, 126, 233

Citation : (2003) CriLJ 3514 : (2003) 2 GLR 305 : (2003) 2 GLT 576

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : D.K. Misra and R.K. Jain, for the Appellant; P.C. Gayan, for the Respondent

Judgement

I.A. Ansari, J.—Should the High Court, in exercise of its powers under sections 397 and 401 read with Section 482 Cr.PC set aside and quash the First Information Report (FIR) as well as the investigation, which commences pursuant to the FIR, which alleges existence of suspicious circumstances indicating possibilities of preparation for commission of cognizable offences ? This is the basic question which this revision has raised.

2. By making this application u/s 482 read with sections 397 and 401 of the Code of Criminal Procedure, the petitioner has approached this Court seeking order(s) setting aside and quashing the First Information Report, which has resulted into registration of Paltanbazar Police Case No. 302/2002 under Sections 467, 468, 471, 472, 420 Indian Penal Code against the petitioner.

3. The First Information Report (Annexure D), which is under challenge, discloses, in brief, thus :

(a) On receiving secret information about evasion of tax, a team of officers of Finance (Taxation) Department conducted a raid at the residence of the petitioner at Chhatribari, Guwahati, on 16.9.2002, the petitioner "being

Accountant of a number of registered firms. During the search, the following documents were seized :

1. Huge number of registers, papers and documents in respect of various transactions of sales and purchases pertaining to the three dealers.
2. Counterfoils for the applications for Bank Drafts in the name of different traders from outside the State.
3. Blank "C" Forms, which are used for declaration in case of inter-state sales for availing concessional rate of tax. These forms are in the names of various dealers of some of the neighbouring States, Such blank forms should not be found in the custody of Sri Pareek unless the same were kept for the purpose of cheating.
4. Partially filled up "C" forms of dealers of the neighbouring States, which should not have also been in the custody of Sri Pareek.
5. Partially filled, up "C" forms of some local dealers are also found in his possession, which should not be in the possession of any other person.
6. Signed but unwritten letter-heads of several parties from outside the State.
7. Unsigned and unwritten letter-heads of parties from within and outside the State.
8. Not less than 30 rubber stamps of different parties, whdse identity could not be ascertained.
9. 2 (two) blank Road Permits (original and duplicate copies) in the name of Singla Associates, Shillong. These should not be in the possession of Sri Pareek.

(b) The Commissioner of Taxes, Assam, Guwahati, lodged the First Information Report, aforementioned, on 19.9.2002, addressed to the Officer-in-Charge, Paltanbazar Police Station, alleging further to the effect that the papers/documents mentioned in paras 1 and 2 above, were found to be related to evasion of tax directly and were being examined by the Officers of the Tax Department, but as far as the papers/documents mentioned in paras 3 to 8 are concerned, the same relates to criminal offences committed by the petitioner and that necessary action should be taken for bringing the offender to book.

4. I have heard Mr. D.K. Misra, learned senior counsel, assisted by Mr. R.K. Jain, appearing on behalf of the petitioner, and Mr. P.C. Gayan, learned Addl. Public Prosecutor, Assam, appearing on behalf of the opposite party.

5. Assailing the First Information Report, in question, Mr. Misra has submitted that the contents of the First Information do not, even if taken to be true in its entirety, make out commission or any cognizable offence and, hence, the Officer-in-Charge or Paltanbazar Police Station had no power or authority u/s 157 Cr.PC and/or under any other provisions of law to register the said complaint as First Information Report and commence investigation based thereon.

6. It has been pointed out by Mr. Misra that as far as blank Forms "C" are concerned, which were allegedly found in the possession of the petitioner, the same are, in fact, supplied by the prescribed authority as blank forms and the same are required to be submitted to the authorities concerned with requisite declaration after filling up the same, but for filling up of "C" Form, the second proviso to Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957, shows that one single declaration may cover all transactions of sale, which take place in one financial year between the same two dealers. It is also pointed out by Mr. Misra that finding of partially filled up "C" Forms cannot also disclose commission of any cognizable offence nor can the alleged possession or unwritten letter-heads and/or rubber stamps be said to constitute any offence. The offence or offences, if any, can, at best, contends Mr. Misra, be said to be still at the stage of preparation and preparation for offences under Sections 467, 468, 471, 472, 420 IPC is not punishable.

7. To support his contention that if the First Information Report does not disclose commission of cognizable offence, the FIR as well as investigation conducted in pursuance thereof can be quashed, Mr. Misra has placed reliance on the decisions rendered in *State of West Bengal and Others Vs. Swapan Kumar Guha and Others*, *R.S. Raghunath Vs. State of Karnataka* and another,

8. Controverting the above submissions made on behalf of the petitioner, Mr. P.C. Gayan, learned Addl. Public Prosecutor, Assam, has submitted that the investigation of the case, in question, is still at a nascent stage and at this stage, the First Information Report should not be quashed, for, enough suspicion exists that the petitioner may be involved in the commission of offences alleged against him and the police may, be allowed to continue with their investigation.

9. Before entering into the merit of the present revision it is opposite to note that it has been the consistent view of law that when allegations made in the FIR, even if they are taken at their face value and accepted in their entirety as true, do not constitute any offence or make out a case against an accused, the Court must not allow investigation by police into such FIR to continue.

10. In the case of *Swapan Kumar Guha (supra)* it has been held by the Apex Court that if the First Information Report does not allege or disclose that the essential requirements of the penal provisions are prima facie satisfied, it cannot form the foundation or constitute the starting point of a lawful investigation, for, the right of the police to investigate is subject to the condition that they must have reason to suspect commission of, a cognizable offence and the police can not be said to have reasons to suspect commission of a cognizable offence unless the FIR prima facie discloses the commission of a cognizable offence. I am guided to adopt this view from the following observations made in *Swapan Kumar Guha (supra)* :

"That being an essential ingredient of the offence charged, it cannot be said in the absence of any allegation whatsoever in that behalf, that there is "reason to

suspect" the commission of that offence within the meaning of Section 157, of the Code of Criminal Procedure, so as to justify the investigation undertaken by the State authorities.

In *R.P. Kapur Vs. The State of Punjab*, 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 the proceeding was made out but Gajendragadkar, J, speaking for the Court 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.

The position which emerges from these decisions and the other decisions which are discussed by brother A.N. Sen is that the condition precedent to the commencement of investigation u/s 157 of the Code is that the FIR must disclose, prima facie, that a cognizable offence has been committed. It is wrong to Suppose that the police have an unfettered discretion to commence investigation u/s 157 of the Code. Their right of enquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the FIR, prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must, do on and the rule in *Khawaja Nazir Ahmed* will apply. The Court has then power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. On the other hand, if the FIR does not disclose the commission of a cognizable offences, the Court would be justified in quashing the investigation on the basis of the information laid or received." (emphasis is supplied)

11. Similarly, in the case of *R.K. Srivastave* (supra), the Apex Court upheld the order of the High Court quashing the FIR observing to the effect that when the criminal proceedings have been started on the basis of an FIR, which does not contain any definite accusation, it amounts to an abuse of process of the Court and, as such, the FIR is liable to be quashed. This is clear from the following observations made by the Apex Court in *R.K. Srivastava* (supra):

"It is now as well settled proceedings of law that if the allegations made in the FIR are taken at their face value and accepted in their entirety do not constitute an offence, the criminal proceedings instituted on the basis of such FIR should be quashed."

"The High Court has rightly held that as the criminal proceedings have been started against the respondent on the basis of an FIR which does not contain, any definite accusation, it amounts to an abuse of process of the Court and, as such, it liable to be quashed. We entirely agree with the view expressed by the High Court." (emphasis is added)

12. As far as the Rishi Anand and Another Vs. Government of National Capital Territory of Delhi and Others, is concerned, the Apex Court has, with regard to quashing of criminal proceedings, observed as follows :

"The High Court observed that the factum of return of articles is under dispute and it can only be examined after trial and that no case has been made out for quashing the FIR. The High Court did not address itself to the crucial question whether the substances of the allegations in the complaint coupled with any other material on record justified the prosecution of the appellants u/s 406 and the Magistrate taking cognizance of the alleged offence. In a recent case, S.W. Palanitkar and others Vs. State of Bihar and another, a Bench of this Court consisting of one of us (D. P. Mohapatra, J) and Shivaraj V. Patil, J. reminded the High Court of the obligation to intervene u/s 482, Cr.PC in cases where manifest error has been committed by the Magistrate in issuing process despite the fact that the alleged acts did not at all constitute the offences (in that case under Sections 406 and 420 IPC)."

13. In R.S. Raghunath Vs. State of Karnataka and another, the Apex Court has laid down, amongst others, following guidelines for exercise of powers u/s 482 Cr.PC to quash the criminal proceedings :

"(1) Whether 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) Whether the allegations 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 preview of Section 155(2) of the Code."

14. Keeping the law in view on the subject of quashing of FIRs let me now revert to the factual matrix of the present case.

15. In the present revision petition, what attracts my eyes, most prominently, is that Sub-section (4) of Section 8 of the Central Sales Tax Act, 1956, which relates to declaration to be made in C-Form, states, thus :

"(4) The provisions of Sub-section (1) shall not apply to any sale in the course of inter State trade or commerce unless the dealer selling the goods furnished to the prescribed authority in the prescribed manner.

(a) a declaration duly filled and signed by the registered dealer to whom the

goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority ; or

(6) if the goods are sold to the Government, not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorized officer of the Government. Provided that the declaration referred to in Clause (a) is furnished within the prescribed time or within such further time as that authority may, for sufficient cause permit."

16. The second proviso to Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957, which relates to declaration to be made in Form-C, reads thus :

"Provided further that a single declaration may cover all transactions of sale which take place in one financial year between the same two dealers."

17. It is also worth noticing that Sub-rule (2) of Rule 12 of the Rules, 1957, shows that Form-C is really supplied to the dealers concerned by the prescribed authority as blank forms.

18. A careful, reading of Rule 12 of the Rules, 1957, shows that Form-C is supplied to the dealer concerned as blank forms and even a single declaration may cover all transactions of sale, which take place in one financial year between the same two dealers. This shows that possession of blank forms cannot in itself constitute any offence, nor can a partially filled up Form-C, in itself, constitute any offence inasmuch as blank forms are supplied by the prescribed authority and such forms may be filled up by the person concerned from time to time for transactions of sale, which take place between the concerned parties within one financial year.

19. In short, neither the possession of blank C-Forms nor partially filled up C-Forms can constitute any offence. No penal provision could be pointed out, on behalf of the State, to show that the possession of blank C-Form or possession of partially filled up C-Form can in themselves constitute any offence, far less cognisable, offence.

20. Coupled with the above, it is also imperative to note that an offence, generally, passes, through four different stages, namely, motive, preparation, attempt and commission. As far as preparation for offence is concerned, it is not an offence in itself except in some specified cases, such as, offences under Sections 122, 126, 233-235, 257, 242, 243, 259, 266, 399 Indian Penal Code. It is noteworthy that preparation for forgery is not an offence under the provisions of the IPC. Ordinarily, once the act enters into the arena of attempt, criminal liability commences, because attempt takes the offender very close to a stage, where the offence would have stood successfully completed, out for some intervening factor, which did not permit the offence to get completed, in other words, but for the intervening factor, the offence would have been successfully completed. That is why, attempt to commit an offence is punishable in law just

like the completed offence. There is subtle but definite distinction between preparation and attempt to commit an offence. Preparation consists in devising or arranging means necessary for the commission of an offence, while an attempt is the direct movement towards the commission after the preparation is complete or made. The law punishes a man not for guilty intention, but for the overt act done. If, but for the interruption, offence would have been complete, the act amounts to attempt. (Duraishwamy, In re. AIR 1942 Mad. 521). The Apex Court has held in, *Abhaynand Mishra Vs. The State of Bihar*, that a person commits the offence of attempting to commit a particular offence, when he intends to commit the particular offence, and, having made preparations and with the intention to commit that offence, does an act towards its commission and that such an act need not be penultimate act towards the commission of that offence, but must be an act during-the course of committing such offence. Preparation for offence is not, punishable, because a preparation, apart from its motive, would, generally, be a harmless act. This apart, it would be impossible in most cases, to, show that the preparation was directed to, or aimed at, a wrongful end or was done with an evil motive intent.

21. Couple with that have been concluded above, it is also worth pointing out that from a bare reading of the definition of "making of false document", contained in Section 464 IPC, it is abundantly clear that to make a document a false document, a person, who makes the document, has to act dishonestly or fraudulently in making the document or part of the document with the intention of causing it to be believed that the same was made by the authority of the person by whom or by whose authority the accused knew that it was not made.

22. In short, Section 464 IPC shows that a document, to be treated as a false document, has to be capable of being used with the intention of causing it to be believed that the document was made by the authority of a person by whom or by whose authority, the accused knew that the same was not made.

23. The documents, which have been seized, such as unwritten letterheads, signed but unwritten letter-heads, rubber stamps, etc., are in themselves wholly innocuous documents and the same are, in the absence of any overt act alleged against the accused-petitioner, incapable of being regarded as false documents. It is like making of false key for a lock hanging on the door of a house, where the thief intended to commit the theft. Viewed from this angle, the petitioner cannot be held to have committed the offence of forgery and/or cheating. The penal provisions of sections 467, 468, 471, 472, 420 IPC are, therefore, not attracted in the present case.

24. From what have been discussed above, it, is abundantly clear that the First Information Report, which is under challenge, if read carefully and taken to be true in its entirety, does not disclose commission or any cognizable offence by the petitioner and hence, in such a situation, the Officer-in-Charge of Paltanbazar Police Station could not have legally exercised the powers u/s 157 Cr.PC and register the case against the petitioner as has been done in the present case and/

or commenced investigation into the same. It is also abundantly clear that such investigation, if allowed to continue, will, I have no hesitation to hold, be abuse of process of law, which this Court, in exercise of its powers u/s 482 Cr.PC, must not permit.

25. In the result and for the aforesaid reasons, this revision succeeds. The First Information Report aforementioned and the investigation carried out in pursuance thereof are hereby set aside and quashed. The informant, however, is left at liberty to approach appropriate machinery of law if and when the petitioner is found to have committed any cognizable or non-cognizable offence(s) under the law.