
(2019) 11 GAU CK 0042
In the Gauhati High Court
Case No : Criminal Petition No. 873 Of 2018

Kanu Bhattacharjee And 5 Ors

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

Date of Decision : 19-11-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 320, 482
Indian Penal Code, 1860 — Section 34, 182, 211, 307, 366

Citation : (2019) 11 GAU CK 0042

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : T H Hazarika

Final Decision : Dismissed

Judgement

1. Heard Shri T. H. Hazarika, learned counsel for the petitioners. Also heard Shri B. Sharma, learned Additional Public Prosecutor, Assam and Shri P. K. Munir, learned counsel for the respondent No. 2.

2. As agreed to by the parties and taking into consideration the nature of dispute, the present petition is taken up for disposal at the Admission stage.

3. The petitioners have filed this petition under Section 482 of the Cr.P.C. to invoke the extra-ordinary jurisdiction of this Court to quash the proceeding initiated by the respondent No. 2 by lodging an FIR, dated 13. 12.2016, against the petitioners before the Golakganj Police Station leading to registration of Golakganj P.S. Case No. 1218/16 under Section 366/34 of the Indian Penal Code. It appears that upon completion of the investigation, Charge-Sheet No. 240/17, dated 30.05.2017, has been filed under Section 366/34 of the Indian Penal Code, corresponding to G.R. Case No. 5122/16 which is pending before the learned Judicial Magistrate First Class, Dhubri.

4. Shri Hazarika, learned counsel for the petitioners, submits that apart from the fact that the allegations in the FIR are wholly concocted, the contents are

absolutely contradictory and in this regard, reference has been made to a Deed of Marriage Agreement, dated 19.12.2013. Shri Hazarika, learned counsel, has fairly submitted that though this Deed may not be of any evidentiary value so far as the marriage between the parties is concerned, the contents being uncontroverted, the allegations cannot be maintained.

5. Shri Munir, learned counsel for the respondent No. 2, on the other hand, submits that the respondent No. 2 is consistent on the allegations made in the FIR dated 13.12.2016 and further submits that even assuming that the contents of the Marriage Agreement are correct, without by itself cannot be a legal bar to lodged the FIR in question. He further submits that in fact the petitioners have also lodged a counter FIR which is pending investigation.

6. Shri B. Sharma, learned Additional Public Prosecutor, Assam, submits that powers under Section 482 of the Cr.P.C. are required to be sparingly exercised in exceptional cases.

7. The rival contentions of the learned counsels for the respective parties have been duly considered. The Hon'ble Supreme Court in the case State of Haryana Vs. Bhajan Lal, reported in 1992 Supp. (1) SCC, has laid down the broad guidelines of exercising powers under Section 482 of the Cr.P.C. in matters of quashing.

8. For ready reference, the relevant extracts of the said judgment is quoted herein below -

"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 or the inherent powers under Section 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 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 channelized and inflexible guidelines or 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 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 under Section 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 the 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 allegations 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 under Section 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 a 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 on the accused and with a view to spite him due to private and personal grudge.

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 extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

104. It may be true, as repeatedly pointed out by Mr Parasaran, that in a given situation, false and vexatious charges of corruption and venality may be maliciously attributed against any person holding a high office and enjoying a respectable status thereby sully his character, injuring his reputation and exposing him to social ridicule with a view to spite him on account of some personal rancour, predilections and past prejudices of the complainant. In such a piquant situation, the question is what would be the remedy that would redress the grievance of the verily affected party? The answer would be that the person who dishonestly makes such false allegations is liable to be proceeded against under the relevant provisions of the Indian Penal Code - namely under Section 182 or 211 or 500 besides becoming liable to be sued for damages."

9. The said judgment of the Hon'ble Supreme Court has been consistently followed by later judgments. Further, the Hon'ble Supreme Court in the case of State of Madhya Pradesh Vs. Laxmi Narayan, reported in (2019) 5 SCC 688, has held as follows -

"13.Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

i) that the power conferred under Section 482 of the Code to quash the criminal

proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

ii) such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

iii) similarly, such power is not to be exercised for the offences under the special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

iv) offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

v) while exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc."

10. Following the ratio laid down by the Hon'ble Supreme Court and taking into

consideration the facts of the case, in the opinion of this Court, no exceptional case for exercise of powers under Section 482 of the Cr.P.C. is made out and the grounds taken in this petition can be valid grounds of defence that may be taken in the trial. Accordingly, the petition is dismissed.

11. Interim order passed earlier shall stands vacated.

12. Dismissal of this petition, however, shall not bar the parties to arrive at an amicable settlement.

13. It is needless to observe that the petitioner is otherwise entitled to take further recourses in law including filing application for discharge before the learned Trial Court which may be considered in accordance with law.