

(2006) 11 GAU CK 0085
In the Gauhati High Court

Md. Makfur Rahman and Another

APPELLANT

Vs

Md. Kajimul Hussain Baruah and Another

RESPONDENT

Date of Decision : 06-11-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 155, 2, 482

Penal Code, 1860 (IPC) — Section 34, 427, 443, 506

Representation of the People Act, 1951 — Section 31

Citation : (2007) CriLJ 1536 : (2009) 1 GLR 225 : (2007) 3 GLT 447

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

Bench : Single Bench

Judgement

I.A. Ansari, J.—By making this application u/s 482 of the Code of Criminal Procedure, (in short "the Code"), the petitioners, who are accused in Case No. 232/ 2006, have sought for quashing, amongst others, the order, dated 16-3-2006, whereby the learned Judicial Magistrate, 2nd Class, Guwahati, has taken cognizance of offence u/s 506 read with Section 34, I. P.C. against the accused-petitioners.

2. The material facts and various stages, which have led to the filing of the present petition, may, in brief, be set out as follows:

The present petitioners lodged a complaint against the opposite party No. 1 herein alleging, inter alia, that on 27-11-2005, at about 1.00 p.m., the opposite party No. 1 herein along with some others forcibly entered into the land of the complainant, removed the fencing, which had been raised by the complainant for preventing illegal parking of vehicles, destroyed the said fencing and when resistance was offered by the peon and security guard of the complainant, the accused abused them and threatened them with dire consequences. This complaint gave rise to the Complaint Case No. 7318c/2005. Having taken, on the basis of this complaint, cognizance of offences, under Sections 427/443/506, I. P. C, against the accused-opposite party No. 1, the learned Judicial Magistrate. 2nd Class, Guwahati, issued summons to the opposite party No. 1 herein as

accused, whereupon the opposite party No. 1 appeared in the Complaint Case aforementioned and informed the learned Court below that the opposite party No. 1 herein had lodged an Ejahar at Dispur Police Station, against the petitioners herein and based on this Ejahar, police had registered Non-FIR Case No. 06/ 2005 and submitted charge-sheet against the present petitioners as accused under Sections 506/34, I.P.C. and, hence both these cases shall be tried simultaneously. Thus, during the pendency of the CR Case No. 7318c/2005, it transpired that pursuant to an Ejahar, lodged by the opposite party No. 1 herein, the police registered Non-FIR Case No. 06/2005 aforementioned and, upon enquiry, filed an offence report seeking orders for prosecution of the present accused-petitioners under Sections 506/34, I.P.C. Based on this charge sheet, Case No. 232c/2006 was registered and by order dated 16-3-2006, learned Court below took cognizance of offence u/s 506/ 34, I.P.C. against the present petitioners as accused and directed issuance of summons to them. It is the order, dated 16-3-2006, aforementioned, which stands impugned in the present revision.

3. I have heard Mr. P. Kataki, learned Counsel for the accused-petitioners, and Mr. D.C. Mahanta, learned Senior counsel, appearing on behalf of the Opposite Party No. 1. I have also heard Mr. K. Munir, learned Additional Public Prosecutor, Assam, for the Opposite Party No. 2.

4. It has been pointed out by Mr. Kataki, learned Counsel for the petitioners, that an offence u/s 506 is non-cognizable and no police officer is empowered to investigate such an offence without the order of a Magistrate. However, in the present case, points out Mr. Kataki, the police investigated into the complaint, in question, and submitted charge-sheet u/s 506/34, I.P.C. Based on such a charge-sheet, contends Mr. Kataki, the learned Court below could not have legally taken cognizance of offence u/s 506/34, I.P.C. against the present petitioners as accused. Support for this submission is sought to be derived by Mr. Kataki from the case of Keshav Lal Thakur Vs. State of Bihar,

5. While candidly conceding to the submission made on behalf of the petitioners that the order dated 16-3-2006, taking cognizance is not sustainable in law, Mr. D.C. Mahanta, learned Senior Counsel, submits that the opposite party No. 1 herein has the liberty to lodge a complaint with regard to the occurrence, which gave rise to Case No. 232c/2006.

6. The question, therefore, raised, in the present revision, falls in a very narrow compass and the question is this : Whether a Magistrate can take cognizance of an offence, on the basis of a police report, submitted after making investigation into an information received by the police of commission of a non-cognizable offence? My quest for an answer to the above question brings me to Section 155 of the Code, which reads as follows:

155 Information as to non-cognizable cases and investigation of such cases.--(1) When information is given to an officer in charge of a police station of the

commission within the limits of Such station of a non cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf and refer the information to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

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

7. From a careful reading of the provisions contained in Section 155, it becomes transparent that when an information is given to an Officer-in-Charge of a police station as regards the commission of a non-cognizable offence, his duty, under Sub-section (1) of Section 155, is to enter or cause, to be entered the substance of such information, in a book, to be maintained as may be prescribed in this behalf and refer the informant to the Magistrate. Sub-section (2) of Section 155 clearly bars police officer from making any investigation into a cognizable offence without the order of a Magistrate, who has the power to try such a case or commit the case for trial. Section 155(3) also makes it clear that when ordered by a Magistrate, a police officer will have the same powers as an investigator, which he will have, while conducting an investigation into a cognizable offence. Section 155(4) further clarifies that 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 one, notwithstanding the fact that the other offences are non-cognizable.

8. In short, thus, without an order from a Magistrate of competent jurisdiction, no police officer can conduct investigation into an information of a non-cognizable offence. If any such investigation is carried on, the same would be without jurisdiction and based on the report of such an investigation, no Court can take cognizance of offence. Though Section 2(d), which defines a complaint, includes police report within the meaning of the word "complaint", what needs to be noted is that the police report, so referred to in Section 2(d), means the report, which the police submits on making investigation into a cognizable offence and not a report submitted after investigation into a non-cognizable offence. However, if the information received by the police discloses commission of offences both cognizable as well as non-cognizable, the police officer shall be competent to investigate into such a case as prescribed for investigation of cognizable offence.

9. What emerges from the above discussion is that without any order from a Magistrate, when a police officer conducts an investigation into a case, which involves commission of non-cognizable offence, and submits, on completion of

such an investigation, report, no Magistrate can take cognizance of offence on the basis of such a report. The reference made by Mr. Kataki to the case of Keshav Lal Thakur (supra) is not entirely misplaced. In Keshav Lal Thakur (supra), after conducting investigation into an offence u/s 31 of the Representation of the People Act, 1950, without an order of a competent Magistrate in terms of Section 155(2), the police submitted its report and the Magistrate took cognizance, though the offence u/s 31 of the Representation of the People Act is a non-cognizable offence. This was interfered with by the Apex Court and while so interfering and setting aside the order, the Apex Court held and observed thus : "On the own showing of the police, the offence u/s 31 of the Act is non-cognizable and therefore the police could not have registered a case for such an offence u/s 154, Cr. P.C. Of course, the police is entitled to investigate into a non-cognizable offence pursuant to an order of a competent Magistrate u/s 155(2), Cr. P.C. but, admittedly, no such order was passed in the instant case. That necessarily means, that neither the police could investigate into the offence in question nor submit a report on which the question of taking cognizance could have arisen. While on this point, it may be mentioned that in view of the Explanation to Section 2(d), Cr. P.C. which defines "complaint", the police is entitled to submit, after investigation, a report relating to a non-cognizable offence in which case such a report is to be treated as a "complaint" of the police officer concerned, but that explanation will not be available to the prosecution here as that relates to a case where the police initiates investigation into a cognizable offence - unlike the present one - but ultimately finds that only a non-cognizable offence has been made out."

10. Bearing in mind the position of law as indicated above, when I turn to the facts of the present case, what clearly attracts the attention is that in the case at hand, on receiving, from the opposite party No. 1 herein, the information that the present petitioners had committed a non-cognizable offence. The Officer-in-Charge of the Police Station concerned ought to have made, in terms of Section 155(1), an entry, in this regard, in the prescribed manner and referred the informant to the Magistrate. No police officer, on the basis of the information so lodged by the opposite party No. 1 herein, could have carried out any investigation without necessary order from a Magistrate of competent jurisdiction. Instead of taking the legally permissible course, as indicated hereinbefore, the police investigated into the case without having received any order from a competent Magistrate. This investigation was, undoubtedly, without jurisdiction and based on the report of such an investigation, no cognizance u/s 506/34, I.P.C. could have been legally taken against the present petitioners. Viewed thus, it is clear that the impugned order, dated 16-3-2006, whereby cognizance has been taken by the learned Court below, is without legal foundation and jurisdiction. Such an order cannot be allowed to survive.

11. In the result and for the reasons discussed, above, the impugned order, 16-3-2006, is hereby set aside and, in consequence thereof, all the orders passed either prior or anterior thereto shall accordingly stand set aside.

12. The opposite party No. 1 shall, however, have the liberty to lodge such complaint, as may be permissible in law, with regard to the alleged occurrence.

13. With the above observations and directions, this revision shall stand disposed of.