
(1986) 04 GAU CK 0009
In the Gauhati High Court
Case No : Criminal Revision No. 131 of 1981

Md. Zafrulla and Another

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 04-04-1986

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 39A
Criminal Procedure Code, 1973 (CrPC) — Section 482, 483
Penal Code, 1860 (IPC) — Section 120, 120B, 415, 420

Citation : (1986) 2 GLR 269

Hon'ble Judges : K. Lahiri, J

Bench : Single Bench

Advocate : N.M. Lahiri and A.R. Banerjee, for the Appellant; C.R. De and Z. Angami, for the Respondent

Final Decision : Allowed

Judgement

K. Lahiri, J.—The Core question: Should the High Court in exercise of its inherent power u/s 482 read with Section 483, Code of Criminal Procedure, "the Code" for short quash the criminal prosecution, being G.R. Case No. 1675 or 1979 arising out of Nazira P.S. Case No. 9(9) of 1979?

2. The Scope and Object of Sections 482 and 483 "the code"; Are the section inter-linked with the Constitution of India? Should we read the sections oblivious of its relation with the constitutional mandates provided in the Constitution?

No procedural Code howsoever exhaustive can expressly provide for safety valves or safeguards to prevent all injustices. The age-old and universally established principle is that every court has inherent power to act ex debito justitiae, that is to say, to do that real and substantial justice for the administration of which alone the courts exist. The provisions have been made out of necessity to enable the High Court in appropriate cases to exercise its inherent power for the ends of justice and for the purpose of carrying out the other provisions of "the Code". The provisions adjure the High Court to prevent

the abuse of the process of any Court or otherwise to secure the ends of justice and to exercise relentless supervision over the courts of Judicial Magistrates subordinate to it to ensure that there is expeditious and proper disposal of cases by such Magistrates. The preamble to the Constitution of India expressed the resolution of the people of India to secure to all citizens Justice, freedom, equality and fraternity assuring the dignity of the individuals. Article 21 provides for the protection of life and personal liberty. It is the Constitutional right of a citizen to get expeditious disposal of criminal cases pending against him and the procedure must be a fair procedure. Article 39A of the Constitution, a directive principle calls, upon the State to provide equal justice and free legal aid. The procedure prescribed by law has to be fair, just and reasonable, not fanciful oppressive or arbitrary. In *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another, Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, Bhagwati, J,* (as his Lordship then was), stated thus:

Principally, the concept of reasonableness must be projected in the procedure contemplated by Article 21, having regard to the impact of Article 14 on that Article.

In *Sunil Batra Vs. Delhi Administration and Others etc.*, Krishna Iyer, J. has expressed that though our Constitution did not have a "due process" clause as in the American Constitution, the same consequence ensued after the decisions in *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, generally known as *Banks Nationalisation case*. Desai, J. observed inter alia that the word "law" in the expression "Procedure established by law" in Article 21 has been interpreted to mean in *Maneka Gandhi (supra)* that the law must be right, just and fair, and not arbitrary, fanciful or oppressive. Other wise it would be no procedure at all and the requirement of Article 21 would not be satisfied. It has been held that if it was arbitrary it would be violative of Article 14. Is it justice or a fair procedure to drag a person and brand him as an accused when there is absolutely no material enabling the court to issue process and compel him to stand his trial? In my opinion, the provisions of Sections 482 and 483 can not be read in isolation. They convey the noble message, the spirit of the Constitution. The inherent statutory power conferred on the High Court is in tune with the march of the time. It is in tune with the rising tide of human consciousness. It is in tune with the philosophy of our enlightened Constitution. The provisions are inter-linked with the preamble to the Constitution, the fundamental rights and the directive principles of the State policy. No Article of the Constitution guaranteeing a fundamental right ought to be read in isolation; I find a new jurisprudence has sprung around Article 21 since the *Banks Nationalisation case* which freed the consideration of Article 21 from cobweb of *A.K. Gopalan Vs. The State of Madras*, The Code of Criminal Procedure is a part of the integrated scheme contained in the Constitution which is the fountain bead of unimpeded and impartial justice. In *Maneka Gandhi (supra)* Beg, C.J. observed thus:

Articles dealing with different fundamental rights contained in Part-III of the

Constitution do not represent entirely separate streams of rights which do not mingle at many points. They are all parts of an integrated scheme in the Constitution, Their waters must mix to constitute that grand flow of unimpeded and impartial Justice (social, economic and political), Freedom (not only of thought, expression, belief, faith and worship, but also of association, movement, vocation or occupation as well as of acquisition and possession of reasonable property), of Equality (of status and of opportunity, which imply absence of unreasonable or unfair discrimination between individuals, groups and classes); and of Fraternity (assuring dignity of the individual and the unity of the nation), which our Constitution visualizes....

Beg C.J. concluded thus:

...Isolation of various aspects of human freedom, for purposes of their protection, is neither realistic nor beneficial but would defeat the very objects of such protection.

It was ruled with reference to Article 21 of the Constitution that the provisions of the Article guarantees that no person shall be deprived of his life and liberty except in accordance with the procedure established by law. In *Maneka Gandhi (Supra)* Chandrachud, J. (as his Lordship then was), observed:

The procedure prescribed by law has to be fair, just and reasonable, not fanciful, oppressive or arbitrary.

3. A man hunted down by the police and/or appearing Court as an accused for no cause or for no reason whatsoever can legitimately claim that his human dignity and freedom enshrined in the Constitution have been trampled. The police have power to investigate the case but within the frame work of the law. The court has jurisdiction to direct a person to appear in Court and designate him as an accused provided it has the authority of law. The procedure prescribed by law can never be unfair, unjust or unreasonable. No person can be arraigned as an accused when there is no material to show that he might have committed an offence, In the absence of any reasonable ground to believe no human being should be made a suspect of criminal offence. This is the spirit and philosophy of the Constitution and therefore, to tune with the philosophy of the Constitution the High Court has been armed with the power to prevent the abuse of the process of any Court or secure the ends of justice when any action has been taken by any person or authority purporting to act under "the Code". These are the implicit reasons why their Lordships quashed the proceedings in *R.P. Kapur Vs. The State of Punjab*, *State of West Bengal v. Swapan Kumar* AIM 1982 SC 949 and *Dr. Sharda Prasad Sinha Vs. State of Bihar*, In *Swapan Kumar (supra)* the police investigation was interfered with by their Lordships and the proceedings were quashed for the ends of justice, to uphold the Constitution and the Law. The Court has inherent power to prevent abuse of the process of the Court or otherwise to secure the ends of justice if any person purporting to act under "the Code" has done any injustice to any person. Let me now proceed to

consider the case in hand.

4. THE FACTUAL MATRIX:- The Director of a Tea Estate. Its manager as well as the officials of Nagaland Government are being prosecuted for alleged offences under Sections 120B read with Section 120 Indian Penal Code, for short I.P.C. Section 120B defines the offence of criminal conspiracy" to commit an offence punishable with death, imprisonment for life pr rigorous imprisonment for a term of two years or upwards. Section 420 I.P.C. provides for punishment for cheating. The crime cheating is defined in Section 415 I.P.C. which required (1) Deception of any person; 2.(a) Fraudulently or dishonestly inducing that person; (i) to deliver any property to any person; or (ii) to consent that any person shall retain any property, or (b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

5. At the put set I asked Mr. C.R. De, learned Public prosecutor, Assam, as well as Mr. Z. Angami, learned Public Prosecutor, Nagaland whether in the case in hand, being O.R. Case No. 1675 of 1979 stemming form Nazira P.S. Case No. 9(9) of 1979 there is any material whatsoever against any of the accused to believe that be has committed any offence. Learned Counsel have very fairly submitted that there is no material against any of the accused persons and the proceedings may be Quashed. However, I do not propose to dispose of the application on concession of learned Counsel as I propose so justify the fair, bold and correct submissions made by the learned public prosecutors. In making the submission they have helped preserve wasteful public expenditure, They have performed "public duty" in the true traditions of the holders of the public office.

6. Petitioner No. 1 is the Director of M/S, Rafiulia Tea and Industries (Pvt.) Ltd., "Tea Company" for short, whereas Safi Ansari, Petitioner No. 2 is the Manager of Ougurijan Tea Estate belonging to the Tea Company. The Tea Estate was purchased in the year 1977 by "the company" having its registered office at Dibrugarh, Assam. The Tea Estate comprised land measuring more or less 675 Bighas on the border between Assam and Nagaland. After purchasing the dilapidated tea estate " the company" made improvements. Some local people from Nagaland side created law and order problem and the tea estate needed protection from the authorities. The company wrote to the Extra Assistant Commissioner, Nagimmara, Nagaland and other officials of Nagaland to maintain law and order. The Collector of District Moa, Nagaland bad demanded from the Petitioner-company payment of land revenue on 25.4.79. The Extra Assistant Commissioner, Naginimara, Nagaland demanded land revenue in respect of the tea estate and issued several reminders. As the demands came from the officials of the Nagaland Government the Petitioner-company paid the land revenue as demanded. Way back on 18.5.78 the Extra Assistant Commissioner issued a certificate to the effect that the entire land of the "tea estate" was within the State of Nagaland and it was with in the jurisdiction of Naginimara Police Station,

District-Mon. It is thus seen that the payment of land revenue was made on the demand by the officials of Government of Nagaland. However, the Company used to pay the Central Excise Tariff at the rate of excise duty on green tea leaf @ Rs. 1.30 per kg. Knowing and having reason to believe that the Tea Estate was within the State of Assam. The rate of duty was applicable to the Tea Estate falling in Zone-V of Assam. The company still makes the payment at the same rate. But when the Government of Nagaland -demanded payment of the land revenue and asserted that the land was within the territorial jurisdiction of Nagaland, the company claimed before the Central Excise officials that they were entitled to refund as the rate in Zone I of Nagaland was Rs. 0.40 per kg. The representation pended before the Excise officials. Now, it is seen from the entire materials that the officials of the Government of Nagaland asserted that the Tea Estate was within the territorial jurisdiction of Nagaland, There said Government claimed land revenue from persons in "possession of the land in accordance with the provision of land revenue law applicable in Nagaland. The Petitioner had to pay the land revenue. However, the Petitioners had the impression that the land was within the territorial jurisdiction of the State of Assam and paid excise duty according to "the Assam rate". If the land falls within the State of Nagaland the excise duty must be according to Nagaland rate. As such, it is for the department to decide as to whether the excise duty paid was according to the rate applicable to Nagaland or according to rate applicable to Assam. Where is the case of conspiracy? What is that illegal act committed by the accused? What is illegal means adopted by the accused persons? The Government of Nagaland demanded land revenue claiming that the area was within the territorial jurisdiction of Nagaland and the officials of the Company paid the land revenue and there was no question of personal gain or loss of the accused persons. They complied with the demand made by the Government officials of Nagaland. Where are the ingredients of the offence u/s 120B? Even, the First Information report does not show that the Petitioner had entered into any criminal conspiracy with known or unknown persons. Even the illegal act or illegal means have not been set out in the ejahar. The accused persons can not be termed, and arraigned as the accused because they had complied with the Govt. orders. It is a strange enquiry report" submitted by the police. We must bear in mind that the commission of offence u/s 120B is punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or more. It is not a pleasure trip for a Director and/or any responsible person like Manager of a tea estate to appear before the Court as accused in respect of the charge of criminal conspiracy. There is no material of the offence of cheating as defined* in Section 415 of I.P.C. The F.I.R. is extracted herein below:

To

The Officer in-Charge, N.P.S.

Sir,

I am to inform you that director M/S. Rafiulla Tea and Industries Pvt. Ltd.

Division Ougurijan T.E. has applied to the Asstt. Controller Central Excise and Land Custom, Jorhat for refund of Central Excise tariff already paid in 1977 and 1978. On the false plea that Ougurijan T.E. falls within Nagaland territory by enclosing a photo stat copy of letter dtd. 8.5.78 from E.A.C. Naginimara, Nagaland. The firm has pleaded that since the Ougurijan T.E, falls within Nagaland be (sic) is to pay Rs. 0.40 p. per Kg, (i.e, Nagaland) of manufactured tea whereas be has paid Rs. 1.30 per Kg. as basic duty applicable to the tea gardens in Sibiagar district.

The Ougurijan T.E. covering an area of land measuring 607 b. 4 k, 8 J. in village Ougurijan grant Dhapabor mouza Sibsagar sub-division within the State of Assam as per record, The said farm has been continuously paying taxes and revenue to the authority concerned in the Sibsagar Dist. of Assam from the above it will be seen that Director of Rofiulla Tea and Industries Pvt. Ltd, in collusion with Manager Ougurijan T.E. and Nagaland Officials have criminally conspired among themselves in order to deprive the Govt. of their legitimate revenue for his personal and wrongful gain.

I therefore request you to register a case u/s 120 B/420 I.P.C. I have taken up the investigation.

Yours faithfully Sd/- N.N. Kataki, S.I. Nazira P. S. 4.9.79.

It appears that the police personnel considered that the tea estate was within the State of Assam whereas the revenue authorities of the Government of Nagaland considered it to be within their jurisdiction. Situated thus the Petitioner company was to pay the land revenue for the land either to the Government of Assam or to the Government of Nagaland. It appears that as yet the Central Excise department could not reach the conclusion as to whether under whose jurisdiction the land in question falls. If the area falls within the State of Assam it must be so asserted by the Government. It is also open to the Governments to settle up the matter amicably and give relief to their subject, instead of further proceeding in the matter. The police official of Assam have unnecessarily brought the accusation. The dignities of the responsible citizens have been lowered. On perusal of the entire materials at my disposal I do not find that the accused-Petitioner have committed any crime defined in the Penal Code. The acts of the accused person are absolutely bonafide actions in the capacity of the office bearer and/or employee of the Company. The materials do not disclose that the accused have committed any criminal offence under the Indian Penal Code, It would be unjust, improper and illegal to permit the criminal prosecution to continue on such materials. It is a case of abuse of the process of the Court, Even if the entire materials on record are taken at their face value I do not find that the accused had committed the offences, On the authority of the decisions of the Supreme Court in (1) R.P. Kapur (supra); (2) Swapan Kumar (supra) (3) Dr. Sharda Prasad Sinha (supra); and following the spirit of the maxim "Conformant usum qui tollit abusum" I quash the proceedings to uphold the cause of justice.

7. In the result the petition is accepted and the proceedings in G.R. Case No. 1675/79 arising out of Nazira P.S. Case No. 9(9) of 1979 are quashed.