

(1992) 03 GAU CK 0013

In the Gauhati High Court

Case No : Criminal Revision Nos. 109, 110 and 111 of 1992

Md.Jalaluddin

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 04-03-1992

Acts Referred:

Criminal Procedure Code, 1973 — Section 154, 157
Criminal Procedure Code, 1973 (CrPC) — Section 154, 157

Citation : (1992) 1 GLJ 287 : (1992) 1 GLR 256

Hon'ble Judges : S.Barman Roy, J

Bench : Single Bench

Advocate : A.Alam, C.R.De, R.D.Lal, Advocates appearing for Parties

Judgement

1. By this common, order I propose to dispose of three, revision petitions at motion stage filed by the same petitioner as all these three petitions involve identical questions of law and facts.
2. Petitioner was arrested in three different police cases and subsequently he was enlarged on bail. All these three police cases are still under investigation.
3. I have heard Mr. R.D. Lall, learned counsel for the petitioner and also Mr. C. R. De, learned Public Prosecutor for the State of Assam.
4. Mr. Lall submits that three different FIRs were registered for various cognizable offences and in none of these FIRs name of the petitioner figured as an accused or suspect. Yet the petitioner was arrested in connection with all these three cases.
5. Mr. Lall further submits that entire proceeding in the form of police investigation against the petitioner in all these three cases being unfair, biased and partisan, should be quashed or name of the petitioner should be dropped or deleted from the array of the accused. According to Mr. Lall entire investigation is patently unfair, partisan and there is absolutely no material to connect the petitioner with the offences alleged to have been committed.

6. However, Mr. Lall fairly submits that all the three FIRs disclose commission of cognizable offences and therefore FIRs can not be quashed.

7. Power of the Court to interfere with police investigation into cognizable offence during the stage of investigation is very limited. The law in this respect is covered by the decision of the Privy Council in *King Emperor vs. Nazir Ahmed*, AIR 1945 PC 18 Lord Porter delivering the opinion of the Judicial Committee observed.

"In their Lordships" opinion however the more serious aspect of case is to be found in the resultant interference by the Court with the duties of the police. Just as it is essential that every one accused of a crime should have free access to a Court of Justice so that he may be duly acquitted if found not guilty of the offence with which he is charged so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry. In India, as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships. think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be attained by leaving each to exercise its function always of course, subject to the right of the Court to intervene in an appropriate case when moved under S. 491 Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however the Court's functions begin when a charge is preferred before it and not until then.

8. However, immediately after that passage quoted above, the Privy Council qualified its statement by saying.

"No doubt, if no cognizable offence is disclosed and still more, if no offence of any kind is disclosed, the Police would have no authority to undertake an investigation.

It therefore appears that an investigation can be quashed if no cognizable offence is disclosed by the FIR. It shall also have been noticed that the Privy Council took care to qualify its statement of law by saying that the judiciary should not interfere with the Police in matters which are within their province. Therefore, it is certainly not within their province of the Police to investigate into a report which does not disclose commission of a cognizable offence and the Code of Criminal Procedure does not impose upon them duty of enquiry in such cases.

9. However, Mr. Lall, learned counsel for the petitioner has fairly conceded that it is not the case of the petitioner that the three FIRs did not disclose commission of cognizable offence. In view of this stand taken by Mr. Lall, this Court cannot

quash the investigation nor can it interfere with the police investigation until the investigation is completed.

10. In *State of West Bengal vs. Swapau Kumar*, AIR 1982 SC 949 his Lordship Y.V. Chandrachud, C.J. observed in paragraph 20 of the judgment that the law laid down in *Nazir Ahmed*'s case (supra) constitutes as it were the charter of the prosecution all over and expressed his opinion in this respect in paragraph 21 which is reproduced below:

"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 under 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 under S. 157 of the Code Their right of inquiry 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 go on and the rule in *Khwaja Nazir Ahmed* will apply. The Court has then no 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 offence, the Court would be justified in quashing the investigation on the basis of the information as laid or received."

11. Relying upon the decision of the Privy Council in *Naifar Ahmed*'s case (supra), the Hon''ble Supreme Court held in the case of *West Bengal vs. S. N. Basak*, AIR 1963 SC 447 at page 448 as follows :

"Powers of investigation into cognizable offences are contained in Chapter XIV of the Code of Criminal Procedure. Section 154 which is in that Chapter deals with information in cognizable offences and Section 156 with investigation into such offences and under this Section Police has statutory right to investigate into circumstances of any alleged cognizable offence without authority from a Magistrate and those statutory power of the Police to investigate cannot be interfered with by exercise of power under Section 561A of Cr.P.C."

Thereafter in the aforesaid case of *S. N. Basak* the Hon''ble Supreme Court proceeded to quote a passage from the decision of *Nazir Ahmed*'s case which has already been quoted in this order. Ultimately their Lordships of the Supreme Court in the aforesaid case *S.N Basak* observed that their Lordships were in accord with the interpretation which has been put on the statutory duty and powers of the Police and of the Court by the Privy Council in *Nazir Ahmed*'s case.

12. In view of the aforesaid well settled position of law, it would be an act beyond powers of this Court to investigation until the investigation is over and therefore these petitions have to be dismissed. Accordingly the Petitions are dismissed.