
(2018) 03 GAU CK 0082
In the Gauhati High Court
Case No : Crl.Pet. 57 of 2011

MS. BINA KUMARI MISHRA and ANR.Vs MRS. PROMILA MISHRA

Date of Decision : 23-03-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 200, 202, 204, 482
Indian Penal Code, 1860 — Section 34, 499, 500

Citation : (2018) 03 GAU CK 0082

Hon'ble Judges : MIR ALFAZ ALI

Bench : Single Bench

Final Decision : Dismissed

Judgement

1.By this petition under Section 482 CrPC, the petitioners have challenged the order dated 12.11.2010 passed by the learned Addl. Sessions Judge in

Crl. Motion No. 3(2)/2008 and the order dated 13.12.2010 passed by the learned Addl. Chief Judicial Magistrate, whereby processes were issued

against the present petitioners in CR No. 600/2008.

2. The brief facts leading to the present petition are that the respondent No. 1 lodged an FIR against Punya Deo Misra and Upendra Misra alleging

attempt to commit rape on her. On being instigated by other accused persons, said Punya Deo Misra and Upendra Misra lodged a false complaint

case in the Court of Chief Judicial Magistrate (CJM), Golokganj against the respondent No. 1, Manoj Mahato and three brothers of the respondent

No. 1 making some defamatory allegations against the respondent No. 1. The CJM, Golokganj having found lack of territorial jurisdiction, returned the

complaint and directed the complainant to lodge the complaint in the court at Kokrajhar. On 07.01.2008, accused Upendra Misra and Indradeo Misra

along with the members of their family came to Kokrajhar to attend Shradh ceremony of the mother of the accused Punya Misra, where the accused

persons including the present petitioners rebuked the respondent No. 1 by using slang words calling her (respondent) prostitute and concubine of

Manoj Mahato. They used to abuse her using such defamatory language on several occasions and they also threatened the respondent No. 1 to vacate

the house of her husband. All the accused persons named in the complaint including the present petitioners spread false and defamatory statement

among the relatives of the accused and the respondent No. 1 that the complainant had illicit relation with Manoj Mahato and she herself killed her

husband with the intent to maintain her illicit relation with said Manoj Mahato. The accused persons including the present petitioners on 15.03.2008 and

22.03.2008 threatened the respondent No. 1 to withdraw the sessions case filed against Punyadeo and Upendra or to face dire consequences.

Thereafter the respondent No. 1 lodged the complainant and the learned Addl. CJM, on the basis of the said complaint took cognizance of offence

under Section 500 IPC R/W Section 34 IPC and issued summons to the accused Punyadeo Misra, Upendra Misra and Indradeo Misra. However, the

Magistrate did not issue any process against the present petitioners.

3. Aggrieved by the said order of learned Addl. CJM not issuing process against the present petitioners, the respondent No. 1 preferred a criminal

revision before the learned Sessions Judge, which was registered as CrI. Motion 3(2)/2008. Learned Sessions Judge while allowing the criminal

revision directed the learned Addl. CJM to re-consider the complaint and remanded the matter back to the learned Addl. CJM. Learned Addl. CJM

by order dated 13.12.2010 recorded a finding that there was prima facie material to proceed against all the accused persons and accordingly issued

process against all the accused persons named in the complaint including the present petitioners.

4. Aggrieved by the said order as well as the order of the learned Addl. Sessions Judge, the petitioners have preferred the instant petition under

Section 482 CrPC for setting aside the order, taking cognizance against the petitioners.

5. Mr. G. Baishya, learned counsel for the petitioners and Mr. K. Sarma, learned counsel for the respondent were heard.

6. Learned counsel for the petitioners relying on the following decisions submitted that the allegations made in the complaint did not make out any

offence against the present petitioners. Learned magistrate, though, initially did not issue process against the present petitioners, later on, while the matter was remanded back by the learned Addl. Sessions Judge, learned Magistrate without applying his mind issued process against the petitioners, submits Mr. Baishya.

2008 (1) GLT 623 (H.R.A. Choudhury Vs. Rockybul Hussain)

(2013) 6 SCC 740 (Chandran Ratnaswami Vs. K.C. Palanisamy)

(2009) 10 SCC 184 (Neelun Chopra Vs. Bharti)

(2009) 11 SCC 203 (Chunduru Siva Ram Krishna Vs. Peddi Ravindra Babu)

1992 Supp (1) SCC 325 (State of Haryana Vs. Bhajanlal)

7. Learned counsel for the respondent submitted that the complaint as well as the statement of the witnesses recorded under Section 200 & 202 CrPC

disclosed offence under Section 500 IPC against the petitioners and therefore, the learned Trial Court committed no illegality by issuing process

against the present petitioners. To buttress the submission, learned counsel for the respondent No. 1 placed reliance on the following decisions:

2010 (1) GLT 619 (Prem Das Dahiya Vs. Dayashish Chakma)

2010 (2) GLT 535 (Pallav Das @ Kero Young Vs. State of Assam)

2010 (1) GLT 588 (Jakir Hussain Vs. Sabnam Begum)

8. In Chandran Ratnaswami Vs. K.C. Palanisamy (supra), the Apex Court observed that there is an impression that civil law remedies are time

consuming and do not adequately protect the interests of lenders/creditors. Therefore, there are growing tendency in business circles to convert purely

civil disputes into criminal cases. So it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process,

particularly when matters are essentially of civil nature. On the facts of the case this decision does not appear to be of any help to the petitioners.

9. In Neelu Chopra Vs. Bharti (supra), the Apex Court held that in order to lodge a proper complaint, mere mention of the sections and the language

of those sections is not the all and end of the matter. What is required to be brought to the notice of the court is the particulars of the offence

committed by each and every accused and the role played by each and every accused in committing that offence. In the said case, the Apex Court

having found the allegation containing the particular ingredients of offence

absent against the accused person quashed the complaint.

10. In *Chundru Siva Ram Krishna (supra)*, the specific allegation or role played by the petitioners having found absent and the allegation made in the complaint found to be vague and bald in nature, the Apex Court held that no useful purpose would be served by allowing the proceeding to continue against such petitioners in absence of specific allegation against them.

11. The decision of the Apex Court in *State of Haryana Vs. Bhajanlal (supra)* and all other decisions relied by the learned counsel for the respondent

No. 1 dealt with the scope of power of the High Court in quashing a criminal proceeding exercising inherent power under Section 482 CrPC. The scope of interference with the criminal proceeding by the High Court at the initial stage in exercise of inherent power being well settled, I am not

inclined to laden this judgment by quoting all those decisions, inasmuch as, referring the decisions of the Apex Court in *Bhajanlal (supra)* would suffice.

In *Bhajanlal (supra)*, the Apex Court laying down the principles and guidelines for the High Court in exercising inherent power for quashing criminal

proceeding, enumerated the following categories of cases where the High Court should and can quash the proceeding to secure ends of justice or to prevent abuse of process of the court.

â??(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 F.I.R. 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.â??

12. It is the settled position as held in R.P. Kapoor Vs. State of Punjab reported in AIR 1960 SC 866 and also in Bhajanlal (supra) that when the

allegation made in the complaint even if 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, the proceeding should be quashed. As a corollary to the same, if the allegations made in the complaint or FIR prima facie

makes out an offence, the proceeding cannot be quashed and in such case, Magistrate has no option, but to issue process.

13. Section 204 CrPC provides that if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding

against the accused person, he shall issue summons or warrants, as the case may be. It is settled position of law that for issuing process, a prima facie

satisfaction is only necessary for the Magistrate whether to issue process or not. It is not necessary for the Magistrate to come to a finding at the

stage of taking cognizance and issuing process, whether the case against the accused person would culminate in conviction. The complaint lodged by

the respondent makes it appear that there were allegations against all the accused named in the complaint including the present petitioners, to the

effect that they rebuked the respondent No. 1 by using slang language and they called the respondent prostitute and concubine of Manoj Mahato. It

has been averred in the complaint that all the 5 accused persons named in the complaint circulated such false imputation against the respondent No. 1

amongst the relatives and public. It appears that following specific averment were made against the accused including the present petitioners:

“All the accused persons circulated such false matters among their relatives of the complainant and the public alleging that the complainant had/has

the illicit connection with Manoj Mahato and they are continuing to do so and they both killed Dhruba Deo Mishra on 04/06/2006 with intent to

maintain their such illicit connection.

14. Section 499 IPC defines defamation as under:

“Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning

any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in

the cases hereinafter expected, to defame that person.”

15. It is evident that the learned Magistrate conducted an enquiry under Section 202 CrPC and examined three witnesses. Upon consideration of the

allegation made in the complaint and the statement of the witness recorded in course of enquiry under Section 200 & 202 CrPC, it is difficult to say,

that no prima facie offence under Section 499 IPC was made out against the present petitioners for issuing process. Because at the stage of issuing

process Magistrate was not supposed to ascertain whether the allegation would stand at the end of the trial or whether the proceeding would result in

conviction. The allegations made in the complaint as reproduced above and the materials revealed in course of enquiry under Section 202 CrPC,

appears to have made out a prima facie case against the petitioners under Section 500 IPC and as such, the Magistrate cannot be held to have

committed any illegality by issuing process against the present petitioners.

16. Being of the above view, I find that there is no merit in the petition and accordingly, it is dismissed.

17. Send down the LCR.