

(1988) 09 PAT CK 0014

In the Patna High Court

Case No : Criminal Miscellaneous No. 4772 of 1988

M/s Hanutram Jawahirlal and anr

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 16-09-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 157, 414, 482
Penal Code, 1860 (IPC) — Section 379, 414

Citation : (1989) PLJR 234

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Advocate : G.C. Bharuka, Navniti Prasad Singh, R.K. Agrawal and S.D. Sanjay,
for the Appellant; Satya Narayan Prasad for the State, for the Respondent

Final Decision : Allowed

Judgement

S.N. Jha, J.—This application has been filed for quashing an order dated 7.4.1988 (Annexure-6), whereby the learned Additional Chief Judicial Magistrate, Kishanganj, refused to permit the petitioners to dispose of and/or otherwise deal with the silver bars released to them by order dated 23.11.1987 passed in Kishanganj G.R.P.S. Case No. 55/87 (G.R. No. 646/87). While this application was pending for admission the petitioners filed a petition for amendment of the prayer portion of the main application and to treat the amendment petition as part of the main application, which was allowed vide order dated 7.7.1988.

2. By amendment now the petitioners have also prayed for quashing of the entire criminal proceeding including the investigation pertaining to the aforesaid case pending in the court of the Sub-divisional Judicial Magistrate, Kishanganj.

3. The facts relevant for the disposal of this application, in short, are that the petitioner No. 1 is a Hindu Undivided Family (HUF) firm carrying on business, inter alia, as Bullion Merchants and Commission Agents at Kishanganj and one Sampat Kumar Baid being the Karta of the HUF acts as the proprietor of the firm. The firm is duly registered under the Bihar Finance Act, 1981 Part I (the sales

tax law relevant for the State of Bihar) and the Central Sales Tax Act, 1956 and the said firm is also regularly assessed under the Income Tax Act as a specified Hindu Undivided Family.

4. The petitioner No. 2 is the manager of the said firm.

5. From the statement made in the application, it appears that the said firm in course of regular business as Bullion Merchant purchases silver and silver jewellery and after melting the same converts it into silver bar and sells it either at Kishanganj or sends it for sale to places outside like Delhi.

6. On 30.9.1987 in course of business petitioner No. 1 was sending four silver bars duly stamped marked as Bar No. 1, 2, 3 and 4 weighing 3757 gms, 4077 gms, 2826 gms and 3818 gms respectively to Delhi to sell through their commission agent, M/s Tarachand Jalan, 1162, Kucha Mahajani, Chandani Chowk, Delhi, through two employees of its firm. From the first information report (Annexure-3), it appears that when the aforesaid two employees were at Kishanganj Railway Platform at about 8.30 p.m. on the same day to catch a train for going to Delhi via Sealdah (since the railway line from this side was disrupted by heavy flood) they were apprehended by the G.R. Police and on search the aforesaid articles were recovered from their possession in two bags. Each employee was carrying two silver bars. The police suspected it to be the stolen property and lodged the aforesaid first information report before the Officer Incharge Railway Police Station, Kishanganj, on the same day for an offence u/s 414 of the Indian Penal Code (hereinafter referred to as "the Penal Code") and started investigation.

7. It further appears that in course of interrogation the said two employees disclosed that they were carrying the silver bars en route to Delhi on behalf of the petitioner firm and immediately showed the original folio of the silver transport voucher, but the Assistant Sub-Inspector arrested the two persons and seized the aforesaid four silver bars and ticket which they were possessing from Kishanganj to Dalkola. The Police also drew up a seizure list with regard to other belongings of the aforesaid employees including the silver bars.

8. While the investigation was going on, a petition was filed in the court of the Sub-Divisional Judicial Magistrate, Kishanganj, for the release of the seized silver bars and the learned Magistrate vide order dated 23.11.1987 released the seized silver bars to petitioner No. 1 on furnishing bond of Rs. 80,000/- (eighty thousand) with two local sureties of the like amount each subject to the condition that the petitioner shall not destroy or melt or change the present construction of the silver bars without seeking prior permission of the court. The silver bars in question were handed over to the firm.

9. On 7.4.1988 a petition was filed on behalf of petitioner No. 2, who is the manager of the firm, for modification of the release order dated 23.11.1987 to the effect that the petitioners be allowed to make ornaments of the said silver bars, but the learned Magistrate refused to modify the previous order on the

ground that if the modification is ordered to be made the material evidence may disappear in the trial.

10. The petitioners have now moved this Court for quashing of the entire criminal proceeding on the ground that no case u/s 414 of the Penal Code has been made out against the petitioners.

11. Mr. Bharuka, learned counsel appearing on behalf of the petitioners, contended that the entire prosecution is misconceived and since the goods were carried under valid voucher in regular course of business for sale to Delhi, no case u/s 414 of the Penal Code has been made out against the petitioners. It was further contended that since no offence has been made out at all on the facts, as stated in the first information report, any further continuation of the Criminal proceeding is an abuse of the process of the court. Therefore, it must be quashed.

12. In support of his contention he has drawn my attention to Section 414 of the Penal Code and pointed out that unless there is a case of theft no case u/s 414 of the Penal Code could be made out. Section 414 of the Penal Code reads as follows:

Whoever voluntarily assists in concealing or disposing of or making away with property, which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

13. It was vehemently argued that unless a person knows or (sic) reasons to believe that the property is a stolen property, he cannot be punished and in the instant case there was no question of believing that the property was stolen property because these two employees of the said firm were carrying the silver bars duly stamped and marked as 1, 2, 3, and 4 weighing to 3757 gms, 4077 gms, 2826 gms and 3818 gms., respectively under valid silver transport voucher issued by the Custom Authorities u/s 11K of the Customs (Amendment) Ordinance, 1969 and Rule 3(1) of the Special Goods (Prevention of Illegal Export) Rules, 1969. A Photostat copy of the said silver transport voucher is Annexure-2 appended to this application. From Annexure-2 it appears that permit was issued to petitioner No. 1 where the name of the specified goods is mentioned and to whom it is being sent is also mentioned. Column 2 shows that the goods are being sent to M/s Tara Chand Jalan at Delhi. In Column No. 5, marks and numbers on the silver bars are mentioned as 1, 2, 3 and 4 and the weight are also mentioned, which are specified as reported in the first information report itself. The value of the goods is also mentioned in Annexure-2. From perusal of Annexure-2 it is manifest that the goods which were seized by the Railway Police are mentioned in the Silver Transport Voucher. Therefore, it cannot be believed that the seized articles were stolen articles and prima facie, in my view, no case has been made out u/s 414 of the Penal Code.

14. Mr. Bharuka in support of his contention has further argued that where no

case has been made out, the Court is competent to quash the proceedings even at the initial stage of investigation. He has relied upon the decisions reported in the case of Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi & others (A.I.R. 1976 S.C. 1947), and State of West Bengal and others v. Swapan Kumar Guha and others (A.I.R. 1982 S.C. 949).

15. In Nagawwa's case (supra) the Supreme Court has laid down four categories of cases, where an order of the Magistrate issuing process against the accused can be quashed or set aside. In these four types of cases, one type of case is that where the allegations made in the complaint or the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused, in such type of cases the High Court can quash the proceedings in exercise of its inherent power u/s 482 of the Code of Criminal Procedure, 1973 (herein-after referred to as "the Code"). It is well settled that if no prima facie case has been made out against the accused, the proceedings may be quashed to prevent the abuse of the process of the Court and secure ends of justice but if facts are otherwise and in course of investigation, the police has found a case against the accused, the result may be different. Proceedings against an accused can be quashed even in the initial stage if on the face of the complaint or the papers accompanying the same, no offence is constituted. In other words the test is that taking the allegations and the complaint as they are, without adding or subtracting therein, if no offence is made out, then the High Court would be justified in quashing the proceeding in exercise of its power u/s 482 of the Code to prevent the abuse of the process of the Court.

16. On behalf of the State it was contended that this Court should not quash the investigation at this stage. I may point out here that the case was registered as far back as 30.9.1987 and till today i.e. about ten months have passed the investigation has not been completed. It was contended that there is nothing to investigate in the case. The police is keeping the investigation pending for the reasons best known to them. It is merely a harassment to the petitioner, therefore, it must be stopped. In this connection he has relied upon the decision of the Hon'ble Supreme Court in the case of State of West Bengal & others vs. Swapan Kumar Guha & others (supra), where it has been laid down that the condition precedent to the commencement of investigation u/s 157 of the Code is that the first information report 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 F.I.R., prima facie, discloses the commission of such offence.

17. In the instant case a criminal case has been registered under S. 414 of the

Penal Code, which deals with an offence where a person has reason to believe that the articles which he is carrying is a stolen property. There are enough material on the record to show that those articles were not stolen property because there is valid silver transport voucher issued by the custom officer under the Custom (Amendment) Ordinance and Rules framed thereunder, as I have already indicated above. Therefore, in my view no case u/s 414 of the Penal Code has been made out at all. It may further be pointed out that no case under S. 379 of the Penal Code for the theft of those articles have any where been registered either in Kishanganj or in any part of the State or any where in this Country. The police has not found any material to proceed in the matter even after the lapse of about 10 months. In that view of the matter, it cannot be inferred that the articles in question were stolen property. It is now well settled that this Court can quash the criminal proceeding even in initial stage in its inherent power where the allegation in the first information report, even they are taken at their face value and accepted in its entirety, do not make out any offence. The police has no authority to proceed with such investigation and to allow the police to proceed with such investigation will amount to mala fide exercise or abuse of power. This point has already been settled by the Hon''ble Supreme Court in the well known decision in R.P. Kapur Vs. The State of Punjab, . In the said case while laying down the principles in what circumstances the High Court may quash the criminal proceedings in its inherent powers, it was observed by Gajendragadkar, J., as he the then was, who delivered the judgment for the Supreme Court as follows:

Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases, no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases, it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person.

18. Having considered the facts and circumstances of the instant case, I am of the opinion that the first information report do not disclose any offence at all. Therefore, the continuation of any further investigation would be nothing but an abuse of the process of the Court. For the reasons stated above, I allow this application and quash the investigation pertaining to G.R. No. 646/87 arising out of Kishanganj G.R.P.S. Case No. 55/87 dated 30.9.87 including the order dated 7.4.1988 passed by the learned Additional Chief Judicial Magistrate, Kishanganj.