

(2005) 08 CAL CK 0002
In the Calcutta High Court
Case No : C.R.R. No. 1760 of 2004

Nirmal Kumar Kharkia and Another

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 09-08-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 173(2), 482, 561A
Electricity Act, 1910 — Section 39(1)
Imports and Exports (Control) Act, 1947 — Section 5
Penal Code, 1860 (IPC) — Section 120B

Citation : (2005) 3 CALLT 505

Hon'ble Judges : Pravendu Narayan Sinha, J

Bench : Single Bench

Advocate : Dilip Dutta, Arup Chatterjee and A. Sinha, for the Appellant; Balai Roy, Advocate-General, Sudipta Moitra and Sujasha Mukherjee for the Opposite Party No. 2. and Barin Roy, for the Respondent

Final Decision : Dismissed

Judgement

Pravendu Narayan Sinha, J.—This revisional application u/s 482 of Cr. PC is aimed at quashing the proceeding in GR Case No. 1192/02 arising out of Sankrail P.S. Case No. 129/02 dated 23.7.02 u/s 39(1)(a) of the Indian Electricity Act now pending in the Court of the learned Sub-Divisional Judicial Magistrate (SDJM), Howrah.

2. Mr. Dilip Dutta, learned senior advocate appearing for the petitioners with Mr. Arup Chatterjee and Mr. A. Sinha submitted that the petitioners are owners of land and shed measuring about 7450 sq.ft. situated at Andul Road and they leased out the said shed, i.e. godown to Bijoy Bahadur Pande who is now running M/s. Krishna Chemicals over the said land. M/s. Krishna Chemicals is a consumer under the West Bengal State Electricity Board (WBSEB). M/s. Ashoka Roller Flour Mill is another occupation of the land owned by the petitioner and the said proprietorship concern having its office at 125, Cotton Street, Calcutta is owned

by one S.R. Jha. On 15.9.99 a memorandum of agreement was executed between M/s. Ashoka Roller Flour Mills and WBSEB for supplying electricity. Similarly there was agreement between M/s. Krishna Chemicals and Bijoy Bahadur Pande for supplying electricity at premises of M/s. Krishna Chemicals as M/s. Krishna Chemicals and M/s. Ashoka Roller Flour Mills are running business over the land and enjoying electricity on the basis of agreement with WBSEB. They are the consumers and petitioners have no connection at all relating to running of the said factories. Suppressing everything a FIR was lodged making false allegations against the petitioners that they are running a parallel supply agency of electricity to various concerns.

3. Mr. Dutta further submitted that Mr. Bijoy Bahadur Pande was arrested and subsequently he filed a writ application under Article 226 of the Constitution. In that writ the amount due to the WBSEB was assessed and Mr. Pande paid the said amount. The petitioners being owners of the land are not at all liable for the laches of licensee or for the acts and omissions of the licensee. WBSEB on 26.4.04 wrote a letter to Mr. Bijoy Bahadur Pande in respect of confirmation for cleaning of the shrubs, grass and other growths in the factory premises of M/s. Krishna Chemicals at Andul Road, Howrah and it establishes that WBSEB has accepted Mr. Bijoy Bahadur Pande as their consumer in respect of electricity supply to M/s. Krishna Chemicals. In the writ the WBSEB did not state that the Khakia Brothers are behind the entire incident. When the WBSEB made agreement with Mr. Pande and Mr. Jha lodging of FIR against the petitioners, who are not in possession of the land and factories at present, is malafide and in suggests that in the FIR there is no material at all against the petitioners.

4. Mr. Barin Roy, learned advocate appearing for the State submitted that the alleged agreement for lease was for five years but it was not registered. An agreement of lease in respect of immovable property for more than one year requires compulsorily registrable. The case is now at the stage of investigation. The petitioners have installed unauthorized transformers in respect of 11 K.V. and it has been installed in a sealed room in hidden condition and they are supplying power to different industries establishing a regular station. The investigation so far made reveals prima facie materials against the petitioners showing their involvement in the incident. This is not a fit case where this Court would exercise its inherent jurisdiction to quash the criminal proceeding.

5. Mr. Balai Roy, learned Advocate-General appearing for the WBSEB along with Mr. Sudipta Moitra and Ms. Sujasha Mukherjee submitted that the petitioners have prayed for quashing of proceeding of GR Case No. 1192/02 now pending before the learned SDJM, Howrah. The word "judicial proceeding" means adjudication of rights. The petitioners did not challenge any particular order of learned Magistrate. The entire order sheet annexed will reveal that the learned Magistrate did not adjudicate touching the rights of the petitioners and accordingly prayer for quashing the judicial proceeding is not maintainable. In support of his contention learned Advocate-General referred to the decisions in

Ramchandra Aggarwal and Another Vs. State of Uttar Pradesh and Another, , Babu Lal Vs. Hazari Lal Kishori Lal and Others, and King Emperor v. Nazir Ahmad reported in AIR 1945 PC 18.

6. Mr. Roy further submitted that who is the owner of the land in question, who is in possession thereof cannot be decided at this stage. At the same time all the annexures appended with the revisional application cannot be looked into by this Court as the said documents were neither verified nor tested. Even the papers annexed with the writ application cannot be considered by this Court as subject matter of writ was different from the subject matter of the present criminal proceeding in which serious allegation of theft or pilferage of electrical energy has been alleged against the petitioners. At the early stage of investigation, even if a proceeding has been started against a wrong person, the investigation should be allowed to continue and investigation, if any, would be for the ends of justice and would reveal the truth. The investigation can only establish against whom materials are there for continuation of the proceeding and investigation can reveal whether starting of proceeding against a wrong person was bad or not.

7. Mr. Roy further submitted that FIR discloses elements of cognizable offence and at this stage the police has no other option but to investigate the case. It has been transpired that there was installation of U.G. Cable 65M approximately from terminal double pole (rail structure) upto 11 K.V. oil switch and about 1 KVA, W/O, 4 K.V. transformer unauthorizedly bypassing Board's metering system and they are supplying electricity to their machinery and other industries for which WBSEB has sustained loss of revenue of more than rupees twenty lacks and in the mean time loss has enhanced enormously. That transformer does not belong to WBSEB and the petitioners and others have installed the transformer in an underground sealed room in hidden condition.

8. Learned Advocate-General further submitted that the Hon'ble Supreme Court in several decisions has laid down the guidelines which are to be followed by the High Court in quashing a criminal proceeding. It is the constant view of the Supreme Court that quashing of FIR should be exercised very sparingly and with circumspection and that too with great care and caution and in rare cases. The prime consideration is whether allegations made in the FIR discloses any cognizable offence and whether there is prima facie case against the petitioners. If these tests are fulfilled there cannot be ground of quashing of FIR or criminal proceeding at the early stage of investigation. The FIR contains serious allegations not only against petitioners but others and FIR discloses elements of cognizable offence. Wrong mention of section is immaterial and in the instant matter elements of Section 39(1)(a) of the Indian Electricity Act is applicable. There is no ground for quashing the criminal proceeding and the revisional application requires dismissal. In support of his contention Mr. Roy cited the decisions in State of Haryana and others Vs. Ch. Bhajan Lal and others, , State of Punjab v, Dharam Singh, reported in 1987 (supple) SCC 89, J.P. Sharma Vs. Vinod Kumar Jain and Others, , Jehan Singh Vs. Delhi Administration, and Ram

Lal Narang Vs. State (Delhi Administration), .

9. I have perused the revisional application, the materials on record and considered the submissions made by the learned advocates of the parties. There is no dispute that the petitioner No. 1 is owner of land and shed measuring about 7450 sq.ft. situated at Andul Road, Howrah and on 28.7.95 he entered into agreement of license in respect of the said shed or godown in favour of one Bijoy Bahadur Pande, proprietor of M/s. Krishna Chemicals for carrying on business of laminating HDP fabric and bags. It further appears that M/s. Ashoka Roller Flour Mill is another occupation of the said land and proprietorship of this mill has office at 125, Cotton Street, Calcutta and it is owned by one S.R. Jha. WBSEB entered into an agreement with Ashoka Roller Flour Mills on 15.9.99 regarding supply of electricity into the said concern. It further appears that on behalf of the petitioners a writ petition in AST No. 634/02 and WP No. 67(W)/04 was filed and the writ the main dispute was relating to due of amount to the WBSEB for consumption of electricity and in the said writ amount as per provisional bill was assessed and the petitioners were directed to make payment 25% of the said amount. In the writ matter there was allegation of tampering in meter as well as pilferage but there was no direction for quashing of the FIR. On the other hand, it transpires that in the writ there was direction for checking the metering system by the Head of the Metallurgy Department, Jadavpur University and it appears that the said premises was inspected and the report submitted indicated illegal load through installation of illegal transformer.

10. At this stage I do not think it expedient for the ends of justice to enter into a detailed discussion as to whether judicial proceeding means adjudication of rights. It was the contention of the learned Advocate-General that the petitioners have not challenged any particular order and they prayed for quashing of the entire criminal proceeding which is not entertainable. There is no need of discussion of the principles of law enunciated by the Hon'ble Supreme Court in Ram Chandra Aggarwal (supra) and Babu Lal (supra). It is now settled that, "The term "proceeding" is a very comprehensive term and generally speaking means a prescribed course of action for enforcing a legal right. It is not a technical expression with a definite meaning attached to it, but one the ambit of whose meaning will be governed by the statute. It indicates a prescribe mode in which judicial business is conducted" (Babu Lal v. Hazari Lal Kishori Lal). Though the petitioners did not challenge any particular order but they have filed a revisional application for quashing the FIR and investigation concerning the FIR. In my opinion in a quashing proceeding a party need not proceed against a particular order and he has a right to challenge the fundamentals of any proceeding particularly FIR and investigation on the ground of illegality and Section 482 of the Code is the jurisdiction where this Court can invoke such a power.

11. The FIR indicates that on 22.7.02 the informant and other officers of WBSEB visited the premises of M/s. Krishna Chemicals at Andul Road and searched the said premises and found that the petitioners and others have installed UG Cable

65M approx from Terminal Double Pole (Rail Structure) upto 11 KV oil switch and about 1 KVA, W/O, 4 KV transformer unauthorisedly bypassing the Board's metering system and supplying electricity to their machinery and others like M/s. K.P. Industries, M/s. Ashok Roller Flour Mill etc. for which the Board sustained loss of revenue of about Rs. 20 lakhs. It was also found that unauthorised transformer and 11 KV oil switch had been installed in a sealed room in hidden condition and unauthorizedly supplying power to the aforesaid two mills or factories, where plastic glooms, sheets etc. were being manufactured and quantity of finished products on operation of several motors, machineries, heaters etc. for the said purpose. It was also noticed that several fans and lights were there. On the basis of such FIR the Sankrail PS Case No. 129 dated 23.7.02 u/s 39(1)(a) of the Indian Electricity Act was started against the petitioners and others. I am of opinion that the learned Advocate-General rightly made the submission that mentioning of wrong section in the FIR is not a factor to be considered at the initial stage and at this stage gravity of the offence is to be considered. Mr. Roy pointed out that it would be a case u/s 39(1)(c) of the Indian Electricity Act. Be that as it may, contents of FIR reveals that the petitioners and others are running almost a separate generator room from underground in a hidden condition. From that underground generating station they are supplying electricity to different mills and other consumers. In my considered view the contents of FIR prima facie makes out or discloses elements of cognizable offence and FIR discloses prima facie case against the petitioners.

12. The lease is concerning the factories and not the land as it appears prima facie from the document. Possession is a matter of fact which requires to be established in Trial Court on the basis of evidence. The contention of the petitioners that they are not in possession of the land, factory and shed and, "Mr. Bijoy Bahadur Pande and Mr. S.R. Jha are running the said factory, is not a matter which require consideration by this Court at this stage where a proceeding has been instituted concerning serious allegation of theft or pilferage of electricity. This Court at this stage cannot enter into discussion of evidence like a Trial Court or Appellate Court. The question regarding possession of the land, factory shed etc. as well as the contract between Mr. Gupta and Mr. Jha with WBSEB are matters which can be considered in the trial as these questions are the defence of accused petitioners and at the initial stage of investigation the defence of accused cannot be considered at all.

13. Mr. Roy, learned Advocate-General cited a few decisions relating to investigation anti power of this Court to quash FIR and investigation invoking jurisdiction u/s 482 of Cr PC. I am of opinion that detailed discussion of the said decisions is not necessary as the principle of law now well settled. In Ram Lal Narang (supra) it was held by the Supreme Court that even after taking of cognizance by a Magistrate further investigation by police is not barred. In Jehan Singh (supra) the Hon''ble Supreme Court observed that where at the date of filing the petition u/s 561A (old Cr PC of 1898) no charge sheet or a complaint has been laid down in Court and the matter is only at the stage of investigation

by police, the Court cannot, in exercise of its inherent jurisdiction u/s 561-A (present Section 482 Cr PC), interfere with the statutory powers of the police to investigate into the alleged offence and quash the proceedings.

14. In J.P. Sharma (supra) the complaint against the accused persons for offence u/s 120B of IPC and Section 5 of the Imports and Exports (Control) Act was filed and cognizance was taken and summons was issued. The accused persons filed a revisional application in the High Court and the High Court quashed the complaint. The Supreme Court observed that, "The question at this stage is not whether there was any truth in the allegations made but the question is whether on the basis of the allegations a cognizable offence or offences had been alleged to have been committed. The facts subsequently found out to prove the truth or otherwise on the allegation is not a ground on the basis of which the complaint can be quashed." The Supreme Court set aside the order of the High Court and directed continuation of the proceeding. In State of Punjab v. Dharam Singh (supra) the Supreme Court observed that, the High Court erred in quashing the FIR by not only examining the averments made in the FIR but also going into merits of the case before investigation and collection of evidence by the investigating agency. In State of Haryana (supra) the Supreme Court made it clear that power to quash FIR and investigation should be exercised sparingly and that too in the rarest of rare cases. In that decisions the Supreme Court in para 108 laid down seven illustrations where the High Court can exercise inherent power u/s 482 of Cr PC. It was also observed that the illustrations are not exhaustive. The Supreme Court observed that where allegations in the complaint did constitute a cognizable offence justifying registration of a case and investigation thereon and did not fall in any of the categories of cases enumerated above, calling for exercise of extra ordinary powers or inherent powers, quashing of FIR was not justified.

15. Subsequently, in several other decisions including State of Karnataka v. M. Devendrappa 2002 (SCC) Cri 539, M. Narayandas v. State of Karnataka 2004 SCC (Cri) 118 and State of A.P. v. Golconda Linga Swami 2004 SCC (Cri) 1805 the Supreme Court observed that, "Inherent jurisdiction u/s 482 of the Code though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in Section 482." It was indicated by the Hon'ble Supreme Court that "Power u/s 482 has to be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The Court cannot inquire about the reliability or genuineness or otherwise of the allegations made in the FIR.... The Court has also no power to enquire whether the allegations are likely to be established or not."

16. It is also well settled that the Court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the FIR till the submission of report by the Officer-in-Charge of police station in Court u/s 173(2) of Cr PC is a field being exclusively reserved for the investigating agency (such a view was expressed by the Supreme Court in Union

of India v. Prakash P. Hinduja (2003) 4 Sup 466).

17. Before that the same view was expressed by the Hon"ble Supreme Court in several other decisions namely R.P. Kapur Vs. The State of Punjab, , Madhu Limaye Vs. The State of Maharashtra, , Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, , Raj Kapoor and Others Vs. State and Others, . The position that transpires is that, power u/s 482 of the Code to quash FIR or investigational proceedings should be exercised very sparingly and that too in the rarest of rare cases and at the initial stage of investigation where the FIR discloses not only cognizable offence but a very serious case, the Court cannot inquire about the reliability or genuineness or otherwise of the allegations made in the FIR. At this stage this Court cannot assess evidence like a Trial Court or Appellate Court and cannot make any enquiry relating to reliability or evidence and sustainability of accusation. In S.M. Datta Vs. State of Gujarat and Another, the Supreme Court observed that, "The FIR should be read as a whole and not with mathematical accuracy and nicety and FIR ought not to be thwarted at initial stages unless materials did not disclose an offence."

18. In the present case the FIR reveals or discloses cognizable offence and a very serious case of running a parallel generator room or running in a parallel sub-station illegally without valid permission of WBSEB. The investigation so far made makes out prima facie case against the petitioners and others warranting continuation of investigational proceeding into the matter complained of. At this stage the FIR cannot be quashed and the investigation cannot be thwarted. Considering the allegations in FIR as well as the materials collected during investigation I am of opinion that this is not a fit case where this Court should exercise its inherent power u/s 482 of Cr PC to quash the FIR and to stop investigation. The investigation, if any, would be for ends of justice and would reveal the truth. The investigation may also help the present petitioners to base their defence. The evidence and the materials which may be collected during investigation can only disclose whether the alleged offence made out in the FIR has been established against the petitioners or not and whether there are materials against the petitioners or not. It is not a fit case in which the investigation should be stopped and the FIR should be quashed. It is also well settled that this Court at this stage cannot look into all the papers and documents annexed with the revisional application as those were neither verified not tested. Let the investigation be proceeded with and the Investigating Officer after completing investigation submit report in accordance with law.

19. The above discussion makes it clear that the revisional application for quashing the FIR and investigation arising out of Sankrail PS Case No. 129 dated 23.7.02 pending before the learned SDJM, Howrah has no merit and the revisional application accordingly fails and is dismissed.

20. It is made clear that whatever has been observed by this Court in this revisional application should not be considered as observation on merit of the main case and should be treated as observation for this revisional application

only and learned Magistrate would arrive at his own decision on the basis of evidence and materials on record without being influenced in any way by the observations of this Court.

The interim order passed earlier stands vacated.

Send a copy of this order to the learned Sub-Divisional Judicial Magistrate, Howrah for information and necessary action.

Urgent xerox certified copy be given to the parties, if applied for, expeditiously.