
(2016) 08 GAU CK 0063
In the Gauhati High Court
Case No : Crl. Petition No. 676 of 2014

Nur Uddin

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 04-08-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 482
Penal Code, 1860 (IPC) — Section 120B, 34, 384, 468, 500

Citation : (2016) 166 AIC 626 : (2017) 1 GauLR 382 : (2016) 5 GauLT 553 :
(2016) 4 NEJ 92

Hon'ble Judges : Paran Kumar Phukan, J.

Bench : Single Bench

Advocate : Mr. HRA Choudhury, Senior Advocate and Mr. J. Uddin, Advocate, for the Petitioners; Mr. K. Munir, Additional Public Prosecutor, for the Respondent No. 1; Mr. P.C. Dey, Advocate, for the Respondent No. 2

Final Decision : Disposed Off

Judgement

Paran Kumar Phukan, J.—By means of this application under Section 482 of the Cr.P.C. the petitioners are seeking quashment of the Charge Sheet No. 36/2014 in connection with Hojai P.S. Case No. 335/2012 and the consequential orders dated 4.6.2014 and 5.6.2014 passed by the learned Judicial Magistrate 1st Class, Sankardev Nagar, Hojai, taking cognizance against the petitioners under Sections 120(B)/468/384/500/34 of the Indian Penal Code.

2. The respondent No. 2 herein filed a complaint before the learned SDJM, Sankardev Nagar, Hojai alleging therein that the petitioners by preparing a forged document started demanding money from him and they threatened that if he fail to pay the amount, the petitioners would take forceful possession of his house and land. The contention of the respondent No. 2 is that the petitioners collusively prepared a document stating that on 16.9.2012 a meeting was held in the house of some village elders and in that meeting, the respondent No. 2 had given consent to the decision taken by the village elders that he would pay

certain amount, mentioned in the document, to the petitioners, which was allegedly taken by his deceased father from the petitioners during his life time for his business. According to the respondent No. 2 the meeting was held on 28.6.2012 and in that meeting, he flatly denied that his father borrowed money from the petitioners and insisted for production of documentary evidence. The signatures of the persons who were present in the meeting were taken on 28.6.2012 and although the dispute could not be resolved, the petitioners inserted materials in the backside of the paper on which the signatures were taken to show that the respondent No. 2 gave consent for payment of the amount and started demanding money from him and threatened him with dire consequences if he fail to do so. They also defamed the father of the respondent No. 2 by alleging that he had borrowed money from the petitioners.

3. The complaint was forwarded to O.C., Hojai Police Station for investigation by the learned SDJM on the basis of which Hojai P.S. Case No. 335/2012 was registered and investigation was conducted. On completion of investigation, report in final form was submitted by the Investigating Officer exonerating the accused petitioners from the case.

4. On receipt of the final report, the learned SDJM, Sankardev Nagar, Hojai issued notice to the complainant, in pursuance to which, he filed a "Naraji" petition alleging that the investigation of the case was done perfunctorily and even his statement was not recorded. The learned SDJM having considered the petition and the case diary statements, ordered further investigation of the case and accordingly further investigation was conducted and charge sheet was submitted against the accused petitioners under Sections 120(B)/468/384/500/34 of the IPC.

5. Heard Mr. HRA Choudhury, learned Senior counsel appearing on behalf of the petitioners and Mr. P.C. Dey, learned counsel appearing on behalf of the respondent No. 2. Also heard the learned Additional Public Prosecutor, Assam.

6. Mr. Choudhury, learned Sr. counsel for the petitioners, inviting my attention to the complaint, dated 25.10.2012, filed by the respondent No. 2, submits to project that in the complaint itself, the complainant, respondent No. 2 admitted that the meeting of the elderly persons in the village was held on 28.6.2012 as well as on 16.9.2012 which belies his sworn statement made in his affidavit-in-opposition that no meeting was held on 16.9.2012.

7. It is next contended by Mr. Choudhury that the dispute between the parties is purely a civil one and no criminal liability could be attributed to the accused petitioners.

8. Controverting the submissions, Mr. P.C. Dey, learned counsel for the respondent No. 2, submits that although meeting was invited on 16.9.2012 but it was not in fact held and the accused petitioners fabricated a document showing that in the meeting held on 16.9.2012, the respondent No. 2 agreed to the resolutions taken in the meeting although no such resolutions were taken on that

day. Although the meeting was invited it was not in fact held on 16.9.2012 as the respondent No. 2 vehemently denied that his father took loan from the petitioners, but the accused petitioners collusively prepared the document showing that resolutions were taken in the meeting which was held on 16.9.2012. Mr. Dey further submits that if there was any monetary transaction between the petitioners and the late father of the respondent No. 2, then the petitioners could have approached the civil court, but, that has not been done and with a view to illegally realise money, they have fabricated and forged the document to show that the father of the respondent No. 2 had taken loan from the petitioners and they even threatened the respondent No. 2 and his family members with dire consequences if they fail to pay the amount. Mr. Dey submits that the petitioners have committed offences under Section 120(B)/468/384/500/34 IPC.

9. In the instant case, there is no dispute that police initially filed a report in final form as provided u/s 173 of the Cr.P.C. exonerating the accused petitioners from the offence allegedly committed by them for want of evidence against them. It is also not disputed that the learned SDJM before whom the report in final form was submitted, issued notice to the complainant, respondent No. 2, in pursuance to which, he filed the petition before the court alleging inter alia that Investigating Officer in collusion with the accused petitioners conducted investigation in a perfunctory manner and even his statement was not recorded. The learned court having considered the petition and after perusal of the case diary statements, was pleased to order further investigation in terms of Section 173 (8) of the Code of Criminal Procedure. Further investigation was conducted by another Investigating Officer and it appears that during investigation he has recorded the statements of witnesses whose names were not mentioned in the complaint petition.

10. Mr. Choudhury, learned counsel appearing on behalf of the accused petitioners strenuously contends that the Investigating Officer who conducted the investigation, without considering the investigation earlier conducted in the case, came to a conclusion that the accused petitioners have committed the offences which is not the import of Section 173 (8) of the Cr.P.C. and on this ground alone, the charge sheet is liable to be quashed and set aside.

11. Mr. Dey, learned counsel for the respondent No. 2, on the other hand, by referring to several decisions of the Apex Court, submits to project that on this ground alone, the entire case cannot be thrown overboard. He has submitted that the allegations contained in the om-plaint/FIR clearly reveals that the accused petitioners have committed forgery and they have defamed the deceased-father of the informant and forcefully tried to extort money from him.

12. The law relating to exercise of jurisdiction u/s 482 Cr.P.C. is well settled. The Apex Court in a catena of judicial decisions have laid down the principles of law on this aspect of the matter. In R.P. Kapur v. State of Punjab, AIR 1960 SC 866, the Apex Court has observed that where the allegations in the FIR 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 a case, no question of appreciating the evidence arises and it is a matter merely of looking at the FIR or a complaint in order to decide whether the offence alleged is disclosed or not. From the above observation of the Apex Court it becomes abundantly clear that when a mere looking into the contents thereof, even if taken at their face value and accepted to be true in their entirety, do not disclose commission of offence, a complaint or the FIR, as the case may be, shall be quashed.

13. Laying down the scope of interference by the High Court in matters of quashing of the FIR or complaint, the Apex Court in the leading case of State of Haryana and Ors. v. Bhajanlal and Ors., 1992 Supp (1) SCC 335 has given the categories of cases wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice which are reproduced below :

(1) Where the allegations made in the First Information Report or in the complaint, even if they are taken at their face value and accepted in their entirety as true, do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations made in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognisable 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 evidence collected in support of the same do not disclose the commission of any offence and/or make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognisable offence but constitute only a non-cognisable 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 that on the basis of such absurd and inherently improbable allegations, no prudent person can ever reach a just conclusion that there is sufficient ground to proceed 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 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 of the accused and with a view to spite him due to private and personal private grudge." (Emphasis added)

14. From the principles of law laid down in the case of R.P. Kapur (Supra) and Bajhanlal & Ors. (Supra) broadly speaking, quashing of a complaint or the First Information Report is possible in the following cases :

(a) Where the allegations made in the complaint or the First Information Report, even if they are taken at their face value and accepted in their entirety as true, do not prima facie constitute any offence or make out a case against the accused.

(b) Where the uncontroverted allegations made in the FIR or complaint and evidence collected in support of the same do not disclose the commission of any offence and/or make out a case against the accused.

(c) Where the allegations made in the FIR or complaint are so absurd and inherently improbable that on the basis of such absurd and inherently improbable allegations, no prudent person can ever reach a just conclusion that there is sufficient ground to proceed against the accused.

15. It follows, as a corollary, that in a quashing proceeding, it is not within the ambit of the powers of the High Court u/s 482 Cr.P.C. to determine the truth, veracity, correctness or otherwise of the allegation made in the FIR or a complaint.

16. Applying the above principles of law to the facts of the present case, I have found that in the FIR the informant alleged that the accused petitioners committed forgery by fabricating a document of the meeting allegedly held on 16.9.2012, although no such resolutions, as mentioned in the alleged fabricated document, were taken in the meeting. That apart, on the basis of that document they threatened the informant and his family members that they would be thrown out of their house if they fail to pay the amount within the stipulated period. When the FIR was initially filed no objection was raised by the accused petitioners even though they filed petition before this Court seeking pre-arrest bail and they are aggrieved because of the charge-sheet filed against them by police after further investigation was ordered by the learned court.

17. Section 173 (8) of the Code of Criminal Procedure empowers the court to order further investigation but that would not mean that further investigation would obliterate the earlier investigation conducted by the Investigating Officer. In the present case, it appears that after conducting investigation initially the Investigating Officer submitted report in final form and the said report reveals that he recorded statement of several witnesses during investigation. After order for further investigation was passed, it was the duty of the Investigating Officer to conduct further investigation and not fresh investigation or de novo investigation. In the present case, he appears to have conducted fresh investigation of the case without considering the earlier part of the investigation conducted by the previous Investigating Officer in the case. He has examined

some new witnesses and the statements of the witnesses earlier examined have not been considered while filing the charge sheet against the accused petitioners.

18. In this case no charge has been framed against the accused petitioners and the accused petitioners will get ample opportunity to place their grievance before the trial court at the time of consideration of charge.

19. On an overall assessment of the case record, particularly the complaint filed by the complainant, I am of the considered view that the charge sheet cannot be quashed in exercise of power u/s 482 Cr.P.C. However, it is directed that the learned court below while considering the matter regarding charge, shall take into consideration the statement made by the witnesses before the Investigating Officer who initially conducted investigation and on scrutiny of the entire matter, appropriate order regarding charge shall be passed.

20. With the above direction, the petition stands disposed of.

21. Send back the LCR along with a copy of this judgment for information and necessary action.