
(2009) 02 OHC CK 0020
In the Orissa High Court

Padma Charana Behera

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 03-02-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Penal Code, 1860 (IPC) — Section 155, 156, 162, 302, 313

Citation : (2009) CLT 481 (Suppl CrI) : (2009) CriLJ 2585 : (2009) 2 OLR 89
Supp : (2010) 6 RCR(Criminal) 310

Hon'ble Judges : B.S. Chauhan, C.J.;I. Mahanty, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan, C.J.—This writ petition has been filed for quashing of ICC No. 83 of 2005 pending before the J.M.F.C. (Paradip), Kujang and also for quashing of G.R. Case No. 1884 of 2004 arising out of Madhupatana P.S. Case No. 323 of 2004, pending before the S.D.J.M., Sadar, Cuttack.

2. The facts and circumstances giving rise to this case are that the petitioner, an employee of this Court, after the death of his first wife petitioner had an illicit relationship with one Nirmala Behera, D/o. Fakir Behera with a promise to marry her and kept sexual relationship with her which caused her to conceive, and on the pretext of medical check up caused miscarriage without the knowledge of the lady and on coming to learn about that Nirmala had lodged an FIR at Madhupatana P.S. u/s 313, IPC against the petitioner. Even thereafter petitioner prevailed upon Nirmala promising to marry her on 13-2-2005 and motivated her to bring Rs. 70,000/- from her father. On such amount being paid, it is stated that marriage of the petitioner with Nirmala was solemnized at one Sarala Temple on 13-2-2005 and at about 2.30 p.m. on the very day, petitioner and Nirmala reached at a petrol pump at Sandhapur and sent information to the father of Nirmala to meet them there and petitioner further demanded Rs. 30,000/-. As a result there was exchange of some hot words between the

petitioner and his wife Nirmala. On getting such information father of Nirmala proceeded to the Petrol Pump and requested the petitioner to come to his house. Petitioner agreed and instructed the car driver to proceed towards their house. It was alleged that petitioner throttled and poison was forced inside mouth of Nirmala. Thereafter, she was taken to the Cuttack Medical where she died. In such circumstances, criminal proceedings under Sections 420/493/302, IPC were initiated against the petitioner.

3. The petitioner in person has submitted that all criminal proceedings against him are liable to be quashed on three grounds namely, (a) proceedings have been initiated at a belated stage, i.e. after expiry of 71 days, (b) proceedings have been initiated because of malice against the petitioner and only to harass him by the complainant and (c) the evidence collected so far against the petitioner is not sufficient for his prosecution and therefore on these grounds the proceedings are liable to be quashed.

4. On the other hand, Mr. P.K. Khuntia, learned Addl. Government Advocate has submitted that criminal proceedings are not liable to be quashed on any of the grounds raised by the petitioner in this case. The matter is to be examined by the trial Court at length, but no ground is made out for quashing the criminal proceedings and thus, the petition is liable to be dismissed.

5. We have considered the rival contentions made by the petitioner in person and Mr. Khuntia, learned Addl. Government Advocate and perused the record.

6. The power of quashing the criminal proceedings has to be exercised very sparingly and with circumspection and that too in the rarest of rare cases and the Court cannot be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of allegations made in the FIR or complaint and the extraordinary and inherent powers of Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice. However, the Court, under its inherent powers, can neither intervene at an uncalled for stage nor it can "soft-pedal the course of justice" at a crucial stage of investigation/proceedings. Vide State of West Bengal and Others Vs. Swapan Kumar Guha and Others, ; Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandojirao Angre and Others, . Janata Dal Vs. H.S. Chowdhary and Others, ; Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another, ; G. Sagar Suri and Another Vs. State of U.P. and Others, and Ajay Mitra Vs. State of M.P. and Others, .

7. Similar view has been taken by the Apex Court in S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another, ; Veer Prakash Sharma Vs. Anil Kumar Agarwal and Another, ; Didigam Bikshapathi and Another Vs. State of A.P., and Sunita Jain Vs. Pawan Kumar Jain and Others, .

8. In Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, a similar issue was considered and the Hon"ble Apex Court held that the criminal law cannot be set into motion as a matter of course. The provisions of Articles 226 227 of the Constitution of India and Section 482 of the Code are a device to

advance justice and not to frustrate it. The power of judicial review is discretionary, however, it must be exercised to prevent the miscarriage of justice and for correcting some grave errors that might be committed by the subordinate Courts as it is the duty of the High Court to prevent the abuse of process of law by the inferior Courts and to see that esteem of administration of justice remains clean and pure. However, there are no limits of power of the Court but more the power more due care and caution is to be exercised invoking these powers. The Apex Court held that nomenclature under which the petition is filed is totally irrelevant and does not prevent the Courts from exercising its jurisdiction which otherwise it possesses unless there is a special procedure prescribed which procedure is mandatory.

9. In *State of U.P. Vs. O.P. Sharma*, , the Hon''ble. Supreme Court has indicated that the High Court should be loath to interfere at the threshold to thwart the prosecution exercising its inherent power u/s 482 of the Code or under Articles 226 or 227 of the Constitution of India, as the case may be, and allow the law to take its own course. Similar view had been taken in *Pratibha Rani Vs. Suraj Kumar and Another*, .

10. In *L.V. Jadhav Vs. Shankarrao Abasaheb Pawar and Others*, the Apex Court held that Court''s power is limited only to examine that the process of law should not be misused to harass a citizen and for that purpose, the High Court has no authority or jurisdiction to go into the matter or examine the correctness of allegations unless the allegations are patently absurd and inherently improbable so that no prudent person can ever reach to such a conclusion and that there is sufficient ground for proceedings against the accused but the Court, at that stage, cannot go into the truth or falsity of the allegations.

11. In *Trisuns Chemical Industry Vs. Rajesh Agarwal and others*, the Supreme Court placed reliance upon its earlier judgment in *Rajesh Bajaj Vs. State NCT of Delhi and Others*, and observed that the Inherent power of the High Court should be limited to very extreme exceptions.

12. In *State of Haryana and others Vs. Ch. Bhajan Lal and others*, , the Hon''ble Supreme Court laid down the guidelines for exercising the inherent power as under:

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 FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 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 u/s 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 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.

13. In Ganesh Narayan Hegde Vs. S. Bangarappa and Others, an earlier decision in Dhanalakshmi Vs. R. Prasanna Kumar and Others, has been cited with approval for the proposition that there should be no undue interference by the High Court as no meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at this stage. The High Court should interfere only where it is satisfied that if the complaint is allowed to be proceeded with, it would amount to abuse of process of Court or that the interests of justice otherwise call for quashing of the charges.

14. In Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, the Hon'ble Apex Court held that criminal proceedings can be quashed but such power is to be exercised sparingly, carefully with caution-and only when such exercise is justified by the tests specifically laid down in the statutory provisions itself. It is to be exercised ex debito justitiae to do real and substantial justice for administration of which alone Courts exists. Wherever any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent the abuse. A case where the FIR or the complaint does not disclose any offence or is frivolous, vexatious or oppressive, the proceedings can be quashed. It is, however, not necessary that at this stage there should be meticulous analysis of the case before the trial to find out whether the case ends in conviction or acquittal. The allegations have to be read as a whole.

15. In State of West Bengal Vs. Narayan K. Patodia, , the Apex Court observed that lodging an FIR is only the first step of investigation by the police. Premature quashing of the FIR at the initial stage instead of serving the cause of justice, harmed it. The inherent powers of the High Court are reserved to be used "to give effect to any orders under the Code, or to prevent abuse of the process of

any Court or otherwise to secure the ends of justice".

Thus, in view of the above, law can be summarized on the subject that criminal proceedings/FIR/complaint is liable to be quashed only if the Court comes to the conclusion that the FIR or complaint does not disclose any offence or is frivolous, vexatious or oppressive. Power of quashing can be exercised by the Court only in exceptional circumstances wherein the Court is satisfied that if the complaint is allowed to be proceeded with, it would amount to abuse of the process of the Court or that the interest of justice otherwise calls for quashing of the FIR or complaint.

Limitations on examining Questions of mala fide in Writ Petition

16. The issue of mala fide decided by the Hon''ble Apex Court in State of Haryana and others Vs. Ch. Bhajan Lal and others, held as under:

At this stage, when there are only allegations and recriminations on no evidence, this Court could not anticipate the result of the investigation and rendered a finding on the question of mala fides on the materials at present available. Therefore, we are unable to see any force in the contentions that the complaint should be thrown over board on the some unsubstantiated plea of mala fides.

(Emphasis added)

17. In Sheonandan Paswan Vs. State of Bihar and Others, the Hon''ble Apex Court while dealing with the issue of mala fides in criminal law observed as under:

It is well established proposition of law that a criminal prosecution, if otherwise justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta of the first informant or the complainant.

(Emphasis added)

18. Similarly, in State of Bihar and Another Vs. J.A.C. Saldanha and Others, , the Apex Court has held as under:

It must, however, be pointed out that if an information Is lodged at the police station and an offence is registered, the mala fide of the informant would be of secondary importance if the investigation produced unimpeachable evidence disclosing the offence.

(Emphasis added)

19. In Sarjudas and Another Vs. State of Gujarat, the Hon''ble Supreme Court held that there must be cogent evidence of mala fides or malicious intention of the informant or the complainant for taking note of the allegations of mala fide. The bald statement in this respect is not sufficient.

20. In State of Orissa and Another Vs. Saroj Kumar Sahoo, , it has been held

that probabilities of the prosecution version cannot be analyzed at this stage. Likewise the allegations of mala fides of the informant are of secondary importance. The relevant passage reads thus:

It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the Court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings.

(Emphasis added)

21. In *M. Narayandas Vs. State of Karnataka and Others*, the Apex Court rejected the contention that proceedings were liable to be quashed as the same stood initiated on account of personal vendetta observing that complaint has to be tested and weighed after the evidence is collected.

22. Similar view has been explained by the Apex Court in *State of Bihar and Another Vs. P.P. Sharma, IAS and Another*, and *Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others*, .

23. Thus, it is evident that in case there is sufficient evidence against the accused, which may establish the charge against him, even if the bias/mala fide is established, the proceedings cannot be quashed.

Defence and Investigational material not to be considered at this stage;

24. In *Savita v. State of Rajasthan* (2005) 12 SCC 338, it has been held that at the stage when investigation had not even started and charge-sheet had not been submitted the High Court could not take into consideration extraneous material given by the party concerned for reaching the conclusion that no offence was disclosed. This in fact was too premature a stage for the High Court to give such a finding when even the investigation had not started and the investigating agency had no occasion to find out whether there was material to file a charge-sheet or not.

25. Similarly in *State of T.N. Vs. Thirukkural Perumal*, , it has been held that it is impermissible to quash criminal proceedings based on evidence collected by the investigating agency during investigation. The Court held as under:

The normal process of the criminal trial cannot be cut short in a rather casual manner. The Court, is not justified in embarking upon an enquiry as to the reliability or genuineness of the allegations made of the FIR pr the complaint on

the basis of the evidence collected during investigation only while dealing with a petition...seeking the quashing of the FIR and the criminal proceedings.

26. In *S.M. Datta Vs. State of Gujarat and Another*, the practice of the High Court in scuttling criminal proceedings at the initial stage was criticised, except in the rarest cases where the same amounted to abuse of the process of law. Only broad allegations were to be seen and genuineness of the FIR could not be looked into at this stage. The Court observed as under:

Criminal proceedings, in the normal course of events ought not to be scuttled at the Initial stage, unless the same amounts to an abuse of the process of law. In the normal course of events thus, quashing of a complaint should rather be an exception and a rarity than an ordinary rule. The genuineness of the averments in the FIR cannot possibly be gone into and the document shall have to be read as a whole so as to decipher the intent of the maker thereof. It is not a document which requires decision with exactitude, neither is it a document which requires mathematical accuracy and nicety, but the same should be able to communicate or indicative of disclosure of an offence broadly and in the event the said test stands satisfied, the question relating to the quashing of a complaint would not arise. It is in this context, however, one feature ought to be noticed at this juncture that there cannot possibly be any guiding factor as to which investigation ought to be scuttled at the initial stages and investigations which ought not to be so scuttled. The first information report needs to be considered and if the answer is found on a perusal thereof which leads to disclosure of an offence even broadly, law Courts are barred from usurping the jurisdiction of the police since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere.

(Emphasis added)

27. In *M/s. Medchl Chemicals and Pharma P. Ltd. Vs. M/s. Biological E. Ltd. and Others*, the Apex Court observed that the complaint or charge-sheet can only be quashed of the rarest of rare exceptional case, but where the allegations on the face of the complaint do not constitute an offence, criminal proceedings may be unhesitatingly quashed. The Court held as follows:

Exercise of jurisdiction under the inherent power as envisaged in Section 482 of the Code to have the complaint or the Charge-sheet quashed is an exception rather than a rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the provision. With the lodgement of first information report the ball is set to roll and thenceforth the law takes its own course and the investigation ensues in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and its undue expansion is neither practicable nor warranted. In the event, however, the Court on a perusal of the complaint comes to a conclusion that the allegations levelled in the complaint or charge-sheet on the face of it does not constitute or disclose any offence as alleged, there ought not to be any hesitation to rise up to the

expectation of the people and deal with the situation as is required under the law. Frustrated litigants ought not to be indulged to give vent to their vindictiveness through a legal process and such an investigation ought not to be allowed to be continued since the same is opposed to the concept of Justice, which is paramount.

(Emphasis added)

28. In the case of Jagdish Yadav v. Ram Nandan Yadav 1990 SCC 648, it was observed that simply due to lodging of a cross-case the investigation ought not to have been interfered with by the High Court. As in view of the fact that the two cases related to the same incident it was open to the Magistrate after the two reports came to be placed before him to consider what action according to law is called for. Likewise the scope of interference with investigation when there were cross cases has been considered in Kari Choudhary Vs. Most. Sita Devi and Others, the Court observed that there cannot be two FIRs against the same accused in respect of the same case. But when there are rival versions in respect of the same episode, they would normally take the shape of two different FIR's and investigation can be carried on under both of them by the same investigating agency.

29. In Upkar Singh Vs. Ved Prakash and Others, the Court considered the issue and placing reliance upon its earlier judgment in T.T. Antony Vs. State of Kerala and Others, held that the registration of a complaint in the nature of counter case from the purview of the Code is not excluded. Any further complaint by the same complainant or others against the same accused, subsequent to the registration of a case, is prohibited under the Code because an investigation in this regard would have already started and further complaint against the same accused will amount to an improvement on the facts mentioned in the original complaint, hence will be prohibited u/s 162 of the Code. This prohibition does not apply to counter-complaint by the accused in the first complaint or on his behalf alleging a different version of the said incident. The Court held as under:

Be that as it may, if the law laid down by this Court in T.T. Antony case is to be accepted as holding that a second complaint in regard to the same incident filed as a counter-complaint is prohibited under the Code then, in our opinion, such conclusion would lead to serious consequences. This will be clear from the hypothetical example given herein below i.e. if in regard to a crime committed by the real accused he takes the first opportunity to lodge a false complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question, consequently he will be deprived of his legitimated right to bring the real accused to book. This cannot be the purport of the Code.

Thus, at the initial stage of the proceedings, it is not permissible for the Court to assess the merit of the case taking into consideration the evidence collected by the Investigating Agency for the purpose of quashing the criminal proceeding.

30. Thus, the Court is not permitted to consider/examine the reliability/genuineness of the allegations made in the FIR or complaint, at the stage of considering a case for quashing criminal proceedings.

In view of the above, as none of the grounds taken by the petitioner in person is tenable, we are not inclined to grant any indulgence.

The petition lacks merit and is accordingly dismissed.

I. Mahanty, J.

31. I agree.