

(2004) 12 JH CK 0020
In the Jharkhand High Court
Case No : Writ Petition (Cr) No. 335 of 2004

Pandey Pradip Nath Roy

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 16-12-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 120B, 466, 468, 471

Citation : (2005) 1 BLJR 421 : (2005) 1 JCR 150

Hon'ble Judges : Hari Shankar Prasad, J

Bench : Single Bench

Advocate : P.K. Prasad, V.R. Singh, for the Appellant; Anil Kumar Sinha, AG and R.R. Mishra, for the respondent Nos. 1 and 2 and J. Nath and S. Sahay for the respondent No. 3, for the Respondent

Judgement

Hari Shankar Prasad, J.—Heard Mr. V.P. Singh, learned counsel for the petitioner, Mr. Anil Kumar Sinha, learned Advocate General for the respondent Nos. 1 and 2, Mr. Jitendra Nath, learned counsel for the respondent No. 3 and Mr. P.K. Prasad, learned counsel appearing on behalf of the Advocate's Association.

2. This writ application under Article 226 of Constitution of India has been filed for quashing the FIR registered on the statement of respondent No. 3 as informant under Sections 466, 468, 471, 120B, IPC being Hazaribagh Sadar P.S. Case No. 485/2003, G.R. No. 2517/2003 against the petitioner on the ground that no case is made out under any of the sections so far as this petitioner is concerned.

3. Learned Counsel appearing for the petitioner gave details of development leading to lodging of the FIR and also the subsequent action on the basis of FIR leading to arrest of the petitioner and subsequent release of the petitioner. It was further pointed out that government conducted an enquiry on its level and its superior officer also made enquiry and even a team consisting of three officers also enquired into the matter but in every enquiry no material of involvement of

this petitioner was found nor of his connivance or conspiracy with other two named persons was found in forging the documents and using the same knowing the documents to be forged ones. In this connection learned counsel referred to several annexures filed on behalf of the respondent Nos. 2 and 3 and tried to show from their annexures that no complicity was found but all of a sudden, while lodging FIR, the informant, who was also a member of the three man enquiry committee, in course of enquiry, did not find any material against this petitioner but amazingly made this petitioner as named accused alleging therein that lawyer of the co-accused Badri Singh, namely, Mr. P.P.N. Roy, without verifying from the original, filed a writ petition annexing photo copies of the so called forged documents and got a favourable order from the learned Court below and his complicity is also there. It is stated that this allegation in the FIR is based without any foundation, as in none of the enquiry reports the name of this petitioner has transpired or has come that he has participated in the commission of offence, rather it is clear from the FIR itself that documents were forged in the Central Jail, Hazaribagh by Badri Singh in connivance with some other prisoners lodged in the Central Jail and those papers were passed on to his son Anant Kumar Singh, who maneuvered and swore an affidavit that all papers are genuine and when he swore affidavit that all papers are genuine then concerned lawyer of the writ petitioner had nothing to verify the genuineness of the documents because affidavit was sworn by the son of accused Badri Singh and, therefore, his complicity is not at all there and, therefore, this FIR is fit to be quashed. In this connection, learned counsel placed reliance upon a number of rulings to show that FIR can be quashed at this stage. He referred to State of Haryana and others Vs. Ch. Bhajan Lal and others, , in which the Apex Court has given certain guidelines in the facts and circumstances of which cognizance or FIR can be quashed and learned counsel referred to guideline Nos. 1, 5 and 7 fit into the case, which are quoted hereinbelow :

"(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.

(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.

(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."

4. Reliance was also placed upon Hamidan Khatoon and Others Vs. State of Jharkhand and Another, , in which cognizance was quashed on the ground that case was filed with ulterior motive. Reliance was also placed upon 2003 (2) Cri Cas 255 wherein it was held that when FIR lodged does not disclose commission of cognizable offence then the case is not within the purview to investigate the

same. The learned counsel drew my attention to para 19 of the foresaid case law, which is quoted hereinbelow :

"19. The High Court has held that the petitions filed by the appellants for quashing the complaint and the FIRs registered against them are premature. The question which arises is that where the complaint or the FIR does not disclose commission of a cognizable offence, whether the same can be quashed at the initial stage? This question was examined by this Court in *State of West Bengal and Others Vs. Swapan Kumar Guha and Others*, and it was held that the first information report which does not allege or disclose that the essential requirements of the penal provision are prima facie satisfied, cannot form the foundation or constitute the starting point of a lawful investigation. It is surely not within the province of the police to investigate into Report (FIR) which does not disclose the commission of a cognizable offence and the Code does not impose upon them the duty of enquiry in such cases. It was further held that an investigation can be quashed if no cognizable offence is disclosed by the FIR. The same question has been considered in *State of Haryana and others Vs. Ch. Bhajan Lal and others*, and after considering all the earlier decisions, the category of cases, in which the Court can exercise its extraordinary power under Article 226 of the Constitution or the inherent power u/s 482, Cr PC either to prevent abuse of the process of any Court or to secure the ends of justice, were summarized in para 108 of the Report and sub-paras (1) to (3) thereof are being reproduced hereinbelow :

"(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."

5. On the other hand, learned Advocate General appearing on behalf of the respondent Nos. 1 and 2, referred to FIR where in last para of the FIR this fact has been mentioned that it is evident that petitioner was involved in conspiracy with other co-accused but admitted that in none of the enquiry reports the name of this petitioner has come as one of the conspirators. It is also admitted that lawyers generally believe the statements of their clients to be true and when they bring some documents with them and place at the disposal of the lawyer and further since lawyers have got no agency to verify about the correctness of the documents, therefore, it is difficult for any lawyer to find out that a particular document is forged one or genuine.

6. The learned counsel appearing for the respondent No. 3 submitted that whatever action respondent No. 3 has taken, he has taken at the direction of his superior officers and to that effect he has annexed letters about the directions of the superior officers and at this stage the learned Advocate General pointed out that since letters and direction alleged to have been passed by the respondent No. 2 are not on record and simply those annexures have been annexed, which are not written by the respondent No. 2, hence complicity of respondent No. 2 in implicating the writ petitioner and making him a named accused cannot be found to be true and cannot be decided in this writ petition.

7. Mr. P.K. Prasad, learned counsel appearing on behalf of the Advocates Association, Jharkhand High Court, submitted that the job of lawyers is very difficult and lawyers are officers of the Court and they also need some protection, because it is very difficult to verify about the genuineness of the documents concerned as the lawyers have got no agency of their own and cannot have any agency and if lawyers go and verify about the documents, whether they are genuine or forge, in that case they will have to give up their practice and go on verifying the same. He further pointed out that dignity and independence of lawyers has to be protected.

8. Admittedly, as per FIR, forgery in document is alleged to have been committed in Central Jail Hazaribagh and at that time the writ petitioner was not present. Further from perusal of FIR it also appears that there is no allegation against the writ petitioner except in last para of FIR, where only on the basis of surmises and conjecture the name of this petitioner has been mentioned. It is also clear from the enquiry reports of various authorities including at the Government level (Annexures-A, B, B/1, B/2 and C) that name of the writ petitioner has not come anywhere in course of enquiry. The only allegation against the writ petitioner is that he filed writ petition No. 7/2003 without verifying the original documents and on the basis of photo copies of the said forged documents but there is no allegation against the writ petitioner that he ever participated in commission of preparation of forged documents but the writ petitioner was unnecessarily dragged in the case and was made a named accused.

9. Hence considering the facts stated above and placing reliance on State of Haryana and others Vs. Ch. Bhajan Lal and others, Hamidan Khatoon and Others Vs. State of Jharkhand and Another, find no material against the writ petitioner and in that view of the matter the FIR registered under Sections 466, 468, 471 and 120B, IPC being Hazaribagh Sadar P.S. Case No. 485/2003, G.R. No. 2517/2003 is quashed as against the petitioner only.

10. In the midst of hearing. Mr. P.K. Prasad, learned counsel made some, submissions on behalf of the Advocates Association, Jharkhand High Court, and apprised the Court about the difficult circumstances, in which lawyers, who are part and parcel and also officers of the Court, work and assist the Court. It is a matter worth consideration that writ petitioner, who has put in 31 years of long practice with a good reputation at bar, has so lightly been treated by the police

without verifying the antecedents of the writ petitioner, who never indulged in such sort of action but without any basis he was implicated and thereby police machinery by wielding power in an illegal way has created fear complex among the members of this noble profession that a lawyer, who has put in 31 years of practice and enjoying good reputation at the bar and also having no such nexus with any such person and doing his job as per norms of the profession can be so badly humiliated, then in such a circumstances, it is desirable that some sort of protection should be given to the members of this noble profession so that they may work fearlessly and independently without any bit of fear complex or hesitation among themselves and for that some sort of mechanism or some sort of orders shall have to be issued to the concerned authorities so that in future the members of this noble profession may not be harassed or humiliated in the way this writ petitioner has been put to humiliation. The lawyers being part and parcel and officers of the Court for smooth functioning of judiciary in the State, their cooperation is most needed and also that they may discharge their functions fearlessly, honestly and independently, they need some protection.

11. Hence, State Government of Jharkhand is directed to ensure safety security and dignity of the lawyers of the State by issuing a suitable circular in this behalf directing police officials all over the State so that they may not indulge in the sort of activity as happened in this case and those who will do so, will be considered to have violated the order of this Court and will be liable for contempt of Court and will be suitably punished.