

(2003) 12 GAU CK 0066
In the Gauhati High Court
Case No : Criminal Rev. P. No. 25 of 2003

Pradeep Dutta Bhowmik and Others	Vs	APPELLANT
State of Tripura and Another		RESPONDENT

Date of Decision : 04-12-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 169, 170, 482
Penal Code, 1860 (IPC) — Section 380, 447, 467

Citation : (2004) CriLJ 1697 : (2005) 1 GLR 513

Hon'ble Judges : T. Vaiphei, J

Bench : Single Bench

Advocate : A.K. Bhowmik, Counsel and D. Guha, for the Appellant; A. Ghosh, Public Prosecutor and S. Chakraborty, for the Respondent

Judgement

T. Vaiphei, J.—This is an application u/s 482 read with Section 401 of the Code of Criminal Procedure, 1973 and/or under Article 227 of the Constitution of India for quashing the order dated 23-5-1998 passed by the learned Chief Judicial Magistrate, West Tripura, Agartala in which the Officer-in-charge. West Agartala P.S. was directed to treat the complaint petition of the Opposite Party (for short "O.P.") No. 2 as F.I.R. and for registration of the F.I.R. No. West Agartala P.S. 134/1998 under Sections 380/454/448/467/468/471/120B/34 of I.P.C.

2. Shorn of details the material facts of the case may be stated :--

The O.P. No. 2 who is the wife of Late Bhupendra Dutta Bhowmik, filed a complaint petition on 23-5-1998 before the learned Chief Judicial Magistrate, West Tripura, Agartala against the petitioners for commission of the aforesaid offences. The learned C.J.M. forwarded the complaint to the O/C., West Agartala P.S. with a remark in the margin of the complaint petition, to treat the complaint as F.I.R. and to take up investigation as per provision of Section 156(3), of Cr.P.C. on the same day. The allegation of the O.P. No. 2 in the complaint petition is that the petitioner No. 7 along with some other conspirators removed the golden ornaments, jems and jewelleryes, valuable documents such as life

insurance policy and security from the steel almirah and steel locker when she was absent on 8-9-1997 and 9-9-1997. It is stated by the O.P. No. 2 that the aforesaid articles were kept in her custody, in her bed room at 3rd Floor and the editorial chamber at the 1st floor of "Dainik Sambad Bhawan" at Agartala. It would appear that on the basis of the aforesaid complaint as directed by the learned C.J.M. West Tripura, Agartala, a regular case, i.e. West Agartala P.S. Case No. 134/1998 under the aforesaid sections of I.P.C. was registered and Shri Kshitish Debnath, S.I. of Police was initially entrusted to investigate the case.

It is the case of the petitioners that though two Investigating Officers have so far examined each of the petitioners and the statements of the so called witnesses were recorded long time back yet the police has not filed the charge-sheet in the Court. The Investigating Officer, Sri A.K. Roy however, filed an application before the learned C.J.M. on 8-8-2001 with a prayer to dispose of the case on the basis of the investigation completed so far and allowing him to reopen the case if any foul-play was found in future by the members of the Trustee of the said Will executed by deceased Bhupendra Datta Bhowmik. But the learned C.J.M. has not passed any order on the basis of the said application of the Investigating Officer. It is stated by the petitioners that the genuineness of the Will dated 6-8-1997 executed by deceased Bhupendra Datta Bhowmik is now pending before the learned District Judge, West Tripura, Agartala in Misc. Probate 6/1997. It is submitted by the petitioners that the allegations made in the complaint petition are purely of a civil nature and as such a criminal proceeding does not lie and that the proper remedy lies in the Civil Court. It is also submitted by the petitioners that there is no prima facie case against them, jointly or singly and that the learned C.J.M. has failed to apply his mind and mechanically directed the O/C, West Agartala P.S. to treat the complaint petition as FIR and registered a regular case. It is further submitted by the petitioners that the main allegations against the petitioners of opening an Almirah and taking ornaments, valuable documents, certificates etc. having been not proved and further that the genuineness of the Will yet to be decided by the learned District Judge, the continuation of the criminal proceeding against them is illegal, capricious, arbitrary and violative of Article 21 of the Constitution of India.

3. I have heard Mr. A. K. Bhowmik, learned senior counsel, assisted by Mr. D. Guha, learned counsel appearing on behalf of the petitioners and Mr. A. Ghosh, learned Public Prosecutor as well as Mr. S. Chakraborty, learned counsel appearing on behalf of the respondents.

4. On going through the pleadings of the petitioners and the documents annexed in support thereof, it is obvious that the petitioners are charged with forging Will and also of stealing of valuable articles which are punishable under the Indian Penal Code. The principles governing quashing of a criminal proceeding by the High Court in exercise of its power u/s 482 of the Code or under Article 226 of the Constitution are no longer in dispute. In the R.S. Raghunath Vs. State of Karnataka and another, the Apex Court has laid down the circumstances under

which the extraordinary power under Article 226 of the Constitution or the inherent powers u/s 482, Cr. P.C. can be exercised by the High Court either to prevent abuse of the process of any Court or otherwise to secure the ends of justice which are as follows :--

"(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 in the Code of 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 (Paras 102 and 103)."

5. It is an admitted position that a civil suit by way of a probate proceeding is now pending before the learned District Judge, West Tripura, Agartala which is yet to determine the genuineness of the disputed Will executed by Late Bhupendra Datta Bhowmik. The question is whether a criminal proceeding against the petitioners can be initiated before the determination of the genuineness of the disputed Will by the learned District Judge, who is now seized with the matter in Misc. Probate 6/1997.

6. The Apex Court has an occasion to deal with somewhat a similar question in the case of Mohini Hemant Jadia v. Hemant Ghanshyamlal Jadia, (2002) 9 SCC 767 That case arose out of matrimonial dispute between a wife and husband when the wife filed a petition before the Family Court for a decree of restitution

of conjugal rights u/s 9 of the Hindu Marriage Act, she also moved an interlocutory application for injuncting the husband from interfering with her right to stay in the matrimonial house, which was resisted by her husband relying upon a document styling it as "family arrangement". It was contended by the wife that the said document was the result of forgery and accordingly filed a complaint before the Court of a Judicial Magistrate First Class alleging commission of offences under Sections 465, 466 and 467 of IPC. The Magistrate, took cognizance of the said offences and issued process against the husband. On receipt of the summons, the husband moved the Sessions Court in revision which was dismissed. Thereupon the husband moved the High Court u/s 482 of the Code for quashing the summons. The learned single Judge of the High Court quashed the criminal proceedings as per the impugned judgment. Thereafter the matter went up to the Apex Court which held that the Family Court, if called upon to decide the genuineness of the said document may have to enter on findings either in favour of the husband or against him, in which case the question of initiating criminal proceedings in respect of the said document would arise, if the Family Court reaches a finding that the said document is forged. The Apex Court disposed of the appeal by observing that without prejudice to the right of any person aggrieved (if the Family Court enters upon a finding that the said document is forged) for initiating proceedings against the persons concerned. In the instant case also one of the allegations of the O.P. No. 2 is that the Will dated 6-8-1997 is the result of forgery and that the petitioners are responsible for the same. As observed earlier the admitted fact is that the genuineness of the said Will or the question as to whether the said Will is the result of forgery is one of the issues being decided by the learned District Judge in Misc. Probate 6/1997. From these disputed fact it is obvious that this case is covered by the principles laid down in Mohini's case (supra).

7. In the result, the criminal proceeding initiated against the petitioners is thus premature and such question would arise only if the learned District Judge reaches a finding that the petitioners forged the disputed Will. Accordingly, the instant criminal proceeding in so far as the allegation of forgery is concerned is liable to be quashed.

8. In so far as the other offences alleged to have been committed by the petitioners are concerned, I have carefully considered the letter dated 8-8-2001 at Annexure-H written by the Inspector of Police, CID, Tripura, Agartala to the learned C.J.M., West Tripura, Agartala. The said letter is in the nature of prayer for obtaining legal procedure (whatever that may mean) in connection with West Agartala P.S. Case No. 134/1998. What can be gathered from para-2 of the said letter is that on the basis of investigation completed and the statement of witnesses recorded so far, the entry into the office chamber and premises of Late Bhupendra Ch. Datta Bhowmik were made by the petitioners on the strength of power of attorney executed by Late Bhupendra Ch. Datta Bhowmik on 21-7-1997 in presence of the witnesses. The concerned Inspector of Police is of the view that there is no evidence against the petitioners for opening the lockers and

almirah and for taking away the articles referred to earlier during the absence of the O.P. No. 2 and her husband. In so far as the question of forgery in respect of the said Will is concerned, the concerned Inspector of Police has suggested the desirability of disposing of the case on the basis of the investigation completed with an opportunity to reopen the case, If any foul play came out in future by the members of the Trustee of the said Will. This suggestion is apparently inconsistent with law laid down by the Apex Court in *Mohini Hemant Jadia v. Hemant Ghanshyamlal Jadia*, (2002) 9 SCC 767

9. However, there is one aspect of the case which disturbs this Court. Admittedly the complaint petition of the O.P. No. 2 has been treated as FIR by the Police u/s 156(3) of the Code that being so, once a case has been registered, it must be followed by investigation in accordance with the provisions of the Code. Once an investigation has been completed, the law enjoins the Officer-in-charge of the police station to forward a final report to a Magistrate empowered to take cognizance of an offence on a police report -- see Section 173 of the Code. The police report u/s 173 of the Code includes both the final report u/s 169 of the Code and a charge sheet u/s 170 of the Code. In other words, the completion of the investigation must culminate in filing either a charge-sheet u/s 170 or a final report u/s 169 of the Code. Even though investigation appears to have been done by the police by treating the complaint petition of the O.P. No. 2 as FIR, the contents of the Annexure-H is neither a final report nor a charge-sheet. It is not understood as to under what provisions of law the concerned Inspector of Police has submitted the said letter. From the contents of the Annexure-H, it also appears that investigation of the case has been done haphazardly and in a casual manner. Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. The concerned Inspector of Police must either submit a final report or charge-sheet against the petitioners before the learned C.J.M. once he has completed the investigation of the case. The contents of Annexure-H has obviously prevented the learned C.J.M. from proceeding in a manner prescribed by law. In that view of the matter, the concerned Inspector of police has acted illegally.

10. I have gone through the complaint petition at annexure-G. In so far as the offences alleged against the petitioners under Sections 447/454/380/120(B) IPC are concerned, on the basis of the available materials on record, it is neither desirable nor possible to conclude at this stage that there is no prima facie case against the petitioners inasmuch as investigation has not culminated in the final report or charge sheet as required by law. This is not a case in which it can be said that the uncontroverted allegations made in the FIR or in the complaint and the evidence collected in support by the same do not disclose the commission of any offence or make out a case against the petitioners nor can it be said that 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, which will warrant the closing of the criminal proceeding against the petitioners

in respect of the offence punishable under Sections 447/454/380/120(B) IPC.

11. In the result, this revision petition is disposed of with the following directions :--

(i) The criminal proceeding in respect of the offences under Sections 467/468/471/120(B), IPC against the petitioner stands quashed;

(ii) The Officer-in-charge of West Agartala P.S. shall submit final report or charge-sheet against the petitioners before the learned Chief Judicial Magistrate, West Tripura, Agartala within a period of 30 days from the date of receipt of this order if investigation of the case has been completed;

(iii) If the investigation has not been completed, the O.C. shall take immediate action for completion of the investigation without any delay; and

(iv) The Officer-in-charge of West Agartala P.S. shall consider the question of initiating criminal proceeding in respect of the disputed Will, if the learned District Judge, West Tripura, Agartala reaches a finding that the said document is forged.

No costs.