

(2021) 08 GAU CK 0097
In the Gauhati High Court
Case No : Criminal Petition No.87 Of 2013

Pranab Kr. Baruah And Another

APPELLANT

Vs

State Of Assam And Other

RESPONDENT

Date of Decision : 31-08-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
Indian Penal Code, 1860 — Section 34, 294, 325, 341, 506
Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 173, 401, 482

Citation : (2021) 08 GAU CK 0097

Hon'ble Judges : Rumi Kumari Phukan, J

Bench : Single Bench

Advocate : N. Dutta, A.M. Bora, P. Bhattacharya, P.P. Dutta, P.S. Lahkar, B.M. Choudhury, U. Choudhury, B. Choudhury

Final Decision : Dismissed

Judgement

1. By filing this petition under Section 482 read with Section 401 of the CrPC, the two petitioners sought for quashing of the FIR, in connection with the Latasil P.S. Case No.18/2013, registered under Section 341/325/294/506/34 of the IPC.
2. Heard Mr. A.M. Bora, learned senior counsel appearing for the petitioners. Also heard Mr. B.M. Choudhury, learned counsel for the respondent No.2 and Mr. P.S. Lahkar, learned Addl. P.P., Assam, representing the State respondent.
3. The petitioner No.1 is the brother-in-law of the informant and the petitioner No.2 is the daughter of the petitioner No.1. The informant works as Superintendent of Police, CID at Ulubari, Guwahati.
4. The brief fact of the FIR is that on the occasion of 'sradha' ceremony of mother of the petitioner No.1 (mother-in-law of the informant), all the family members gathered in their parental house to perform the rituals. Then on 19.01.2013, while informant was coming to her father-in-law's house to attend some rituals of mother-in-law, at that point to time both the present petitioners

obstructed the informant at the gate and the petitioner No.1 assaulted on her face with his shoes and tried to attack physically with a threatening that he will kill her. At the intervention of the other family members, she escaped from further assault. However at the request of the family members, on the plea of rituals of mother-in-law, the informant was forced to drop the matter at this stage. Since that incident, the accused/petitioner No.1 whenever saw the informant, he either show his fist or foot uttering unparliamentary words and threatened to kill her at any moment. On the last day of the 'sradha' ceremony, while she came to attend the rituals, the accused/petitioner No.1 again threatened her with a knife in his hand and as she shouted for help, he disappeared. Due to such constant unruly behavior of the petitioner No.1, the informant lodged the FIR on 30.01.2013, after the 'sradha' ceremony was over before the officer-in-charge, Latasil P.S., which was registered as Latasil P.S. Case No.18/2013, registered under Section 341/325/294/506/34 of the IPC.

5. Immediately after filing of the said FIR, the petitioner approached this Court with the present petition under Section 482/401 of the CrPC, for quashing the aforesaid FIR with the contention that without there being any prima facie material, the I.O. has registered the FIR and started the investigation, which is bad in law. It is contended that the FIR is totally false and concocted and baseless, which is made up by the informant with some after thoughts, whereas the petitioners were no way involved in the alleged act.

6. According to petitioner, he resides at Vododra (Boroda) and on being informed about the death of their mother he arrived in Guwahati for cremation on 16.01.2013 and after the rituals were done on very next date on 17.01.2013, while the petitioner No.1 along with his family was sitting near fireside of his resident at Kharghuli, he was rebuked by the informant with filthy language like 'kukur'. etc. on some matters of performance of rituals. On being objected by the petitioner against her behavior, the informant become more furious and threatened him that she would teach a lesson to them. There being no congenial atmosphere in the Kharghuli house, the petitioner left for his in-laws house until the conclusion of the rituals.

7. So far as regards the incident on 19.01.2013, it is stated that he went to Kharghuli house to bring his clothes and belongings, at that point of time, the informant arrived there and started scolding him and it was the informant who assaulted the petitioner with her shoes but he left the place. He left for Delhi on 29.01.2013, after completion of the 'sradha' ceremony. Denying such incident, it has been submitted that no any offence is made out against him and the investigating authority on misconception about the facts and circumstances registered the case and started investigation, which is bad in law.

8. Moreover, it is alleged that the investigating authority has been utilized by the informant for oblique purpose, being the Superintendent of Police, whereas no prima facie case is made out for the purpose of investigation. It is stated that the FIR is manifestly attended with mala fide intention with an ulterior motive for

wreaking vengeance against the petitioners with a view to spite the petitioners, due to private and personal grudge and the same is liable to be quashed by invoking the provision of Section 482 of the CrPC.

9. The informant as respondent No.2 has resisted such contention raised in the petition by filing affidavit-in-opposition, contending inter alia that the FIR dated 30.01.2013, lodged by her is based on true facts and the incident occurred in broad daylight in presence of many witnesses including family members as well as outsiders and neighbours.

10. As regards the facts behind, it is submitted that the petitioner No.1 picked up a quarrel with his eldest sister-in-law on the night of 17.01.2013, over the issue of covering the 'asthi' of his deceased mother by a religious pot which was used in the marriage of the daughter of his eldest brother, solemnized only two months back, which hurt the sentiment of the eldest sister-in-law. The petitioner No.1 got enraged and created an ugly situation by rebuking his eldest sister-in-law with filthy language in front of the family members present there. At that time, the deponent remained quiet since she had nothing to do with that incident and instead she advised her eldest sister-in-law to keep quiet, as the respondent No.2 had the experience of the petitioner No.1's quarrelsome attitude on the earlier occasion, in which she was defamed in public by the petitioner No.1. It is a fact that the petitioner No.1 had not good terms with both his sister-in-laws due to the reasons best known to him.

11. Regarding the incident, it is stated by the answering respondent No.2 that, on 19.01.2013, at about 2:15 P.M., while she was coming from her office to her father-in-law's house at Kharghuli to attend rituals of her deceased mother-in-law, who died on 15.01.2023, suddenly the petitioners came out from the house and obstructed her at the gate and without any reason, attacked her physically with fist and blows uttering filthy language and also assaulted her physically with his shoes on her face and tried to push her uttering that he is going to kill her.

12. Mr. A.M. Borah, learned counsel appearing on behalf of the petitioners has vehemently argued that no prima facie cognizable case is made out from the FIR and the informant/respondent no.2 lodged the FIR on personal vendetta without there being any authenticity in the allegation and informant being the higher police officer, has utilized the police machinery to register and investigate the case. Another point of attack in the FIR is the delay in filing the same, which according to the learned counsel for the petitioners, is fatal to prosecution, to raise doubt over the authenticity of the allegation.

13. Per Contra, the learned counsel Mr. B.M. Choudhury appearing for the informant respondent no.2 has pointed out, that informant in the present case, is the victim woman who has been assaulted publicly by the accused petitioner no.1 even in presence of official security personnel and there cannot be any other ground which may resist the informant from lodging the FIR. It has been submitted that any rational person irrespective of status can lodge such FIR

against the person who committed such offence. Further, the allegation that there is any personal vendetta while filing the FIR and that there is no authenticity in the accusation, can only be decided in course of trial but not at the nascent stage of investigation. So far as the delay in filing the FIR is concerned, it is submitted that the same has been properly explained in the FIR itself that due to the social ritual of 'sradha' ceremony of her mother-in-law and at the interference of family members, she did not file the FIR immediately after the occurrence. Accordingly, it has been contended that delay in filing FIR itself is not a ground to discard and quash the same.

14. The learned Addl. P.P. Mr. P.S. Lahkar has also opposed the contention made by the petitioners' side and has submitted that several incident that has been referred in the FIR, is enough to constitute cognizable offence and referring to the materials in the Case Diary, it is contended that the present petition is filed immediately after few days of filing the FIR, so the case could not proceed further and any debate to argue on the factual basis as to what happens on the fateful day of occurrence cannot be examined by this Court in a petition for quashing. It contends that whether any such offence was committed or not and other challenges that has been made in the present case can be unveiled only on due course of investigation, but due to the stay order of this Court, the investigation could not be proceeded and it should be allowed to proceed so as to come to a logical end.

15. Due consideration is given to the rival submission of the learned counsel for both the parties and also perused the Case Diary produced.

16. In the light of the submissions, this Court carefully examined the matters on record and the materials in the Case Diary.

17. It is pertinent to note that in the present case, FIR was filed on 30.01.2013 in the afternoon and the present petition for quashing was filed on 11.02.2013 and on the prayer of the petitioners' side, further proceeding of the investigation was stayed since 12.02.2013 and is continued till date. As a result of which, the investigation was at halt at the very initial stage, which could run only for 12 days and the case remains pending since years together before this Court.

18. Let us start with the contents of the FIR wherein, the informant who was working as a Superintendent of Police, CID has alleged that the accused persons on the fateful day obstructed her while she was entering into the house of her father-in-law to attend the rituals of the death of her mother-in-law and at that time the accused persons restrained her on the gateway and accused petitioner no.1 severely assaulted her with his shoes on her face, as a result of which, she sustained severe injury in her face and nose and he also abused her in bad language in front of her sub-ordinate officials, other family members and the people gathered in the premises. It is alleged that the accused petitioner no.1 continued his indecent conduct towards the informant till the end of 'sradha' ceremony for which, she filed the FIR after all rituals were over. Now, in her

statement before the I/O she has narrated the incident mentioned above in detail and two witnesses that has been examined who were the subordinate police officials have fully supported the statement of the informant that she was severely assaulted by the accused petitioner no.1 by shoes on her face resulting injury on her nose and face. The Medical Officer who examined the informant recorded such injury on her nose with severe pain and she was advised to consult ENT and Orthopedic Surgeon. But the subsequent Medical Report could not be collected, as in the meantime the investigation was stayed.

19. The informant in her statement has named so many persons including her family members and other persons of the locality who were present at the time of occurrence and witnessed the incident. But those persons could not be examined due to the stay of the investigation after few days of the occurrence. So the fact remains that investigation in all respect, including the examination of material witness, collection of medical evidence etc. is not completed.

20. So far as the contention of the petitioners' side that no prima facie cognizable case is made out and the same is not sustainable in view of the materials in the Case Diary. The informant/victim was restrained on the way from entering into the house and the house was situated nearby the public road and at public gaze and in the given circumstances offence under Section 341 IPC, is made out which is cognizable offence. Similarly, the offence under Section 325 IPC is a cognizable offence and till the final medical evidence is collected, it is hard to denude the offence.

21. Further contention of the petitioners' side is that the case was filed on personal vendetta etc. and it cannot be ascertained at this stage unless some specific/counter evidence is spell out. Although the petitioners alleged to have been misbehaved and assaulted by her (informant), but the petitioners have not filed any FIR in this regard. Discussing of factual aspect and/or merit of the case, will be premature and illegal in petition under Section 482 CrPC. Appreciation of delay and falsity case is subject-matter of trial, which can be addressed by the trial court, having regard to the facts and circumstances of the case, the evidence on record and the same cannot be a ground to quash an FIR.

22. A police officer is duty bound to register a case after receipt of an FIR about cognizable offence and it is immaterial who is the author of the FIR [Lalita Kumari v. State of Uttar Pradesh and Ors., (2012) 4 SCC 1].

23. After going through all materials on record, this Court is of the opinion that the challenge to the FIR has been made at a very initial stage, where the investigating officer could not proceed to enquire into the matter. So far as regards the power under Section 482 CrPC, such inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from doing any prima facie decision in a case where all the facts are incomplete and hazy, more so when the evidence has not been collected. Exercise of such power is not a rule but an exception and it cannot be exercised

at the whims and caprice, but it is to be exercised with due care and caution.

24. In landmark judgment in *State of Haryana and Ors. v. Bhajan Lal and Ors*, 1992 Supp (1) SCC 335, the Hon'ble Supreme Court has held that High Court should not embark upon an inquiry into the merits and demerits of the allegations and quash the proceeding without allowing the investigating agency to complete its task. Certain guidelines have been identified when the FIR/complaint can be quashed:

"102.(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 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 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 under Section 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 Act concerned (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 or the Act concerned, 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.

Over and above, following decisions can be gainfully referred to on the scope and ambit of Section 482 CrPC:

(i) *R.P. Kapur v. State of Punjab*, (AIR 1960 SC 866);

(ii) *Kurukshetra University v. State of Haryana* [(1977) 4 SCC 451;

- (iii) State of A.P. v. Golconda Linga Swaymy [(2004) 6 SCC 522;
- (iv) Zandu Pharmaceutical Works Ltd. v. Mohd. Saharful Haque, [(2005) 1 SCC 122];
- (v) Sanapareday Maheedhar Seshagiri v. State of Andhra Pradesh, [(2007) 13 SCC 165];
- (vi) State of Andhra Pradesh v. Bajjoori Kanthaiah, [(2009) 1 SCC 114];
- (vii) State of Maharashtra v. Arun Gulab Gawali, [(2010) 9 SCC 701];
- (viii) State of Orissa v. Ujjal Kumar Burdhan, [(2012) 4 SCC 547];

25. The law on the exercise of powers under Section 482 CrPC, has been succinctly laid down that such statutory power has to be exercised sparingly in the circumspection and in the rarest of rare cases to prevent the abuse of process of law or to prevent miscarriage of justice.

26. Summarizing all the decisions on the subject, in a recent decision in M/s. Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Ors. in Criminal Appeal No.330/2021 dated 13.04.2021, the Hon'ble Supreme Court has concluded as follows:

"23. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;
- ii) Courts would not thwart any investigation into the cognizable offence;
- iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;
- iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).
- v) While examining an FIR/complaint, quashing of which is sought, the court

cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the 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;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied.

27. In view of the law laid down by the Hon'ble Supreme Court and the reasons discussed above, this Court is of the opinion that prayer for quashing the FIR lacks merits and deserve no consideration.

Accordingly, the criminal petition stands dismissed.