
(1974) 02 GAU CK 0005
In the Gauhati High Court

R.K. Dalmia and Others

APPELLANT

Vs

The State Government and Another

RESPONDENT

Date of Decision : 13-02-1974

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 156, 173
Penal Code, 1860 (IPC) — Section 109, 114, 120B, 204, 211

Citation : (1975) CriLJ 1332

Hon'ble Judges : M.C. Pathak, C.J.;B.N. Sharma, J

Bench : Division Bench

Judgement

M.C. Pathak, C.J.—By this application under Article 226 of the Constitution of India read with Section 561-A of the Code of Criminal Procedure the petitioners have substantially prayed for quashing the investigation proceeding before the Police as well as the proceeding pending before the Sessions Judge, Gauhati. The facts of the case may briefly be stated as follows:

2. The Opposite Party No. 2 Shyam Sundar Agarwalla lodged a First Information Report with the Officer-in-Charge, Gauhati Police Station alleging that the petitioners have committed an offence under Sections 420/511, Indian P. C. as well as some offences under the Prevention of Food Adulteration Act, 1954. On receipt of the First Information Report the Police Registered a case being Gauhati Police Station Case No. 62 (6)/69 and during investigation stage the Gauhati Police got the accused persons arrested through Delhi Police and the accused persons were released on bail. Thereafter the present petition has been filed in this Court on 5-12-1969.

3. Mr. P. Choudhury, the learned Counsel appearing on behalf of the accused-petitioners submits that the allegations made in the First Information Report do not disclose any offence and therefore the investigation proceeding should be quashed. In the prayer portion of the petition there is a further prayer that the proceeding before the Sessions Judge, Gauhati should be quashed.

4. It appears that the Magistrate passed an Order on 1-8-1969 in Gauhati Police Station Case No. 62 (6) of 1969 under Sections 420/511, Indian Penal Code (G. R. Case No. 1164/69) to the effect that in order to avoid deterioration of the seized goods those are released to the owner with the direction that they would not be able to dispose of the goods in the district as it was reported to be adulterated and they, meaning the accused-petitioners, have given an undertaking to that effect. Accordingly the learned Magistrate directed the Police to release the goods seized to the owner immediately subject to the aforesaid conditions.

5. It is submitted at the Bar that the Opposite Party No. 2 moved the learned Sessions Judge in revision against the order dated 1-8-1969 passed by the learned Magistrate. That Revision Petition was rejected by the learned Sessions Judge on 14-11-1969 and there was no further revision petition in this Court. Net result is that the seized goods were directed to be released to the owner. That being the position, the question of quashing the proceeding before the Sessions Judge does not arise at all inasmuch as the Rule in this case was issued on 5-12-1969 after the disposal of the revision petition before the Sessions Judge on 14-11-1969. It is not clear why the present petitioners did not refer to the order of rejection made by the learned Sessions Judge. On going through the First Information Report it is quite clear that there are certain allegations regarding an offence under Sections 420/511, Indian Penal Code as well as regarding an offence under the Prevention of Food Adulteration Act. The Police started investigation and the same has not yet been completed and no charge-sheet has been filed before the learned Magistrate. That being the position, at this stage there cannot be any interference with the investigation proceeding pending before the Police.

6. In this connection the decision of the Supreme Court in Hazari Lal Gupta Vs. Rameshwar Prasad and Another, etc., is apposite. The Supreme Court has made the following observation at page 386 of the report.

The inherent power of the High Court u/s 561-A of the Criminal P. C. has been considered by this Court in R.P. Kapur Vs. The State of Punjab, and State of West Bengal Vs. S.N. Basak, In exercising jurisdiction u/s 561-A of the Criminal P. C. the High Court can quash proceedings if there is no legal evidence or if there is any impediment to the institution or continuance of proceedings but the High Court does not ordinarily enquire as to whether the evidence is "reliable or not". Where again, investigation into the circumstances of an alleged cognizable offence is carried on under the provisions of the Criminal P. C. the High Court does not interfere with such investigation because it would then be impeding investigation and jurisdiction of statutory authorities to exercise power in accordance with the provisions of the Criminal P. C. The High Court was correct in dismissing the applications u/s 561-A of the Cri. P. C.

In the instant case on receipt of the First Information Report the Gauhati Police registered a case and has started investigation u/s 156 of the Criminal P. C. and

during investigation the Police arrested the accused-petitioners and released them on bail. The investigation done by the Police in the instant case is within their jurisdiction and the jurisdiction of the Police has not been challenged in this petition. That being the position, we do not find any ground to interfere with the investigation because that would mean impeding investigation being made by police in exercise of their jurisdiction u/s 156 of the Code of Criminal Procedure.

7. Mr. P. Choudhuri, the learned Counsel appearing on behalf of the petitioners vehemently submits that if no offence is disclosed in the First Information Report itself then the Court may quash the proceeding, that is to say, quash the investigation also. In support of this proposition Mr. Choudhuri has relied on R.P. Kapur Vs. The State of Punjab, We have gone through that decision. The facts of that case may be briefly noted.

On December 10, 1958, Mr. M. L. Sethi lodged a First Information Report against the appellant Mr. R. P. Kapur and alleged that he and his mother-in-law Mrs. Kaushalya Devi had committed offences under Sections 420, 109, 114 and 120-B. of the Indian Penal Code. When the appellant found that for several months no further action was taken on the said First Information Report which was hanging like a sword over his head he filed a criminal complaint on April 11, 1959, against Mr. Sethi under Sections 204, 211 and 385 of the Indian Penal Code and thus took upon himself the onus to prove that the First Information Report lodged by Mr. Sethi was false. On the said complaint Mr. Sethi moved that the proceedings in question should be stayed as the Police had not made any report on the First Information Report lodged by him and that the case started by him was still pending with the police. After hearing arguments the learned Magistrate ordered that the appellant's complaint should stand adjourned.

Thereupon the appellant moved the Punjab High Court u/s 561-A of the Code of Criminal Procedure for quashing the proceeding initiated by the First Information Report in question. Pending the hearing of the said petition in the said High Court the police report was submitted u/s 173 of the Code on July 25, 1959. Subsequently, on September 10, 1959, Mr. Justice Kapoor heard the appellant's petition and held that no case had been made out for quashing the proceedings u/s 561-A. In the result the petition was dismissed. It is against this order that the appellant has come to this Court by special leave.

On considering the facts of that case and the submissions made by the learned Counsel the Supreme Court observed as follows:

In exercising its jurisdiction u/s 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained. Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court u/s 561-A in the matter of quashing criminal

proceedings, and that is the effect of the judicial decisions on the point.

This being the true legal position the question which falls for our decision is : Does the appellant show that his case falls under any of the three categories already mentioned by us. There is no legal bar to the institution of the present proceedings or their continuance and it is obvious that the allegations made in the First Information Report do constitute offences alleged against the appellant. His argument, however, is that the evidence on record clearly and unambiguously shows that the allegations made in the First Information Report are untrue; he also contends that certain powerful influences have been operating against him with a view to harm him and debar him officially and otherwise and have instigated and latter seized upon the false First Information Report filed by Mr. Sethi against him." In this connection he has naturally placed emphasis on the fact that the investigating agency has acted with extraordinary dilatoriness in the matter and that for several months the police did not make the report u/s 173 of the Code.

It is perhaps likely that the appellant being the seniormost Commissioner in the Punjab the investigating authorities may have been cautious and circumspect in taking further steps on the First Information Report; but we are satisfied that this explanation cannot account for the inordinate delay made in submitting the report u/s 173. It is of utmost importance that investigation into criminal offences must always be free from any objectionable features or infirmities which may legitimately lead to the grievance of the accused that the work of investigation is carried on unfairly or with any ulterior motive. Even so it is difficult to see how this conduct on the part of the police officers can materially assist the appellant in his prayer that the proceedings which have now reached the criminal court should be quashed.

So going through this decision it is found that there was a proceeding after submission of the charge sheet by the police and even then the Supreme Court refused to interfere in that case. Though at one stage it has been observed that if allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged, then there may be quashing of proceeding u/s 561-A. But this case does not lay down the principle that investigation before the submission of the charge sheet may be interfered with. If that be so, that would be, as observed by the Supreme Court itself, impeding investigation by police officers as empowered by the provisions of the Criminal P. C., and that is the view held in AIR 1945 18 (Privy Council) and it has been followed by the Supreme Court in several other decisions.

In the circumstances we find that there is no substance in this petition and it is accordingly rejected.

B.N. Sarma, J.

8. I agree.