
(1990) 05 GAU CK 0012
In the Gauhati High Court
Case No : Criminal Revision No. 50 of 1986

Sagarmal Bhura

APPELLANT

Vs

The State of Assam and Another

RESPONDENT

Date of Decision : 22-05-1990

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 482
General Clauses Act, 1897 — Section 26
Penal Code, 1860 (IPC) — Section 154, 156, 379, 411

Citation : (1990) 2 GLR 166

Hon'ble Judges : Manisana, J

Bench : Single Bench

Advocate : N.M. Lahiri, M.A. Laskar and C.N. Sabswalla and A.K. Goswami, for the Appellant; G. Gopal, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Manisana, J.—In this application u/s 482, Code of Criminal Procedure read with Article 227 the Constitution of India, the Petitioner has challenged the First Information Report in Silchar PS Case No. 79/86 (GR Case No. 190 1986) u/s 379/411, IPC and proceedings arising out of First Information Report.

2. The First Information Report runs:

I have the (sic) to report that on 27.1.86 in the strength of search warrant issued by District Magistrate I went Super India Match Co (P) Ltd for searching suspected stolen property accompanied by Sub-Divisional Magistrate etc. The owner of the mill Sri Sagarmal Bhura was present and I found 58 (fifty eight) nos of timber logs bearing no forest department hammer marks and such suspected to be stolen property. Moreover the owner was having machinery for sawing of timber as a saw mill but had no valid license for saw mill nor he maintained the register A and B which are required to be maintained as per law.

Therefore, he has committed offence u/s 379/411 IPC.

I, therefore, request you kindly register a case u/s 379/411, IPC. I have taken up the investigation.

3. Mr. N.M. Lahiri the learned Counsel for the Petitioner has contended that the First Information Report does not disclose the essential requirements of Section 379 or 411, IPC. Therefore the First Information Report cannot form the foundation or constitute starting point of lawful investigation. In support of his contention Mr. Lahiri has referred me to the decision of the Supreme Court in the State of West Bengal and Others Vs. Swapan Kumar Guha and Others,

4. Section 156 confers on the police power to investigate a cognizable offence without the order of a Magistrate either on information given Section 154, Code of Criminal Procedure relating to commission of a cognizable offence, or of their own motion on their own knowledge or other reliable information.

5. The question is,--Whether the First Information Report should disclose prima facie commission of a cognizable offence, if the police starts investigation on the basis of the First Information Report given u/s 154, Code of Criminal Procedure. In State of West Bengal and Others Vs. Swapan Kumar Guha and Others, it has been held:

A 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.

The Supreme Court has further observed that the question as to whether the First Information Report prima facie discloses an offence under any penal statute has to be decided in the light of the essential requirements of the penal provision.

6. In my judgment, in the above quoted passage the principle underlying there does not mean that a pedantic approach should be made. A liberal approach is to be adopted on the principle for the following reasons. The First Information Report should receive a liberal construction and not hair splitting technicalities as sometimes allegations made in the First Information Report are expressed in the words which may not expressly make out a case in accordance with the strict interpretation of law. In such a case, it is the duty of the Court to ascertain the substance of the allegations made in the report to determine the question, is, whenever the question about lack of requirements is raised, the enquiry should not be so much about the form of the allegations, instead the Court must find out the substance or the real meaning of the allegations.

7. Keeping the above principle in view let me examine the case on hand. From a close reading of First Information Report, it appears that the requirements of Section 379 or 411 may not be expressly made out in accordance with strict interpretation of Section 379 or 411, IPC. But, if a mill owner without licence is found in possession of timber log which does not bear forest hammer mark, it prima facie discloses that he is either a thief or has received the goods knowing

them to be stolen. Therefore, I am of the view that a prima "facie case u/s 411 or 379, IPC is disclosed in the report.

8. The next contention of Mr. Lahiri is that, if any offence is disposed in the First Information Report, it would be an offence under the Assam Forest Regulations and, therefore the police has no jurisdiction to take cognizance of an offence under the Assam Forest Regulations. Section 26 of the General Clauses Act, 1897 provide that where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence. In view of the provisions u/s 26, even assuming that the act or omission alleged in the First Information Report constitutes an offence under the Assam Forest Regulations, the alleged act or omission also prima facie constitutes an offence u/s 379 or 411, IPC. Therefore the contention of Mr. Lahiri cannot be accepted.

9. For the foregoing reasons, the petition is dismissed. The observation made herein is without prejudice to the existing right or claim of the Petitioner. The police diary called for shall be sent back immediately.