

(2018) 05 GAU CK 0064
In the Gauhati High Court
Case No : Crl.Pet. 642 of 2016

SATYA NARAYAN THAKUR and 2 ORS

APPELLANT

Vs

THE STATE OF ASSAM AND ANR

RESPONDENT

Date of Decision : 10-05-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 173(2), 173(8), 397, 401, 482
Indian Penal Code 1860 — Section 34, 323, 326, 341, 506
Constitution of India, 1950 — Article 20, 21

Citation : (2018) 05 GAU CK 0064

Hon'ble Judges : AJIT BORTHAKUR

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. This is a petition under Section 482 read with Section 397/401 Cr.P.C., praying for quashing the Fatashil Ambari P.S. Charge-Sheet Nos.05/2015,

dated 27.01.2015 and 05/2015 (B), dated 14.08.2015, filed by the investigating officer under Section 173 (2) Cr.P.C., against the petitioners as well as

the impugned order, dated 12.07.2016, passed by the learned Special Judicial Magistrate, Kamrup (M) at Guwahati in G. R. Case No. 121/2015 under

Sections 326/506/34 IPC.

2. Heard Mr. T. H. Hazarika, learned counsel for the petitioner. Also heard Mr. D. Das, learned Addl. PP, Assam, for respondent No. 1 and Mr. U.

K. Barman, learned counsel for respondent No. 2.

3. The petitioners' case, precisely, is that the respondent No. 2 lodged an FIR, on 04.01.2015, with the Officer-in-Charge of Fatashil Ambari P.S.,

Guwahati alleging that on that day at about 10 PM, the petitioner No. 3 was found pooping his dog in front of his house and when resisted, he called

his elder brother, the petitioner No. 1. Thereafter, the petitioner No. 2 assisted by petitioner No. 2 assaulted in his hand and head by means of a

â??daoâ?? and when his daughter resisted them both, they assaulted her in hand by the â??daoâ??. The petitioner No. 1 further abused and

threatened and slapped them and delivered punch blows. As a result, both of them sustained injuries. Based on the said FIR, Fatasil Ambari P.S. Case

No. 06/2015 under Section 341/326/506/323/34 IPC, dated 04.01.2015, was registered. The police sent the injured informant, his son and daughter for

medical examination in Gauhati Medical College & Hospital (for short, â??GMCHâ??) and the doctor, after their examination held the opinion that

they sustained simple injuries. Accordingly, on completion of investigation, the police submitted Fatasil Ambari P.S. Charge-Sheet No. 05/2015 under

Section 341/323/506/34 IPC against the petitioners. Subsequently, however, additional Charge-Sheet, being Fatasil Ambari P.S. Case No. 06/2015

under Section 341/326/506/323/34 IPC was filed against the petitioners as the medico-legal report on the injury of the informantâ??s daughter, issued

by Marwari Hospital & Research Centre, Guwahati, dated 07.09.2015, showed that the nature of injury she sustained was grievous in nature.

Accordingly, the learned trial Magistrate, after hearing the learned counsel of both the sides and consideration of the materials placed, having found

prima facie materials, framed charges under Section 326/506/34 IPC and read over the charges to the petitioners to which they pleaded not guilty.

4. The crux of the dispute that falls for consideration in this petition is whether the investigating agency is empowered to conduct further investigation

under Section 173 (8) Cr.P.C., without leave of the Court and submit a second Charge-Sheet and whether the court can take a fresh cognizance of

new offence based on such second/ supplementary Charge-Sheet.

5. Mr. T. H. Hazarika, learned counsel for the petitioners, submits that the FIR revealed, prima facie, the use of â??daoâ?? and fist and blows by the

petitioners causing injuries on the persons of the informant, his son and daughter and the doctor, who initially examined them held the opinion that the

injuries were simple in nature, based on which the offence under Section 323 IPC was inserted in the 1st Charge- Sheet. Mr. Hazarika further submits

that after receipt of the said 1st charge-sheet, the learned Magistrate accordingly took cognizance of the offences against the petitioners and as such,

filing of a second/supplementary charge- sheet, after further investigation, without leave of the Court, addition of the offence under Section 326 IPC is illegal under Section 173 (8) Cr.P.C., and so also taking of cognizance of the said newly added offence.

6. Mr. D. Das, learned Addl. Public Prosecutor, submits that the police can reopen an already completed investigation and can submit a fresh charge-sheet, if they find fresh evidence against the accused as it is within their right to act independently in investigation and even on the prayer of the victim.

7. The law enjoins that the police report under Section 173 (2) Cr.P.C. should be forwarded to the Magistrate soon after completion of the investigation. The term "investigation" occurring in Section 173 (2) Cr.P.C. indicates the opinion of the Officer-in-Charge of the Police Station, which is, of course, is not a legal evidence. At this stage of Section 173 (2) Cr.P.C., the question of interpretation of legal evidence does not arise and in any event, that function is that of the Court. On the other hand, Section 173 (8) Cr.P.C. talks about "further investigation". It needs to be mentioned here that a fair and transparent investigation is a constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. In T.

T. Antony "vs- State, reported in (2001) 6 SCC 181, the Apex Court held that the investigating agency after filing of report under Section 173 (2)

Cr.P.C. if comes into possession of further information or material, they need not register a fresh FIR and they are empowered to make further investigation, normally with the leave of the Court, and where during further investigation, they collect further evidence, oral or documentary, they are obliged to forward the same with one or more further reports, which is the import of Section 173 (8) Cr.P.C. Section 173 (8) Cr.P.C. permits further investigation, de hors any direction from the Court, even after the Court has taken cognizance of any offence (s) on the basis of a police report submitted earlier. It is in the case of reinvestigation without prior permission of the Court is prohibited, but further investigation is permissible in given circumstances.

9. Therefore, in the backdrop of the facts of the case, neither the police in submitting the supplementary Charge-Sheet nor the learned Court below committed any illegality, while taking cognizance of a new offence as stated

above vide the impugned order, warranting any intervention.

10. Consequently, the petition stands dismissed.