

(2018) 05 GAU CK 0014
In the Gauhati High Court
Case No : Crl.Pet. 983 of 2017

SHANKAR SINHA and ANR.

APPELLANT

Vs

THE STATE OF ASSAM and ANR

RESPONDENT

Date of Decision : 10-05-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 162, 482
Indian Penal Code 1860 — Section 120B, 409, 419, 420, 468, 471
Constitution of India, 1950 — Article 21

Citation : (2018) 05 GAU CK 0014

Hon'ble Judges : AJIT BORTHAKUR

Bench : Single Bench

Final Decision : Dismissed

Judgement

1.By this common judgment, I propose to dispose of the above 2 (two) criminal petitions filed under Section 482 Cr.P.C., which are pertaining to

allegations of embezzlement of customers's money credited to their respective accounts maintained in the IndusInd Bank at Guwahati.

2. In Crl. Pet. No. 983/ 2017, under Section 482 Cr.P.C., the petitioners have prayed for quashing and setting aside the investigation and further

proceeding in the FIR, registered as Paltan Bazar P.S. Case No. 1140/2017 under Section 120B/420/468/471 IPC against them.

3. In Crl. Pet. No. 984/2017, under Section 482 Cr.P.C., the petitioners have prayed for quashing and setting aside the investigation and further

proceeding in the FIR, registered as Paltan Bazar P.S. Case No. 717/2017 under Section 120B/420/409/468 IPC and Charge-Sheet, dated 03.11.2017,

filed in G. R. Case No. 9942/2017 of the Court of learned Chief Judicial Magistrate, Kamrup (M) at Guwahati.

4. The petitioners' case, in a nutshell, is that on 29.07.2017 at about 10 am, one Dr. Biraj Jyoti Goswami, partner of M/s Ophthalmic Associates had lodged an FIR with the Officer-in-Charge, Paltan Bazar P.S., inter-alia, alleging in detail the fraudulent activities in their account maintained in IndusInd Bank, G. S. Road Branch, Guwahati, whereupon Paltan Bazar P.S. Case No. 711/2017 under Section 419/420 IPC was registered against the said bank branch officials. Thereafter, on the same day, that is, 29.07.2017, at around 11.30 pm., one Amal Deka, Branch Manager, IndusInd Bank, Guwahati Main Branch, also lodged another FIR with the Officer-in-Charge, Paltan Bazar P.S., Guwahati, inter-alia, alleging commission of fraud, manipulation, misappropriation of property, breach of trust and other offences by the petitioners, husband and wife working in the same bank. The said FIR was registered as Paltan Bazar P.S. Case No. 717/2017 under Section 120B/409/420/468 IPC, dated 29.07.2017. Both the petitioners were arrested in connection with the said two cases and got released on bail. While releasing the petitioner No. 1, on bail, in connection with the said Paltan Bazar P.S. Case No. 717/2017, a bench of this Court observed that both the aforementioned FIRs are similar and in that sense the investigation in the earlier case will cover the latter case vide order, dated 24.10.2017, passed in BA No. 1435/2017. Eventually, on completion of the investigation in Paltan Bazar P.S. Case No. 717/2017, Police filed Charge-Sheet, dated 03.11.2017 against both the petitioners and another, with prayer seeking permission to file supplementary Charge-Sheet, which was registered as G. R. Case No. 9942/2017 in the Court of learned Chief Judicial Magistrate, Kamrup (M), Guwahati. Thereafter, on 22.11.2017, one Chiranjib Chakraborty, Branch Manager, IndusInd Bank, Guwahati Branch lodged another FIR with the Officer-in-Charge, Paltan Bazar P.S., inter-alia, alleging that in continuation of their earlier complaint of misappropriation of funds of the Accounts of various customers, which was subsequently registered as Paltan Bazar P.S. Case No. 717/2017 against the petitioners, two customers have informed that post reconciliation of their accounts at their end, it has come to light that they had been provided with fabricated statements of their accounts and that forged signatures were used to siphon out funds from their accounts, which amounted to Rs.70 lacs, more than the amount, which was reported earlier. This FIR has been registered as Paltan Bazar P.S. Case No. 1140/2017, under Sections 120B/420/468/471 IPC, dated

22.11.2017, which is presently under investigation. The petitioners have contended that Paltan Bazar P.S. Case Nos. 717/2017 and 711/2017 as well

as 1140/2017 are containing identical allegations against the petitioners and so in utter violation of the mandate of Article 21 of the Constitution of India

and the third FIR, dated 22.10.2017 is hit by section 162 Cr.P.C.

5. The respondent No. 2/ Branch Manager, IndusInd Bank, Guwahati Branch in his affidavit-in-opposition averred that the petitioner No. 1 was the

manager of IndusInd Bank Ltd., Gangtok Branch and his wife petitioner No. 2 was the Deputy Manager of Guwahati Branch of the same bank and

they along with another in a pre-planned manner committed fraud with the Bank causing it to suffer huge pecuniary loss pertaining to customers's

deposits. It has been further contended that the aforesaid FIRs in succession had to be filed based on discovery of different fraudulent transactions

committed by the petitioners resorting to forgery, as per fresh allegations received from the bank's customers and on the bank's internal

enquiry. It has also been contended that investigation into the FIR, whereupon Paltan Bazar P.S. Case No. 1140/17 is registered is underway and as

such, at this stage, if the FIR is quashed, the entire investigation will be adversely affected. Hence, it is prayed to dismiss the petition.

6. Mr. S. Mitra, learned counsel for the petitioners, submits that the petitioners have been put to serious embarrassment over the same set of facts by

way of filing of three FIRs and as such, in exercise of the wholesome power under Section 482 Cr.P.C., this Court may quash the third FIR upon

which Paltan Bazar P.S. Case No. 1140/17 is registered. Mr. Mitra submits that justice demands that the petitioners cannot be vexed repeatedly on

the same set of facts exposing them to face a number of criminal proceedings.

7. Mr. B. Gogoi, learned Addl. PP, submits that three FIRs in question do not relate to the same set of facts and the allegations are rooted in

fraudulent series of acts, which surfaced one after another involving illegal siphoning of customers money of different amounts. Mr. Gogoi further

submits that in the bank's internal enquiry and in continuous police investigation into the allegations of siphoning of bank money, different modes of

fraudulent acts committed by the petitioners and others have come to light and that it would take more time to complete the investigation into the

alleged economic/ penal offences.

8. Opposing the petition, Mr. A. Bhattacharjee, learned counsel appearing for the informant/ respondent No. 2 reiterates the grounds

averred in the affidavit-in-opposition and further submits that all the three FIRs are absolutely different and registered under different sections of the

Indian Penal Code, as such neither of them can be quashed as all the FIRs on the face of the records make out sufficient prima-facie case against the

petitioners. Mr. Bhattacharjee further submits that in the case of State of Haryana-vs-Bhajan Lal, which has been reaffirmed by the Apex Court in

the case of State of Telengana-vs-Habib Abdulla Jeelani, reported in (2017) 2 SCC 779 held that if the allegations in the FIR on their face value make

out a prima-facie case against the accused, the same cannot be quashed. It is also submitted that the FIRs have been lodged as the fresh fraud

incidents allegedly committed on the bank by the petitioners have come to light after receipt of the fresh complaint from the customers and confirmed

in departmental preliminary enquiry.

9. Perusal of the FIR, dated 29.07.2017, supported by documentary evidence whereupon Paltan Bazar P.S. Case No. 711/2017 under Section 419/420

IPC was registered revealed the allegation of fraudulent activities at IndusInd Bank, G. S. Road Branch, Guwahati without specifying the amount of

money involved and without naming the culprits, who were connected therein. Subsequently, on the same day, the Branch Manager lodged another

FIR, whereupon Paltan Bazar P.S. Case No. 717/2017 under Section 120B/409/420/468 IPC, dated 29.07.2017, was registered identified the

petitioners, who are the said bank officials and husband and wife as the culprits, who allegedly misappropriated the said 1st informant's deposits of

Rs.27,06,201/- and Rs.15,60,000/- on 13.07.2017, fraudulent withdrawal of Rs.6 lacs and transfer of an amount of Rs.22 lacs from their account to the

account of another customer. The said 2nd FIR, dated 29.07.2017, lodged by the Branch Manager as per the RBI guidelines that fraud cases are to be

reported to the police. After those fraudulent transactions in the accounts of the customers, namely, Malabika Sarma, Bidyut Kalita and a firm M/S

Opthalmic Associates were reported, the said bank received two such complaints from other customers, namely, Biraj Jyoti Goswami and Tanmoy

Goswami, who alleged of commission of fraud in electronic and print media, by means of their forged signatures in respect of their accounts involving

approximately an amount of Rs.70 lacs. The investigation into this third FIR, dated 22.10.2017, is underway. Therefore, it is crystal clear from the

FIRs that the allegations contained therein were committed on different occasions and in different illegal modes and further, through forgery of

signatures of the customers in respect of different quantum of money deposits made in their accounts. The allegations in fact relate to economic

offences, which normally constitute a distinct category of offences, unlike of a general incident, which concerns single set of facts.

10. In the above context, as Mr. Bhattacharjee submits, a reference may be made to the relevant paras of the judgment delivered in S. M. Datta-vs-

State of Gujarat, reported in Special Leave Petition (Civil) 1566-69 of 2000, which are herein below extracted:-

“Since the decision of Privy Council in Khwaja Nazir Ahmed(King Emperor-vs-Khwaja Nazir Ahmed), 1944 (71) IA 203; AIR 1945 PC 18 and

till this day there is existing one salutary principle that in normal circumstances, the law courts would not thwart any investigation and criminal

proceedings initiated must be allowed to have its own course under the provisions of Code. The powers of the police ought to stand unfettered to

investigate cases where they suspect or even have reasons to suspect the commission of a cognizable offence and the FIR discloses of such

offence”.

“When an offence is disclosed, a proper investigation in the interests of justice become necessary to collect materials for establishing the offence

and for bringing the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in

escaping from the consequences and the offender may go unpunished to the detriment of the cause of justice and the society at large. Justice requires

that a person who commits an offence has to be brought to book and must be punished for the same. If the offence will go unpunished to the serious

detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the Court normally does not interfere

with the investigation of a case where an offence has been disclosed”.

11. Again in Parbhatbhai Aahir @ Parbatbhai Bhimsinhbhai-vs- State of Gujarat and Another., reported in (2017) 9 SCC 641, the Apex Court

reiterated the guiding principles which High Court should consider in determining

whether to effect such quashment, held:-

Section 482 is prefaced with an overriding provision. The statute saves the inherent power of the High Court, as a superior court, to make such

orders as are necessary (i) to prevent an abuse of the process of any court; or (ii) otherwise to secure the ends of justice. In *Gian Singh* (supra) a

bench of three learned Judges of this Court adverted to the body of precedent on the subject and laid down guiding principles which the High Court

should consider in determining as to whether to quash an FIR or complaint in the exercise of the inherent jurisdiction. The considerations which must

weigh with the High Court are:

61 the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and

different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude

with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.:

(i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or

complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each

case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of

the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the

victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society.

Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act

or the offences committed by public servants while working in that capacity, etc; cannot provide for any basis for quashing criminal proceedings

involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes

of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising

out of matrimony relating to dowry, etc. or the family disputes where the wrong

is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.â??

â??12. In *Narinder Singh*â??, it has been observed that in respect of offences against society, it is the duty of the state to punish the offender. In consequence, deterrence provides a rationale for punishing the offender. Hence, even when there is a settlement, the view of the offender and victim will not prevail since it is in the interest of society that the offender should be punished to deter others from committing a similar crime. On the other hand, there may be offences falling in the category where the correctional objective of criminal law would have to be given more weightage than the theory of deterrence. In such a case, the court may be of the opinion that a settlement between the parties would lead to better relations between them and would resolve a festering private dispute. The court observed that the timing of a settlement is of significance in determining whether the jurisdiction under Section 482 should be exercised: â??29.7â?? Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can

show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/materials mentioned above. On the

other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally

the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide

the case finally on merits.

12. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions, as observed in

Parbhatbhai Aahir case (Supra):

16.1 Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice.

The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

16.2 The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement

has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence.

While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The

power to quash under Section 482 is attracted even if the offence is non-compoundable.

16.3 In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High

Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

16.4 While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to

prevent an abuse of the process of any court.

13. The facts stated in the impugned FIRs, disclosed different sets of facts alleging fraud discovered by the customers in succession involving their

deposited amounts committed in a concerted manner. Thus, as the said impugned FIRs which disclosed alleged different types of cognizable offences,

the same need to be investigated in depth and as such, applying the principles laid by the Supreme Court in this regard referred to above, the same

cannot be quashed under Section 482 Cr.P.C. A thorough investigation into the FIRs, based on different sets of facts and different modes of

embezzlement of customers' money deposited with IndusInd Bank, this Court is afraid, may throw more light on the shadow areas of such

fraudulent activities of the petitioner bank officials, which is necessary in the larger interest of the State.

14. In the backdrop of facts, no right implicit in Article 21 of the Constitution of India is created in favour of the petitioners at the present stage of

investigation and also they cannot claim to have been vexed for the same alleged offences. The statutory right of the police in investigating a case of

such nature is unfettered and cannot be thwarted by way of quashing in exercise of inherent jurisdiction vested under Section 482 Cr.P.C.

Consequently, the petitions stand dismissed.