

(1986) 04 GAU CK 0004
In the Gauhati High Court
Case No : Criminal Revision No. 153/84

Shri J.K. Thaosen

APPELLANT

Vs

Shri Kedarnath Upadhaya and Another

RESPONDENT

Date of Decision : 08-04-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 482, 483
Penal Code, 1860 (IPC) — Section 406

Citation : (1986) 2 GLR 467

Hon'ble Judges : K. Lahiri, J

Bench : Single Bench

Advocate : D.N. Choudhury, for the Appellant; B.K. Das and B. Banerjee for Opposite Party No. 1 and Public Prosecutor for Opposite Party No. 2, for the Respondent

Final Decision : Allowed

Judgement

K. Lahiri, J.—Sections 482 and 483 of the Code of Criminal Procedure adjure the High Court to prevent the abuse of the process of the Court or otherwise to secure the ends of justice and to exercise relentless supervision over the courts of Judicial Magistrates to ensure expedition and proper disposal of cases. The provisions convey the noble messages and spirit of the Constitution. The provisions of the Code cannot be read in Isolation. The inherent statutory power conferred by the court to perform the obligations is in tune with the march of the time; in tune with the philosophy of our enlightened Constitution. The provisions are inter-linked with the preamble to the Constitution the fundamental rights enshrined therein. The people of India solemnly resolved to constitute India into a sovereign, secular democratic republic and ensure to all citizens justice, liberty, equality and last but not the least fraternity, assuring dignity of the individual. A new jurisprudence sprung up since the Bank Nationalisation case i.e., Rustom Cavasjee Cooper Vs. Union of India (UOI), After the Banks Nationalisation case

no article guaranteeing a fundamental right is to be read in isolation. In *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another, Beg C.J.* said that the articles dealing with fundamental rights in part-III of the Constitution do not represent entirely separate streams of rights which do not mingle at many points. They are all parts of an integrated scheme in the Constitution. Their waters must mix to constitute that grand flow of unimpeded and impartial Justice (social, economic and political), Freedom (not only of thought, expression, belief, faith and worship, but also of association, movement, vocation or occupation), of Equality which implies absence of unreasonable and unfair discrimination between individuals, groups and classes and fraternity (assuring dignity of the individual and the unity of the nation). Those are our basic things visualised in our Constitution, In isolation no right conferred by the Constitution can be truly understood. *Moneka Gandhi (supra)* carried Article 21 to nobler rights where *Chandrachud C.J.*, as he then was observed that the procedure prescribed by law has to be fair, just and reasonable, not fanciful, oppressive or arbitrary.

2. Sections 482 and 483 obligate the High Court to perform "Judicial justice", to ensure liberty and to uphold the dignity of the individual. A suspect or accused in dock lives an undignified life. As such, before a person is brought to court designating him as an accused, Justice demands that he must be reasonably considered as a criminal or at least there must be some cause or reason to summon him by the court and compel him to stand in dock. To assure justice liberty, equality and to uphold the dignity of individual the spirit of the Constitution, Sections 482 and 483 of "the Code" have been framed so that no individual is deprived of justice, liberty or suffers indignity.

3. Learned Counsel for the parties admit that personal liberty of a person is surely curtailed if a person is compelled to appear in Court as an accused and live a restrained life as directed by the Court. It is also not disputed that justice demands that a person who is not a criminal, should not appear either as a suspect or a criminal. Learned Counsel also agree that no person should be brought in court designating him as a criminal unless there is reasonable ground that he is so. It is, therefore, necessary to consider, before a person is brought to court, whether the person sought to be summoned is court can be designated as alleged criminal. The court is to consider whether *prima facie* case exists and whether the ingredients of the offence in present in a complaint and/or initial deposition of the complaisant and other materials appearing impelling the court to issue-process against him. When there is no material that the accused could be an accused he should not be summoned as an accused. The power to summon a person as an accused is an extra-ordinary power which should be exercised carefully, cautiously and with circumspection. In short, no person can be arraigned as an accused in a criminal case when there is no material of any allegation against him that he could be as offender or a criminal In the absence of any reasonable ground to believe no human being should be made a suspect or a criminal. This is the spirit and philosophy of our Constitution. This is what has been imprinted in Sections 482 and 483 of the Code of Criminal Procedure

which empower the High Court to prevent the abuse of process of any court and/or to secure the ends of justice when any unwarranted action is taken by the Magistrate while summoning a person as an accused. These are the basic reasons on which their Lordships of the Supreme Court quashed the proceedings in *R.P. Kapur Vs. The State of Punjab*, *State of West Bengal and Others Vs. Swapan Kumar Guha and Others*, and *Dr. Sharda Prasad Sinha v. State of Bihar* AIR 1977 SC 1734. What happened in *Swapan Kumar* (supra) the police investigation was quashed by their Lordship to uphold the Constitution and the Law. If there is any injustice caused by the Court, the High Court has power to prevent injustice and to secure the ends of justice.

4. Let me proceed to consider the factual matrix. The accused is a responsible officer serving as the principal Secretary and Revenue Officer of the North Cachar Hills District Council. The North Cachar Hills District Council is the creature of the Constitution, vide Schedule VI para 2 of the Constitution. The accused was working for gain under the District Council. It was alleged that he, in his capacity as the Secretary and Revenue Officer of the District Council illegally and wrongfully evicted the present complainant in consequence of which he suffered loss and damages amounting to several thousand rupees. The opposite party filed a complaint against the Petitioner in the court of the Assistant to the Deputy Commissioner governed by the Rules for the Administration of Justice in North Cachar Hills. Learned Assistant to the Deputy Commissioner held that he had no jurisdiction to try the case. Then the complainant preferred an appeal before the learned Deputy Commissioner who examined the complainant and another witness and issued summons against the Petitioner. Thereafter, the accused-Petitioner moved the High Court against the said decision. The High Court remanded the matter to the Deputy Commissioner. The learned Deputy Commissioner dismissed the appeal of the complainant. After dismissal of the complaint, the complainant preferred a revision before this Court being Criminal Revision No. 98/79. The High Court remanded the matter for fresh bearing of the appeal and made a passing observation in the judgment that it was desirable that the dispute be amicably settled out of court. The present accused-Petitioner submits that to honour the order of the High Court he with the consent of the District Council allotted 2 bighas of land to the complainant. The complainant filed an application in the court of Deputy Commissioner praying for withdrawal of his case. The complainant said that he approached the accused-Petitioner, who was at the relevant time Principal Secretary (N), N.C. Hills District Council, assured that the loss and damages suffered by the complainant would be duly compensated and advised to withdraw the case. The complainant also stated that he had an open heart and clear mind and on good faith he did not desire to proceed on with the criminal case against the accused, and accordingly, prayed that the case might be dropped. This was a unilateral application made by that complainant-opposite party. On perusal of the petition of the complainant the then Deputy Commissioner by his order dated 19.5.82 dropped the appeal. The matter ended there. Thereafter, the opposite party served a notice u/s 80 of the

CPC claiming compensation of Rs. 66,000/- in respect of the land acquired by NEEPCO. It was stated in the petition that the Petitioner's land measuring 12 bighas had been acquired by the North Eastern Hydro Electrical Project Corporation Ltd. The complainant called upon the NEEPCO to pay him compensation for the acquired land and made the Chairman-cum-Managing Director of the Corporation, Chief Executive Member of the District Council and the Additional Secretary as the proposed Defendants. The accused Petitioner was not shown as a proposed Defendant. The notices u/s 80 are marked as Annexures "3" and "3A". Thereafter, on 5.4.84 the complainant filed a complaint case for alleged commission of the offence u/s 406 I.P.C. against the Petitioner who was working for gain as Principal Secretary (N), North Cachar Hills District Council, Haflong, Assam. The learned Magistrate examined the complainant and passed the following order:

"Received complaint petition of Shri K.N. Upadhaya. Examined the complainant on S/A, There is prima facie case against Shri J.K. Thaosen u/s 406 I.P.C. Register the case and issue summons to the Accused. Fixing 26.4.84". The accused appeared before the court and he was allowed to go on P.R. Thereafter, he has approached this Court for quashing of the proceedings stating, inter alia, that the complaint petition read with the initial depositions of the complainant do not make out any offence against him, not to speak of the offence u/s 406 I.P.C.

5. The learned Counsel for the parties agree that in view of the law laid down by the Supreme Court in P.P. Kapur (supra) to Swapan Kumar (supra) the High Court can in exercise of its inherent power quash the proceeding where the allegation of the first information report of the complaint even If they are taken at their face value and accepted in their entirety do not constitute the offence alleged.

6. Indeed, in such cases no question of appreciating evidence arises. It is merely a matter of looking at the complaint or the first information report to decide whether the offence alleged has been disclosed.

7. The accused has been summoned u/s 406 I.P.C. i.e. offence of the criminal breach of trust. There is no dispute at the Bar that it is necessary to show that (1) the complainant entrusted to the accused with property or with dominion of property, The person entrusted must (a) dishonestly misappropriate or convert to his own use that property; or (b) dishonestly uses or disposes that property or wilfully suffers any other person so to do In violation-(i) of any direction of law prescribing the mode in which such trust is to be discharged ; or (ii) of any legal contract made touching the discharge of such trust. As such, it must be established that the accused was entrusted by the complainant with any property or with any dominion over property, the accused "so entrusted" dishonestly misappropriated or converted the properties to his own use or dishonestly used or disposed of that property or wilfully suffered any other person so to do in violation of any direction of law prescribing the mode in which such trust was to be discharged or of any legal contract made touching the discharge of such trust.

The relevant portions of the complaint are set out below:

* * * *

(7) That also Shri J.K. Thaosean- the Principal Secretary (N) assured the Petitioner that he will make assessment of immovable properties taken over by NEEPCO and refer the same to NEEPCO for payment of compensation and to the petitions. The opposite party Shri J.K. Thaosen-the Principal Secretary (N) advised inducibly to the Petitioner to take steps to make an end of the case in the court first as a good gesture.

(8) That the Petitioner a very poor person for justice all these years went both in lower Courts and to Hon'ble High Court thought it proper so in good faith submitted a petition in the Court of the Deputy Commissioner, North Cachar Hills, Haflong at inducibly advised by Shri J.K. Thaosen (accused) and as also according to the wishes of Hon'ble Gauhati High Court As a result the case was dropped.

(9) That thereafter the Petitioner on many occasions went to Shri J.K. Thaosen-the Principal Secretary (N) N.C. Hills District Council Haflong for (sic) as assured by him but he put forth excuses and took time as he was busy and lastly on 3.4.1984 Shri J.K. Thaosen flatly denied to give any relief and shouted at the Petitioner saying never to disturb him.

(10) That now the Petitioner is convinced that Shri J.K. Thaosen played a fraud by giving false inducement and cheated the Petitioner and which said acts of the opposite party-Shri J.K. Thaosen is tantamount to commission of criminal breach of trust under the provision of Section 406 I.P.C. for which act the humble Petitioner is put to loss and harassment during long period since 1974.

* * * *

The initial deposition of the complainant is extracted below:

In 1974 November Shri J.K. Thaosen and Sirmillick the then MDC burnt my house. I filed a case in the High Court after the D.C. refused to take up the case. High Court ordered for D.C. to try again and suggested a compromise outside the Court, I compromised with T.K. Thaosen who asked me to withdraw the case and that he will pay me ail compensation. I withdrew the petition accordingly, but Shri J.K. Thaosen delayed the matter as compromised but till now he did not pay anything, Now he refused to pay me anything.

R.O. A.C. Sd/-P.P. Verma 5.4.84 Deputy Commissioner, N.C. Hills, Haflong

Reading the entire allegations it appears that the Petitioner as the principal Secretary (N), North Cachar Hills District Council assured the Petitioner that he would make assessment of the immovable properties taken over by NEEPCO and refer the same to the NEEPCO for payment of compensation. But the Petitioner did not take steps to make "the end of the case". The complainant approached the Petitioner who said that he would not be able to grant any relief and asked

him not to disturb him. In short the land of the complainant had been acquired by a Corporation. The complainant went to the Petitioner and asked him to make assessment of immovable property but the accused said that he would not do anything for the complainant. Nothing is disclosed from the complaint as to why the Petitioner is to make the assessment of the property. If the land was acquired, it must have been done under some of the provisions contained in the Acquisition Laws. There are appropriate authorities to assess compensation. The complainant could approach them and get the compensation. Let us assume that it was the duty of the Petitioner to make the assessment. There is no entrustment of any property and/or none of the essential ingredients of Section 406 I.P.C. is found in the complaint. Is the Petitioner liable for criminal breach of trust ? Learned Counsel for the Petitioner contended that this was an undue pressure on a public servant to do something which he was not supposed to perform, taking advantage of certain situation. Reading the complaint as a whole as well as the initial deposition it is not possible to hold that the accused committed the offence of criminal breach of trust, In the absence of any entrustment and/or dishonest misappropriation thereof or conversion of the property to the use of the accused or dishonest use or disposal of the property in violation of the direction of any law or of any legal contract express or implied, I am constrained to hold that there is no material for which the public servant should be allowed to stand in dock as accused to meet the charge u/s 406 I.P.C. In view of the law laid down by the Supreme Court in R.P. Kapur to Swapan Kumar (supra) alluded to I hold that the allegations in the complaint and the initial depositions of the complainant even if they are taken at their face value and accepted in their entirety do not constitute the offence alleged against the Petitioner, However, if it is possible for the District Council it might see that the complainant get his compensation from the NEEPCO, as expeditiously as possible. In that regard if the complainant desires help or assistance from the District Council he may approach the Council and/or my other competent authority.

8. In the result the petition is allowed and the C.R. Case No. 134 of 1984 brought against the accused Petitioner is quashed.