

(1986) 02 GAU CK 0008
In the Gauhati High Court
Case No : Criminal Revision No. 17 of 1986

Shri Purushottam Lal Agarwalla and Another	APPELLANT
Vs	
The State of Assam and Another	RESPONDENT

Date of Decision : 03-02-1986

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 157, 379, 420

Citation : (1986) 1 GLR 416

Hon'ble Judges : K.N. Saikia, J

Bench : Single Bench

Advocate : R.D. Lall, for the Appellant; M. Sarma, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Saikia, J.—Heard the learned Counsel for the Petitioners, Mr. R.D. Lall. Heard also the learned Public Prosecutor, Assam, Mrs. M Sarma. Notice of motion was issued on this application on 29.1.86. The State has not filed any affidavit. However, Mrs. Sharma had made oral submissions.

2. The Petitioners pray for quashing of the proceedings in Panbazar Police Station Case No. 213 of 1985 corresponding to G.R. Case No. 3616/85 u/s 420/379/120-B of the Indian Penal Code pending in the Court of Chief Judicial Magistrate, Kamrup at Gauhati including the order dated 21.12.85 issuing non-bailable warrant against the Petitioners and the order dated 23.12.85 adding Section 120B I.P.C. passed in the same proceeding.

3. The aforesaid Panbazar P.S. case and the corresponding G.R case has been registered upon an F.I.R. lodged by one B.K. Saraf of M/s Shankarlal Bbagawati Prasad Saraf, Gauhati alleging theft of R/R and release of consignment sent on the basis of order placed by one Ashok Kumar Agarwalla of M/s. Jaiprakash Ashok Kumar, Bhairkunda, Deoghar, Bihar. The Petitioners were arrested and produced before the Chief Judicial Magistrate. Patna who released them on bail

provisionally till 21.12.1985 on condition that they must surrender before the Court of the Chief Judicial Magistrate, Gauhati, Assam, and abide by the further directions of the said Court. The Petitioners were directed to produce that Court's certificate latest by 10.1.86 failing which it would make out a new ground for their being arrested in that case. A copy of the order was supplied to the Inspector of Police, C.I.D., Gauhati who had arrested the Petitioners. It appears on 21.12.85 the Inspector of Police, C.I.D. applied to the learned Chief Judicial Magistrate, Kamrup at Gauhati stating that the Petitioners failed to appear pursuant to the Patna order and, as such, prayed that warrant of arrest without bail be issued against them for their arrest. On 23.12.85 the same Inspector of Police, C.I.D. prayed before the Chief Judicial Magistrate that Section 120(B) I.P.C. be added in the case as investigation revealed that there was conspiracy with Petitioner No. 1, Purushottam Lal Agarwal, under whose leadership the offence was committed and there were sufficient materials and evidence against him and few other persons who were absconding. The impugned orders were passed on these two applications.

4. Mr. R.D. Lall, the learned Counsel for the Petitioners, submits that the F.I.R. may or may not have disclosed any ingredients of any of the offences, but the two Petitioners are absolute strangers to those allegations having nothing to do what-soever with the alleged theft of R/R and release of consignment. This being the position their arrest and harassment by police have affected their liberty and hence the proceeding in the G.R. case and the corresponding P.S. case must be quashed in so far as the two Petitioners are concerned. Counsel further submits that the Petitioner No. 2 is a student of Matriculation class and has since surrendered at Gauhati and obtained bail. In so far as Petitioner No. 1 is concerned, he is old man of more than 60 years and is having heart ailment and has not so far surrendered before the learned Chief Judicial Magistrate, Gauhati.

5. On perusal of the F.I.R. it cannot be said that it does not disclose the ingredients of an offence u/s 420/379 I.P.C.. Mr. Lall also does not submit that it discloses no such offence. What the learned Counsel objects to is the complicity of the Petitioners and the addition of Section 120B, I.P.C. In view of the report submitted to the learned Chief Judicial Magistrate, Gauhati by the Inspector of Police, C.I.D. it is difficult to hold at this stage that the Petitioner No. 1 is a complete stranger to the alleged offence, inasmuch as it reports of conspiracy and the offence being committed under the leadership of Petitioner No. 1, Purushottam Lal Agarwalla. If that report is to be acted upon, the order for adding Section 120B cannot be found fault with.

6. The Petitioner No. 2 having already surrendered and obtained bail from the Chief Judicial Magistrate, Gauhati his prayer for quashing of the warrant has become infructuous. In so far as the Petitioner No. 1, Purushottam Lal Agarwalla is concerned, the submission that his liberty has been unnecessarily affected by police, has to be considered in light of the evidence and report of the Investigating Officer. There is no doubt that a person who is absolutely not

connected with the case, need not be harassed by police. If, on the other hand, there is a case for investigation and the police takes steps according to law, a citizen may not be heard complaining that it has affected his liberty. In the instant case, however, we are not in such a difficult situation, inasmuch as the report submitted by the Investigating Officer shows that in course of investigation some evidentiary materials were available. Under such circumstances the prayer for quashing of the proceeding and the order issuing warrants of arrest, cannot be granted. In *State of West Bengal and Others Vs. Swapan Kumar Guha and Others*, it was held that the F.I.R. which does not allege or disclose that the essential requirement of the penal provisions are prima facie satisfied, cannot form the foundation or constitute starting point of a lawful investigation. An Investigation can be quashed if no cognizable offence is disclosed by the F.I.R. It is surely not within the province of the police to investigate into an F.I.R. which does not disclose the commission of a cognizable offence and the Code does not impose upon them the duty of inquiry in such cases. The condition precedent to the commencement of investigation u/s 157 of the Code is that the F.I.R. must disclose, prima facie, that a cognizable offence has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation u/s 157 of the Code. Of course, whether an offence is disclosed or not must depend on the facts of each case. If the Court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice will suffer. It is on the basis of this principles that the Court normally does not interfere with the investigation of a case where an offence has been disclosed. But it cannot be said that an investigation must necessarily be permitted to continue and will not be prevented by the Court at the stage of investigation.

7. Applying the foregoing principle to the facts of the instant case, when the F.I.R. disclosed an offence, the next question is whether when the Petitioner's name did not appear in it, they could be affected by investigation. Generally speaking, it cannot be said that the investigation must be only against the person named in the F.I.R. as experience shows that in course of investigation more and more material may be available implicating the complicity of persons other than those named in the F.I.R. In such cases the materials being there, it cannot be said that investigation will affect the liberty of the persons who happen to be so implicated. Investigation, therefore, has to be carried on strictly in accordance with law. It is for this reason that in all criminal matters though procedural investigation is the function of the police, in some system of law Magistrates have been given the investigatory authority. Express Judicial authorisation of acts interfering with liberty or privacy of citizens is required in all systems, but exceptions for urgent cases are provided with varying liberality in all systems. The conflict between law enforcement and the individuals privacy does not lend itself to a simple solution, since both the interests are highly valued in a democratic society. An Indirect approach has, therefore been

designed to give maximum protection to the individual and evidence obtained in violation of the suspect's rights are not allowed to be used in Court to support a conviction. This assumes that police have a professional interest in the conviction of criminals and the above rule has a deterrent effect on illegal police behaviour. Violation of procedural rights often occur in man-to-man encounters between the police officer and citizens and have, therefore, to be proved. The police action is to be controlled by the police authorities themselves. The attitude of police to the liberty and other rights of the citizens is, therefore, an important factor. The Court has to protect the liberty and rights of citizens in this regard.

8. In the instant case there having been materials to implicate the Petitioners, the question of quashing the proceeding at this stage does not arise. As the Petitioner No. 2 has surrendered and obtained bail, there should be no difficulty on the part of the Petitioner No. 1 also to do the same. The Petitioner No. 1, Purushottam Lal Agarwala, may, therefore, surrender before the Chief Judicial Magistrate at Gauhati and pray for bail. In the event of his so surrendering and praying for bail, there is no reason why the learned Chief Judicial Magistrate should not consider the circumstances pertaining to the Petitioner, namely, that his name did not appear in the F.I.R. that he resides at a place different from the destination to which the goods were sent; and he is a man of about 60 years of age and suffering from heart ailment. If the Petitioner fails to obtain bail his further remedies would also be available under the law. Mr. Lall states that the Petitioner No. 1 be given two weeks" time to surrender and pray for bail before the Chief Judicial Magistrate at Gauhati. This prayer, under the circumstances, is reasonable. The result is that this petition is rejected. It would be open for the Petitioner No. 1 to surrender before the learned Chief Judicial Magistrate at Gauhati and pray for bail within two weeks from today and his prayer for bail shall be considered by the learned Chief Judicial Magistrate in accordance with law.