

(2012) 03 GAU CK 0002

In the Gauhati High Court

Case No : Criminal Petition No. 99 of 2009

Smti. Dipika Saikia and Others

APPELLANT

Vs

Mrinaljyoti Bordoloi

RESPONDENT

Date of Decision : 16-03-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 482

Penal Code, 1860 (IPC) — Section 270, 273, 34

Citation : (2013) 1 GLD 255

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : M. Choudhury, Amicus Curiae, for the Appellant; K. Munir, for the Respondent

Final Decision : Allowed

Judgement

I.A. Ansari, J.—With the help of this application, made u/s 482, Cr PC, the petitioners, who are accused in complaint Case No. 516/2008, have sought for quashing of taking of cognizance by the learned judicial Magistrate, Jorhat, under Sections 270 /273, IPC read Section 34, IPC and directing, by order, dated 03.12.2008, issuance of processes against the accused. As none had appeared on behalf of the accused-practitioners, this Court appointed Mr. M. Choudhary, learned counsel, as amicus curiae and has heard him. This Court has also heard Mr. K. Minir, learned Additional Public Prosecutor, Assam.

2. While considering the present application, u/s 482, Cr. PC. it needs to be noted that the law with regard to quashing of criminal complaint is no longer res integra. A catena of judicial decisions has settled the position of law on this aspect of the matter. I may refer to the case R.P. Kapur Vs. The State of Punjab, , wherein the question, which arose for consideration, was whether a first information report can be quashed u/s 561-A of the Code of Criminal Procedure, 1898. The Court held, on the facts before it that no case for quashing

of the proceeding was made out. Gajendragadkar, J., speaking for the Court, observed that though, ordinarily, criminal proceedings, instituted against an accused must be tried under the provisions of the Code, there are some categories of cases, where the inherent jurisdiction of the Court can and should be exercised for quashing the proceedings. One such category, according to the Court, consists of cases, where the allegations in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases, no question of appreciating evidence arises and it is a matter merely of looking at the FIR or the complaint in order to decide whether the offence alleged is disclosed or not. In such cases, said the Court, it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal Court to be issued against the accused. From the case of R.P. Kapoor (supra), it becomes abundantly clear that when a look into the contents of a complaint shows that the contents of the complaint, even if taken at their face value and accepted to be true in their entirety, do not disclose commission of offence, the complaint shall be quashed.

3. As a corollary to what has been discussed above, it is also clear that if the contents of the complaint disclose commission of offence, such a complaint cannot be quashed.

4. Laying down the scope of interference by the High Court in matters of quashing of FIR or complaint, the Supreme Court in *State of Haryana and others Vs. Ch. Bhajan Lal and others*, , laid down as follows:--

102. In the backdrop of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the inherent powers u/s 482 of the Code, which we have extracted and reproduced above, we give the following categories of cases by way of illustration, wherein such power could be exercised either to prevent abuse of the process of the any Court or otherwise to secure the ends of justice, thought it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines of rigid formulae and not to give an exhaustive list of my raid kinds of cases, wherein such power should be exercised:--

(1) Where the allegations made in the first Information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations made in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and evidence collected in support of the same do not disclose the commission of any

offence and make out a case against the accused.

(4) Where the allegation in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations were made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

5. In the case of Bhajanlal (supra), the Apex Court gave a note of caution on the powers of quashing of criminal proceedings in the following words:--

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extra ordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.

(Emphasis is added).

6. It is clear from a close reading of the principles laid down, in the case of R.P. Kapoor (supra) and Bhajanlal (supra) that broadly speaking, quashing of a First Information Report or a complaint is possible:

(a) when the allegations made, in the First Information Report or the complaint, even if taken at their face value and accepted in their entirety as true, do not prima facie constitute any offence or make out a case against the accused;

(b) when the uncontroverted allegations made in the FIR or complaint and evidence collected in support of the same, do not disclose the commission of any offence and/or make out a case against the accused; and

(c) when the allegations made in the FIR or complaint are so absurd and inherently improbable that on the basis of such absurd and inherently improbable allegations, no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

7. In other words, when the allegations, made in a complaint, disclose commission of an offence, such a complaint cannot, ordinarily, be quashed by relying upon some other materials on which will depend the defence of the accused, for, in such cases, truthfulness or otherwise of the allegations contained in the complaint or the probability of the defence plea can be determined only by effective investigation or at the trial. I am also guided to take this view from the case of *State of Bihar and Another Vs. Md. Khalique and Another*, wherein the Apex Court, while dealing with the quashing of FIR observed as follows:--

7. In *Bhajanlal* case, this Court has also held that the power of quashing a criminal proceeding would be exercised sparingly and with circumspection and that too in the rarest or rare cases. The present case is not rarest of rare case.

In view of the settled legal position and as offences have been disclosed in the FIR, the High Court ought not to have interfered with the investigation and should have permitted the police to complete it. We, accordingly, hold that the High Court has committed a grave error in quashing the entire proceedings and ought not to have thwarted the prosecution. (See also *Latif Ahmed Bin Husain v. State of Assam*, reported in (2003) 1 GLR 514, and *Kailash Chandra Pareek Vs. State of Assam*, .

8. Before I enter into the merit of the present application, it is opposite to take note of the complaint's case, which may, in brief, be described thus: The accused No. 1, who is petitioner No. 2 in the present criminal petition, is a saleswoman in the shop, which is run under the name and Garden at K.B. Road, Jorhat; whereas accused No. 2, who is petitioner No. 1 in the present petition, is proprietor thereof. On 18.07.2008, at about 4:30-4:35 p.m. the complainant's elder sister, Smt. Mallika Bora, purchased four numbers of food items called "Chicken Mayonnaise Roll" from Cherry Garden on payment of Rs. 60/-. The residence of the complainant's sister, Mallika Bora, is very near the said shop. The complainant's sister, along with her husband and minor daughter, came to the complainant's residence located at M.G. Road, Jorhat, and offered the said food items, so purchased from Cherry Garden, to the complainant and the members of the complainant's family. The complainant's sister offered half of the said food item to the complainant, his domestic help, Pranjal Dutta, and the complainant's elder sister, Manjushree Bordoloi, and they all consumed the said food item so offered to them. The complainant's sister's daughter ate a bit of the said food item and so did Bidyanan Bora, bother-in-law of the complainant. The complainant's mother took, at the insistence of the complainant's sister, only a small portion of the said food item. While taking the said food item into his mouth, the complainant could smell that the said food item was moldy and, hence, the complainant took only a bit of the said food item. Be that as it may, on 18.07.2008, the said food item was consumed by all the members of the complainant's family except his father and grand mother as mentioned hereinbefore. After consumption of the said food item, the complainant suffered from severe headache and stomach pain, at about 10.30-11 p.m., on 18.07.2008

itself; he felt giddiness, high temperature and, at about 3.30 a.m., on 19.07.2008, the complainant felt severe pain in his stomach and had loose motion, which carried him to the toilet four times at very short interval. The complainant's condition deteriorated further, at about 6.30-7.00 a.m., on 19.07.2008. The body temperature of the complainant came down drastically and his body became cold as ice. The finger nails of the complainant turned blakish. The father of the complainant rushed the complainant and his domestic help, for treatment, to Jorhat Chritian Medical Center. Similar problems occurred almost in the same fashion in respect of all others members of the complainant's family, who had consumed the said food item including the complainant's mother and his four year old niece. The physicians, who attended on them, admitted into the hospital and started immediate treatment. The complainant also suffered from loss of memory and talked irrelevant things, which complainant's father noticed while he was present at the hospital. In the meantime, the health condition of the other members of family, too, deteriorated and they, too, were rushed to the hospital, they also suffered from loose motion and vomiting and their symptoms were almost similar as those of the complainant. The complainant's sister was, initially, treated at home; but her sister and brother-in-law, along with complainant's niece had to be hospitalized, on 20.07.2008, for their deteriorating health condition. The doctors, who had attended on the complainant and his family members, came to form the opinion that their case was a case of food poisoning. The incident, which so occurred in the family of the complainant, was not the sole incident. The complainant has learnt that many other persons of Jorhat Town had suffered from similar problems. The Joint Director of Health Services, Jorhat, conducted an enquiry into the said case of food poisoning, the Food Inspectors collected samples form the said shop and also from the residence of some of the victims. The samples were sent to the Public Analyst, who suggested adulteration in the samples. The report of the Public Analyst confirms presence of noxious bacteria called E. Coli, mould, etc. The district administration too collected samples, which did not find the food stuff adulterated. This report, according to the complainant, is biased.

9. What, now needs to be noted is that on being called for, the Joint Director, Health Services, Jorhat, submitted a report, on 06.09.2008, to the Deputy Commissioner, Jorhat, wherein it was reported that on receiving information on 19th June, 2008, that a case of food poisoning had occurred at the residence of the complainant, he along with two Food Inspectors, visited M/s Cherry Garden, a bakery house, and Samiran Baruah, a food inspector, collected samples of Mayonnaise Roll form the said shop. The sample was sent to Public Analyst, who reported that in respect of four numbers of Mayonnaise Rolls, no toxic or harmful matter could be detected. In case of Mayonnaise Roll bearing Sl. No. SB (JRT)/INFO/25/08 and SB (JRT)/INFO/30/08, which contain egg as an ingredient, is a delicate food, which should not be exposed for a long period without refrigeration. The above samples are delivered, in the laboratory, at room temperature after a lapse of more than tow days of the incident, which had

incriminated the growth of microorganism present in the food and under such circumstances, according to Public-Analyst, it was not possible to ascertain the original microbial status of the food correctly. However, the items, according to the Public Analyst, received, in the laboratory, showed high colorful contents including E. Coli. which indicates possibility of pathogenicity, but the above rolls are not found contaminated with any toxic chemicals.

10. Thus, on receiving the report from the Public Analyst on 01.08.2008, the said report was, as mentioned above, submitted to the Deputy Commissioner, Jorhat. In terms of the report, the Public Analyst did not find, I notice, any contaminated or toxic chemical in the rolls and, on inspection, which was carried out, the said shop was found to be clean and nothing adverse could be detected.

11. From the case, which the complainant has set up and the report of the Public Analyst, what is revealed is that as far the Mayonnaise Rolls, purchased by the complainant's sister were concerned, no sample for the same was drawn and no chemical analysis thereof has been carried out. In such circumstances, whether the said food items were or were not adulterated, in terms of the provisions of the prevention of Food Adulteration Act, 1954, (in short, "the PFA Act") cannot be ascertained. This apart, any sample, which might have been taken subsequently by the Food Inspector from the said shop, cannot give rise to prosecution of the accused-petitioners on the basis of the present complaint even if the Public Analyst's report, in respect of the subsequently taken sample, now, shows that the sample, subsequently taken, was adulterated. The subsequent Public Analyst's report may, however, give rise to a fresh prosecution, if any, but the present criminal prosecution cannot be allowed to proceed.

12. Whether subsequent drawing of the samples was or was not found adulterated is immaterial in the present case in as much as the accused-petitioners can be tried only if the food items, which the complainant's sister had purchased, can be shown prima facie to be adulterated. As no case of adulteration has been made out in respect of the "food items" which the complainant's sister is had to have purchased, no prosecution, in terms of the provisions of the PFA Act, can be initiated and has rightly not been initiated against the accused-petitioners. Cognizance, as already indicated above, has, however, been taken of the under Sections 270 and 273 read with Section 34, IPC.

13. Let us, therefore, examine if the prosecution of the accused-petitioners, u/s 270, IPC or 273, IPC are, therefore, reproduced below:--

270. Malignant act likely to spread infection of disease dangerous to life.-- Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

273. Sale of noxious food or drinks.-- Whoever sells, or offers or exposes for

sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

14. A bare reading of Section 270, IPC clearly shows that Section 270, IPC would be attracted if a person malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread infection of any disease dangerous to life. In the present case, there is, admittedly, not even an iota of material, on record, to show that the food items, which had been allegedly sold by the accused-petitioners to the complainant's sister, could have spread infection of any disease dangerous to life. By no means, Section 270, IPC can, therefore, be attracted to the facts of the present case.

15. Coming to Section 273, IPC, it may be noted that this Section is attracted, when a person sells, or offers or exposes for sale, as food or drink, any article, which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink.

16. The word noxious, according to Oxford Advanced Learner's Dictionary, means, poisonous or harmful.

17. There is nothing to show, in the present case, that the food items, purchased by the complainant's sister, were noxious. There is also nothing to show that the food item was unfit for food or drink. In such circumstances, it cannot be said that a prima facie case of commission of offence, u/s 273, IPC, has been made out by the complainant.

18. Hence, in the circumstances indicated above, quashing of the complaint is not merely permissible, but wholly warranted, for, allowing the complaint case to proceed would be nothing, but abuse of the process of the Court.

19. In the result and for the reasons discussed above, this application, made u/s 482, Cr PC, succeeds. The impugned order, directing issuance of processes against the accused-petitioners, is hereby set aside and quashed. Send back the LCR along with a copy of this judgment and order.