

(1986) 01 GAU CK 0002
In the Gauhati High Court
Case No : Criminal Revision No. 231 of 1984

Sri Rambabu Maheswari

APPELLANT

Vs

The State of Assam and Another

RESPONDENT

Date of Decision : 31-01-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 157, 482, 561
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (1986) 2 GLR 189

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

Bench : Single Bench

Advocate : S. Birmiwal and R.K. Jain, for the Appellant; K.P. Sarma, Public Prosecutor and J.M. Choudhury, for the Respondent

Final Decision : Allowed

Judgement

K.N. Saikia, J.—This is an application for quashing the complaint case No. CR 861/34 pending in the Court of Additional Chief Judicial Magistrate, Nagaon registered on the complaint dated 21.4.84 filed by the opposite party No. 2 wherein it was alleged that one Swami Gobind Hari came to Nagaon on 7.2.81 and represented that in his own building in Brindavan Ashram the complainant might raise a two roomed house with a bathroom on the first floor for the complainant and he could live there in comfort, and that the construction cost would be around Rs. 25,000/- only. the complainant agreed and on the same day paid Rs. 2,000/. in advance to the Swami who also took the subsequent instalments and thus Rs. 38,000/- in all on different dates and informed the complainant that the flat was complete. Hearing reports that the Swami was contemplating to sell the property to some other persons, the complainant went to Brindavan when the Swami denied the reports and assured the complainant that he would not sell it and in case he was compelled to sell, he would pay Rs. 40,000/- to the complainant by way of compensation before any such sale. The complainant also stated to have informed the instant Petitioner, Rambabu Maheshwari not to purchase the property. On 21.3.84 the complainant was

informed by one Mahesh Chandra Gautam that the Swami had sold the property to Rambabu Maheswari, the instant Petitioner, in violation of the assurance. Hence the complaint under Sections 406/420 I.P.C. wherein a non-bailable warrant was issued to Swami Gobind Hari.

2. The Petitioner submits that he is a bonafide purchaser of the property for a consideration of Rupees one Lakh and that he had no notice or knowledge of any agreement, as stated in the complaint and that the prosecution being purely of a civil nature, the Additional Chief Judicial Magistrate, Nagaon acted without jurisdiction in taking cognizance of the criminal case and issuing process.

3. Mr. J.M. Choudhury, learned Counsel for opposite party No. 2, submits that the Swami came to Nagaon, took the first instalment after the agreement at Nagaon, took and the first instalment after the agreement at Nagaon and from his subsequent conduct it was crystal clear that he had dishonest intention to cheat the complainant and, as such, evidence alone will show whether he was liable u/s 406/420 I.P.C. The instant Petitioner, Mr. Choudhury submits, may not have been associated with Swami at the stage of making the agreement and taking the first instalment at Nagaon, but he abated the offence by purchasing the property from the Swami at a high price and as such evidence alone will show whether he abated the offence and this is not the stage for quashing the proceedings as it cannot be said the ingredients of the offence are not proved by the F.I.R.

4. Mr. K.P. Sarma, the learned Public Prosecutor, Assam also submits that it is not a case where it can be submitted that there is absolutely no case against the Petitioner and he relies on *Pratibha Rani Vs. Suraj Kumar and Another*,

5. It is well settled that a proceeding should not be quashed on slender grounds but where the F.I.R. with its initial statement do not disclose the ingredients of an offence the proceeding may be liable to be quashed. Where the dispute is purely of a civil nature a criminal proceeding instituted thereupon may be liable to be quashed. In *Municipal Corporation of Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others*, the parameter of the power u/s 482 have been stated. Section 482 Code of Criminal Procedure Code is the ad verbatim copy of the old Section 561A. This provision confers a separate and independent power on the High Court alone to pass orders *ex debito Justitiae* in cases where grave and substantial injustice has been done or where the process of the Code has been seriously abused. It is not merely a revisional power meant to be exercised against the. Orders passed by subordinate Courts. It was under this section that in the old Code, the High Courts used to quash the proceedings or expunge uncalled for remarks against witnesses or other persons or subordinate Courts.

6. In *State of West Bengal and Others Vs. Swapan Kumar Guha and Others*, it was ruled that an F.I.R which does not allege or disclose that the essential requirements of the penal provisions are *prima facie* satisfied, cannot form the foundation or constitute the 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 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.

7. In the instant case the dispute appears to be of civil nature. However if it can be shown that the Swami, while entering into the agreement with Opposite party No. 2 at Nagaon and taking the money pursuant to that agreement for the purpose of construction had initial dishonest intention to cheat, which would be evident from his subsequent conduct the ingredients of the offence may be proved. It cannot, therefore, be said at this stage that there could be no criminal case against Swami as stated. However, as regards the instant Petitioner, there is no allegation that he came to Nagaon and in any way participated in the agreement or handing over the amounts. It has not been alleged that when the Petitioner purchased the property it was done at Nagaon. The property is admittedly situated not within the state of Assam but in the state of U.P. The agreement was entered into on 7.2.81 while the information about the sale was received by the complainant on 21.3.84. The complainant himself took the assurance from the Swami on 2.8.84 when the property was not yet sold, Under these circumstances, even if the Petitioner purchased the property with the knowledge that the Swami already took advance from the complainant, without anything more in evidence, it would not be reasonable to hold that he committed any offence against the complainant or abated any offence in that regard.

8. In *Pratibha Rani (supra)* their Lordships of the Supreme Court reiterated what was observed in *Smt. Nagawwa v. Veeranna Shivalingappa Kanjaligi* 1976 Supp SCR 123 : AIR 19746 SC 1947.

Thus, it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:

- (1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;
- (2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused ;

(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible ; and

(4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

* * * *

Their Lordships also held that the same principle should apply mutatis mutandis to a criminal complaint. In that case their Lordships dealt with the question of issue of process, and the same consideration would arise in this case also in that respect.

9. Considering the facts of the instant case against the foregoing background , I am of the view that in so far as the instant Petitioner is concerned, no prima facie case has been disclosed against him, Whether or not in course of evidence any material will be found or not would entirely be a different question. Therefore, the proceeding in so far as the instant Petitioner is concerned, has to be quashed and I do so. The process, if any, issued to him would also be quashed. However if during trial any evidence is found to implicate the Petitioner, this order should not stand as a bar on the part of the criminal Court to take steps against him according to law.

10. With the above observation this petition is allowed. The interim order dated 27.7.84 passed in Crl. Misc. Case No. 466/84 stands vacated.