

(2012) 06 GAU CK 0071
In the Gauhati High Court
Case No : Criminal Petition No. 14 of 2011

Sri Sudip Debnath

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 03-06-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Railway Property (Unlawful Possession) Act, 1966 — Section 3(a)

Citation : (2013) 1 GLD 383

Hon'ble Judges : S. Talapatra, J

Bench : Single Bench

Advocate : P.K. Ghosh, Mr. U.K. Majumder and Mr. R. Datta, for the Appellant;
A. Lodh, SC NF Railway, for the Respondent

Final Decision : Dismissed

Judgement

S. Talapatra, J.—This is an application u/s 482 of Cr.P.C. for quashing the first information report pertaining to DMG/RPF/Case No. 1(12)/10 u/s 3(a) of Railway Property (Unlawful Possession) Act 1966. In the FIR (Annexure-1 to the application) it has been alleged that 4 numbers of dumpers (Truck) of which two loaded with ballast and other two standing empty by the side of ballast stack. When the drivers of those dumpers and one JCB were interrogated, they could not give any satisfactory reply regarding loading of railway stone (ballast) nor could produce any legal documents. On further interrogation of those drivers, they disclosed that one Sri Sudip Debnath, S/o. Nani Gopal Debnath of Jirania, A.A. Road, (College Chowmohani) P.S. Jirania, District-West Tripura hired their vehicles from their owners. They also supplied the names of the vehicle owners. The complainant, one of the ASI of RPF, Dharmanagar, seized all the dumpers and one JCB along with the papers on preparing a seizure list on the spot in presence of witnesses and all the drivers were taken into custody. On the basis of the said complaint, the case being DMG/RPF/Case No. 1(12)/10 was registered u/s 3(a) of Railway Property (Unlawful Possession) Act, 1966. This petition has been filed for quashing the said proceeding on the ground that the documents as

annexed to this criminal petition would irresistibly establish that the railway stone (ballast), as stacked in the railway yard, do not belong to the railways. Heard Mr. P.K. Ghosh, learned counsel appearing for the petitioner and Mr. A. Lodh, learned standing counsel, N.F. Railway for the respondents.

2. The petitioner contended that the said stones (ballast) were supplied by him to the railway contractor, namely, M/s Bhartia Associates Pvt. Ltd., but the railway authorities declined to accept those stones (ballast) as they were being inferior quality. The contention of the petitioner is simple that since the railway authorities are not the owner of those ballast, on the contrary, while the petitioner is the owner of those ballast, he cannot be prosecuted to any criminal proceeding for taking back the rejected materials and cannot be made to suffer a prolonged criminal process that too in the Railway Court located at Tinsukia. This Court vide order dated 16.06.2011, in the interim, suspended the further proceeding of DMG/RPF/Case No. 1(12) of 2010.

3. Mr. P.K. Ghosh, learned counsel appearing for the petitioner referring to Annexure-R/9, which is a correspondence by the Senior Section Engineer (P. Way), Northeast Frontier Railway, Jirania, addressed to the ADEN/AGTL, N.F. Railway, Agartala, submits that the said railway authority has categorically stated that "this stack not belongs to Construction Organization also; otherwise they should have handed over to open line". The petitioner also addressed a letter to the Assistant Divisional Engineer, N.F. Railway, Agartala for identification of ballast lying at Jogendranagar Railway yard and in its vicinity on giving details. He asserted in that letter at Annexure-6 that as per instruction of one Anand Prasad Gupta, Manager (Site), Bhartia Associates Pvt. Ltd., 302, Akashdeep Building, Lakhtokia, Guwahati he had supplied the ballast. Mr. Ghosh, learned counsel also referred to Annexure-4 communication dated 10.11.2007, wherein the M/s Bhartia Associates Pvt. Ltd. had communicated to the petitioner that the materials supplied by him was of poor quality and not as per their requirement. The petitioner was asked to remove the said materials as already supplied at the earliest. On the basis of those communications, the petitioner submitted that if those communications, read with Annexure-7 communication dated 02.06.2011, it would transpire that the ADEN/AGTL, N.F. Railway has categorically stated to clarify that "whether this stack of ballast belongs to Construction Organization and status of this stack of ballast. Open-line has no contract of Cess supply of ballast and no ballast procurement done".

4. Mr. Ghosh submits that in view of Annexure-7 and Annexure-9, it is transparently clear that the ballast lying on the railway line or yard, as referred, did not belong to N.F. Railway. However, by Annexure-8, the Assistant Divisional Engineer, Agartala directed a status report to be furnished to him. On the basis of such requisition, Annexure-9 document was sent to the Assistant Divisional Engineer, Agartala. Annexure-9, as stated earlier, categorically stated that those stack of Ballast did not belong to the Construction Organization.

5. After filing of the criminal petition for quashing the said proceeding, through

Mr. Ghosh, the petitioner filed a bunch of documents to establish his ownership of the railway stone (ballast). From these documents it appears before this Court that the petitioner purchased those ballast from one Suraj Mia and he produced certain challans along with Tax Clearance Certificate to demonstrate bona fide purchase.

6. Considering the limitation and restriction in considering those documents straightway filed before this Court, orders dated 07.12.2011, 10.01.2012, 06.02.2012 and 08.02.2012 were passed for confirmation. It was reflected in the order dated 07.12.2011 that the railway authority was directed to file an affidavit regarding the ownership of those ballast. It appears that no such affidavit was filed but updated case diary was produced on 10.01.2012. On that day, the petitioner was given liberty to file all documents in support of ownership of those materials in question directly to the investigating agency within a period of 15 days from the date of order or he might also impress M/s Bhartia Associates to produce records to the investigating officer. The investigating agency was also directed to make an enquiry on such submission and furnish updated status report within a period of 15 days therefrom. On 06.02.2012, the updated status report could not be filed and a prayer was made for extension of time. Accordingly, the matter was fixed on 08.02.2012, when the updated status report was directed to be filed. Depending on which, Mr. A. Lodh, learned Standing Counsel, N.F. Railway stated that an additional set of those documents was required to be furnished for doing the necessary investigation. Accordingly, the said prayer was allowed and the case was again fixed on 07.03.2012. On 07.03.2012, when the matter was taken up, it had been categorically stated by Mr. Lodh, learned standing counsel that the documents as produced by Mr. Ghosh, learned counsel for the petitioner, were doubtful in nature and as such those documents could not be relied upon by the Investigating Agency as stated. In support of their contention they produced the updated case diary where the statement of the supplier of the ballast was found. From the statement of the supplier of the ballast, as recorded by the Investigating Agency, it cannot be conclusively proved that the ownership of the ballast lies with the petitioner. At this stage, the statement as recorded after interrogation of the supplier stands opposed to the statement of the petitioner and that cannot be brushed aside on the face of it. Unless the ownership is indubitably established in the Court, this Court cannot make an inquiry or investigation for find out the truth in a proceeding of this nature. On reading of the complaint if it appears that no offence has been made out even if the allegations are wholly believed this Court would be within its jurisdiction to quash the said proceeding/complaint u/s 482 of Cr.P.C.

7. At this stage, in view of the law as enunciated by the Apex Court in Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, , and in State of Madhya Pradesh Vs. Awadh Kishore Gupta and Others, , in terms as follows:

10. In dealing with the last case, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction u/s 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the Section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death.

This Court cannot assume the role of a trial Court and embark upon an inquiry as to the reliability of evidence and sustainability of accusation on an all-embracing appreciation of such evidence and, hence, this criminal petition must fail. However, the Investigating Agency is directed to complete the investigation within a period of eight weeks from today as it is found that the investigation is already on the verge of the completion.

For the reasons as stated above, this criminal petition stands dismissed. The order of suspension of the proceeding, if any, is hereby vacated. The case diary containing the status report is returned.