
(1998) 07 GAU CK 0016
In the Gauhati High Court
Case No : Writ Appeal No. 635 of 1997

State of Meghalaya	Vs	APPELLANT
J.B.Holding Pvt.Ltd.		RESPONDENT

Date of Decision : 30-07-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (1998) 3 GLJ 365

Hon'ble Judges : N.C.Jain, C.J. and P.G.Agarwal, J

Bench : Division Bench

Advocate : A.Sharma, S.Saikia , R.Gogoi, N.Tagia, N.M.Lahiri, B.Dutta ,
Advocates appearing for Parties

Judgement

N. C. Jain, C J. (Acting)

1. This writ appeal has been filed by the State of Meghalaya against the order dated 17.11.1997 passed by the learned Single Judge which reads as under:

?Heard Mr. R. Gogoi, learned counsel for the petitioner. Though a request has been made on behalf of Mr. Anil Sarma, Senior Govt Advocate appearing for the State of Meghalaya for adjournment of the case, but in view of the circumstances I do not feel that a protracted hearing on the merit of the case is at all required. Petitioners have filed an FIR pursuant to which the police had to investigate the matter by taking a trip to Bombay where the accused is normally residing. For that the Police Officers approached the State Govt for permitting a Senior Police Officer to proceed to Bombay, which, however, appears to have been refused by the impugned order. That too to my mind may be on account as the financial constraints faced by the Govt.

In the circumstances, I direct that in case the petitioner is ready to deposit the amount that would be required to undertake the investigation and for the visit of the Senior Police Officers to Bombay in connection with the investigation work the State Govt shall allow them to do so and direct the investigating team to

proceed in the right earnest and speedily in terms of the letter dated 8.7.1997 as in Annexure C. It is further directed that the amount that would be required to undertake the investigation will be intimated to the petitioner within one week and the petitioner shall make the deposit of the amount within three days thereafter.

List the case for further order after three weeks.

Let a copy of this order be made available to the learned counsel for the petitioner on payment of usual charges.?

2. In order to appreciate the controversy involved in the present case it is necessary to have a brief look at the facts of the instant case culminating into the order which has been passed by the learned Single Judge. Respondent No. 1 invoked the jurisdiction of the High Court at Shillong Bench (hereinafter referred to as the complainant) with the averment that he filed a complaint before the Deputy Inspector General of Police which probably was not entertained. Thereafter, another complaint was filed before the Superintendent of Police, Special Branch, CID, alleging therein that one N. Majitiha who is the Managing Director of a company in Bombay cheated the complainant to the tune of Rs. 9 crore by making certain misrepresentation, the details of which had been given in the complaint. Upon filing the complaint, the Assistant Inspector General of Police (A) Meghalaya, Shillong, wrote a letter to the Deputy Secretary to the Govt of Meghalaya, Home (Police) Department mentioning therein that the Bombay company did not own such land and that N. Majitiha and company cheated the complainant and requested for deputing a Senior Police Officer capable of liaising with Bombay Police for investigation. Name of Shri D. Kezo, IPS, Deputy Inspector General of Police (SB/CID) was recommended.

3. It has remained undisputed before us that the Commissioner and Secretary, Home (Police), Govt of Meghalaya instead of acceding to the request of the Assistant Inspector General of Police wrote a letter, Annexure 4, which reads as under :

?I am enclosing herewith a copy of the letter dated 11.6.1997 from the Director, JB Holding Ltd, Meghalaya, Shillong, which is self explanatory. Since the accused person appears to be a well known business person of Bombay, I am directed to request the assistance of Govt of Maharashtra to investigate the case through the local police organisation and favour of this Govt with a report of investigation early.?

4. The complainant being apprehensive regarding the conduct of investigation approached the High Court under Article 226 of the Constitution of India for issuance of necessary direction for conducting the investigation and it is on the basis of this fact that the impugned order has been passed by the learned Single Judge.

5. Mr. NM Lahiri, learned Advocate General, representing the State of Meghalaya

has strenuously argued that the High Court had no jurisdiction to pass the impugned order under Article 226 of the Constitution of India particularly when there was no lapse on the part of the State in the matter of investigating the allegations made in the complaint. In the alternative he has argued that the present was not a fit case in which the Court should have issued direction. While defending the order of the learned Single Judge, the counsel for the complainant, on the other hand, has argued that this Court has got ample powers to safeguard the interest of an individual particularly when erroneous view in law has been taken by the Commissioner. He has further argued that in view of the peculiar facts and circumstances of the case, the learned Single Judge has rightly exercised the discretion which should not be interfered in writ appeal.

6. Having given our deep consideration to the arguments of the counsel for the parties, we are of the view that the appeal is meritless and must fail.

7. The Commissioner has taken erroneous view of the matter while observing that the Maharashtra Police should investigate the case through the local police organisation and report the investigation to the Meghalaya Police. The case having been registered in the State of Meghalaya it is only Meghalaya Police who is bound to investigate the matter. The State of Meghalaya could take the assistance of Maharashtra Police and this is what was sought to be done by the Assistant IG of Police by his letter dated 8.7.1997 (Annexure 3) but surely the Maharashtra Police could not be entrusted with the task of investigating the matter. Since the investigation of the case stood scuttled at the threshold, the present was the fittest case in which this Court could order carrying out the investigation by the Meghalaya Police and this is what has precisely been done by the learned Single Judge.

8. There is sufficient case law for the proposition which need not be referred by us in detail that this Court under Article 226 of the Constitution can interfere whenever any erroneous order is passed in the matter of investigation. Except correspondence between certain functionaries of the State, nothing was done for a pretty long time and, therefore, the apprehension of the complainant could not be said to be ill founded. In any case, the learned Single Judge has passed just and proper order in view of the peculiar facts and circumstances of the case. It is settled in various judicial pronouncements that Division Bench in writ appeal should be slow in interfering with such discretionary order passed by Single Bench.

9. For the reasons recorded above, the appeal is found to be devoid of any merit and is ordered to be dismissed.

10. The State of Meghalaya shall intimate the complainant the approximate costs to be deposited by the complainant forthwith with an undertaking from the complainant that any further cost would also be deposited. On deposit of the costs the order of the learned Single Judge be complied with.

11. A copy of this judgment be given forthwith to the counsel for the parties on

their paying requisite copying charges.