

(2016) 01 JH CK 0068
In the Jharkhand High Court
Case No : W.P. (Cr.) No. 182 of 2015

Sunil Lulla and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 06-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155 (2), Section 156 (3), Section 156(1), Section 156(3), Section 200, Section 482, Section 82, Section 83
Penal Code, 1860 (IPC) — Section 120B, Section 34, Section 384, Section 403, Section 406,

Citation : (2016) 2 AIRJharR 40 : (2016) 3 ECrC 150 : (2016) 2 JBCJ 98 : (2016) 1 JLJR 716

Hon'ble Judges : Prashant Kumar, J.

Bench : Single Bench

Advocate : Indrajit Sinha, Advocate, for the Appellant; Ram Nivas Roy, G.P.-III, for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar, J.—1. This writ application has been filed for quashing the entire criminal proceedings in connection with Bistupur P.S. Case No. 303 of 2012, corresponding to G.R. No. 2520 of 2012, including the order dated 13.12.2012 passed by the learned Judicial Magistrate, 1st Class, Jamshedpur, whereby and whereunder he took cognizance against the petitioners under Sections 504, 506 read with Section 34 I.P.C. Petitioners further prayed for quashing the order dated 13.02.2013, 19.08.2013 and 20.03.2015 passed by learned Judicial Magistrate, 1st Class, Jamshedpur, in the aforesaid case, whereby he issued bailable warrant of arrest, non-bailable warrant of arrest and process under Section 83 of the Cr.P.C. respectively.

2. The respondent No. 2 (informant) has filed a complaint in the court of Judicial Magistrate, Jamshedpur, vide Complaint Case No. C/1. 2106 of 2012 alleging therein that the accused persons (petitioners) are running a business of Cinematography films in the name and style of M/s. Eros International Limited. It

is further alleged that accused persons approached respondent No. 2 in the month of July, 2008 for taking distributorship of their film. It is stated that on being induced by the accused persons, the respondent No. 2 paid a sum of Rs. 9,47,000/- to the accused persons for taking distributorship of their film. It is then alleged that the accused persons had not given distributorship to the respondent No. 2. Thereafter, respondent No. 2 requested the accused persons to refund his amount, but the accused persons did not give any heed to his request and avoided to pay the aforesaid amount. Constrained with the same, respondent No. 2 filed a Complaint Case vide C/1 No. 308 of 2009 under Sections 403, 406 & 420 read with Section 34 of the I.P.C., but the aforesaid criminal proceeding has been quashed by a Bench of this Court under Section 482 of the Cr.P.C. by order dated 16.04.2012 passed in Cr.M.P. No. 684 of 2010. It is alleged that thereafter respondent No. 2 sent a legal notice to the petitioners on 21.04.2012, which was received by the petitioners, but they have not given any reply to the said notice. It is stated that on 01.08.2012 at 8:00 p.m. the accused persons threatened respondent No. 2 with dire consequences by giving telephone call on his mobile phone through telephone No. 022-69812565. Accordingly, the present case has been filed alleging that the petitioners had committed offence under Sections 384, 504, 506, 120B & 34 I.P.C.

3. It appears that the learned Judicial Magistrate, Jamshedpur, sent the aforesaid complaint to Bistupur Police Station under Section 156 (3) Cr.P.C. with a direction to institute first information report and investigate the case. Accordingly, Bistupur P.S. Case No. 303 of 2012 under Sections 406, 504, 506/34 I.P.C. instituted and police took up investigation. It appears that the police, after completing the investigation, submitted charge sheet against the petitioners under Sections 504, 506 read with Section 34 I.P.C. against the accused petitioners. It further appears that the learned Judicial Magistrate, 1st Class, Jamshedpur took cognizance of the aforesaid offences against the petitioners vide his order dated 13.12.2012 and issued summons to the petitioners. It then appears that the learned Judicial Magistrate vide order dated 13.02.2013 had issued bailable warrant of arrest against the petitioners. Thereafter, vide order dated 19.08.2013, the learned Judicial Magistrate issued non-bailable warrant of arrest against the petitioners. Then vide order dated 25.11.2013 issued process under Section 82 of the Cr.P.C. and thereafter vide order dated 20.03.2015 issued process under Section 83 of the Cr.P.C. Against the aforesaid orders passed by the learned Magistrate, this writ application has been filed.

4. It is submitted by Sri Indrajit Sinha, learned counsel for the petitioners that the present criminal proceeding is an abuse of the process of court as it appears from the FIR/complaint petition and other materials available on record that respondent No. 2 is harassing the petitioners for personal vendetta. It is submitted that it is clear from the order dated 16.04.2012 passed in Cr.M.P. No. 684 of 2010 (Annexure-3) that this Court, after considering the allegations made in the complaint petition had quashed the earlier proceeding on the same sets of

facts. It is submitted that respondent No. 2 again after adding some vague and general allegations had filed the present case and the learned court below, without applying its judicial mind on the said allegations, had taken cognizance against the petitioners under Sections 504, 506 read with Section 34 of the I.P.C. It is further submitted that from the plain reading of the first information report/complaint, it is clear that there is general and vague allegations against the petitioners that they have threatened the respondent No. 2 on his mobile phone on 01.08.2012 at 8:00 p.m. through telephone No. 022-69812565. But in the entire complaint petition, there is no specific allegation as to which petitioner had threatened respondent No. 2. There is absolutely no allegation that both the petitioners met each other and made a plan for giving threatening to the respondent No. 2. It is submitted that it is well settled that the doctrine of vicarious liability has no application in criminal cases. Under the said circumstance, unless it is specifically alleged that which accused had talked and threatened the respondent No. 2 and which accused had shared common intention with him for threatening the respondent No. 2, it is very difficult to hold that both the petitioners had committed the present crime. It is further stated that it is well settled that on bald and vague allegation a criminal proceeding cannot continue. Sri Indrajit Sinha, further submits that from the perusal of supplementary counter affidavit, filed on behalf of the Senior Superintendent of Police, East Singhbhum, Jamshedpur on 06.10.2015, it is clear that the telephone No. 022-69812565 belongs to one Md. Waqare and it is a public telephone booth. There is no evidence on the record to show that on 01.08.2012 the petitioners approached Md. Waqare and gave call to the respondent No. 2 from his telephone booth. It is submitted that in the absence of above evidence the continuation of present proceeding is an abuse of the process of the Court. Accordingly, Sri Indrajit Sinha, submits that the entire criminal proceedings initiated against the petitioners is an abuse of the process of court, therefore, liable to be quashed.

5. On the other hand, Sri Ram Nivas Roy, G.P.-III and Sri Srijit Choudhary, learned counsel appearing for the respondent No. 2 had submitted that there is direct allegation against both the accused persons that they threatened respondent No. 2 with dire consequences. It is further submitted that paragraph No. 29 of the case diary shows that during investigation, police took the call details report of mobile No. 8797640065, which belongs to the respondent No. 2. It is submitted that from the said call details, it is clear that on 01.08.2012, complainant has received a telephone call from telephone No. 022-69812565. Accordingly, it is submitted that the allegations made in the complaint petition finds corroboration from the aforesaid call details report. Thus, the offence under Sections 504, 506 read with Section 34 I.P.C. made out against the petitioners. Accordingly, it is submitted that no interference required from this Court.

6. Having heard the submissions, I have gone through the record of the case. Admittedly, petitioners filed Cr.M.P. No. 684 of 2010 against the allegations made in paragraph Nos. 1 to 5 of the F.I.R. and this Court quashed the criminal

proceedings in connection with Complaint Case No. C/1 - 308 of 2009 vide order dated 16.04.2012 (Annexure-3). So far the present case is concerned, it relates to criminal intimidation and for that purpose the allegations have been made only at paragraph No. 7 of the F.I.R., which reads as follows:--

"07. That complainant sent a legal notice dated 21.04.2012 to the accused persons and same has received by the accused persons but no any reply above said notice till today, but accused persons threatening to dire consequences by the Telephone on 01.08.2012 i.e. 8:00 p.m. approx. No. 02269812565 from Mumbai in the complaint person No. 8797640065."

From plain reading of the aforesaid allegations, it is clear that there is vague and general allegation against both the accused persons that they threatened the respondent No. 2 with dire consequences through telephone No. 022-69812565. In the complaint petition, the respondent No. 2 nowhere stated which of the petitioners talked to him on the relevant date and time and what role was played by the other accused. Since, the threatening was given on telephone, therefore, it can be presumed that only one person could have talked to the respondent No. 2. Thus, it is necessary for the respondent No. 2 to disclose the name of the accused who threatened him and also disclose the role of another accused.

7. In the instant case respondent No. 2 had not made any specific allegation against either of the accused persons (petitioners). It is well settled that the doctrine of vicarious liability have no application in a criminal proceeding. Thus, for prosecuting two persons, for same criminal offence, it is obligatory on the part of complainant to make specific allegation against both accused persons. In this connection, the law laid down by their Lordships of Hon"ble Supreme Court in Maksud Saiyed v. State of Gujarat and others reported in , (2008) 5 SCC 668, reads as follows:--

"13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statues indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability."

As noticed, in the instant case, the respondent No. 2 has not made any specific allegation against the accused persons, therefore, in my view, on the vague and

general allegation, petitioners are not liable to be prosecuted.

8. In the case of *R.P. Kapur v. State of Punjab* reported in , AIR 1960 SC 866, the Hon"ble Supreme Court has summarized some categories of cases where in exercise of inherent power a criminal proceeding can be quashed, which are:--

- (i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;
- (ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;
- (iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge."

Likewise, in the case of *State of Haryana v. Bhajan Lal* reported in , 1992 Supp (1) SCC 335 at paragraph No. 102, the Hon"ble Supreme Court has laid down seven circumstances under which a criminal proceeding can be quashed, which runs as follows:--

"102.(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 in the first information report and other materials, if any, accompanying the FIR do not disclose a cognisable offence, justifying an investigation by police officers under Section 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 the 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 allegations in the FIR do not constitute a cognisable offence but constitute only a non-cognisable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

(5) Where the allegations 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 Act concerned (under which a 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 Act concerned, 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."

Thus, from perusal of aforesaid judgments, it is clear that even if some allegations made in the FIR, but during investigation no evidence collected in support of the same, then in that case the criminal proceeding can be quashed by the High Court.

9. In the instant case, though it is alleged in the FIR that the accused persons threatened the respondent No. 2 through telephone No. 022-69812565, but during investigation, the police found that the said telephone number belongs to one Md. Waqare. There is nothing on the record to show that the petitioners approached Md. Waqare and threatened respondent No. 2 from his telephone number. Under the said circumstances, I find that there is absolutely no evidence on the record to substantiate the allegation made against the petitioners at paragraph No. 7 of the FIR. Thus, in view of the aforesaid two judgments of the Hon'ble Supreme Court in absence of evidence, continuation of the present criminal proceedings against the petitioners is an abuse of the process of the Court.

10. It has been recently held by their Lordships of Supreme Court in the case of Manik Taneja and Another v. State of Karnataka and Another reported in , (2015) 7 SCC 423 at paragraph No. 8, that:--

"8. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made, prima facie, establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit the prosecution to continue. Where, in the opinion of the Court, the chances of ultimate conviction is bleak and no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may quash the proceeding even though it may be at a preliminary stage."

As noticed above, in the instant case, the telephone No. 022-69812565 belongs to one Md. Waqare and there is absolutely no evidence on record to show that the petitioners approached Md. Waqare for giving a threatening call to respondent No. 2 from his telephone. Thus, in the absence of any cogent evidence that the petitioners threatened the respondent No. 2, I am of the view that the chances of ultimate conviction of the petitioners are very bleak. Therefore, no useful purpose will be served by allowing the present criminal proceeding to continue.

11. It appears that the respondent No. 2 had lost the legal battle against the petitioners in the earlier case, as the same has been quashed by a Bench of this Court vide Order dated 16.04.2012 in Cr.M.P. No. 684 of 2010. Thus, it appears that present proceeding has been initiated by the respondent No. 2 with an ulterior motive for wreaking vengeance on the petitioners for personal grudge.

Thus, on this very ground also the present proceeding cannot be allowed to continue.

12. In view of the discussions made above, I find that the continuation of the present criminal proceeding against the petitioners is an abuse of the process of the Court. Therefore, the same cannot be sustained.

13. In the result, this application succeeds. The entire criminal proceedings in connection with Bistupur P.S. Case No. 303 of 2012, corresponding to G.R. No. 2520 of 2012, pending in the court of learned Judicial Magistrate, 1st Class, Jamshedpur, including the orders dated 13.02.2013, 19.08.2013 and 20.03.2015 passed in the above case are hereby quashed.