

(1996) 09 PAT CK 0029

In the Patna High Court

Case No : Criminal Miscellaneous No. 2383/95 (R)

Surujballi Tiwary

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 20-09-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B, 147, 323, 341, 342

Citation : (1996) 2 PLJR 370

Hon'ble Judges : S.K. Chattopadhyaya, J

Bench : Single Bench

Advocate : Pradeep Ghosh, P.S. Dayal and R.K. Marathia, for the Appellant;
Deepak Kumar, M.K. Dey and K.K. Jhunjhunwala, for the Respondent

Final Decision : Allowed

Judgement

S.K. Chattopadhyaya, J.—In this application u/s 482 of the Code of Criminal Procedure (shortly the Code) the Petitioners has prayed for quashing of the entire criminal proceeding including the investigation pending against them.

2. The facts of the case lie in a narrow compass: on 7.3.95 a complaint was filed by one Moinuddin of village khalrgaon, P.S. Sadar district Hazaribagh against the Petitioners alleging, inter alia, that on 23.3.95 when he was driving truck No. BR 13C 5547 with a cash of Rs. 25,000/- to purchase coal from the colliery, Petitioner No. 1 (accused No. 1) along with 5-6 unknown persons armed with revolver got the vehicle stopped. The driver was asked to vacate the driving seat by showing revolver with a threat to shoot him if the vehicle with its key including the papers and cash are not handed over to Petitioner No. 1, Surujballi Tiwary. The complainant out of fear, handed over the key of the vehicle to Petitioner No. 1 and then Petitioner No. 1 got a letter written by one Mangal Pandey at the point of revolver who was there at the place of occurrence. Thereafter, one of the accused persons sat on the driving seat and searched the box and took out the said sum of Rs. 25,000/- which was given to the accused

No. 1. After that they all drove the vehicle away. It is further stated that on perusal of the letter the name of Petitioner No. 1 was learnt who is an agent of Petitioners 2 and 3 (Accused 2 and 3), The complaint petition further disclosed that the owner of the vehicle was one Ajay Kumar Gupta son of Sarju Prasad of Boddam Bazar, Hazaribagh who had already cleared off all the dues of the Financier. The complaint petition also discloses about some orders of Civil Court at Calcutta regarding which the complainant has stated that if there had been any order of the Civil court, the execution proceeding through the process of the civil court could have been taken but in the instant case the accused persons have looted away the vehicle and cash at the point of revolver and thereby committed serious offence. The complainant had gone to the police statloh but as except some constables, no police officer was available in the police station, the complaint petition was filed in the court.

On such complaint being filed, the learned Chief Judicial Magistrate directed the police to make investigation and, as such G.R. case No. 552/93 corresponding to Sadar Hazaribagh P.S case No. 109(4) 95 was registered by the police.

3. Mr. Pradeep Ghosh, learned Sr. Counsel appearing on behalf of the Petitioners has contended that the complaint petition itself will show that it is not only malafide but has been filed with an oblique motive. He contends that the owner of the truck, Ajay Kumar Gupta is the hirer of which Petitioner No. 3, Duiichand Finance and Leasing (P) Ltd. is a financier. There was hire purchase agreement on the basis of which said Ajay kumar Gupta purchased the truck but, it is said, did not respect the terms and conditions of the agreement by depositing the instalments in time. The said award was filed in the City Civil Court at Calcutta and on the prayer made by the Financier, by order dated 20.9.94, the Chief Judge of the City Civil Court, Calcutta appointed Shri Sheonath Bhattacharya, an advocate of the court as a receiver was at liberty to appoint an agent for the purpose of taking possession of the vehicle. On such liberty being given, said Shri Bhattacharya appointed Petitioner No. 1, Surujballi Tiwary as his agent and directed him to get the possession of the vehicle. Mr. Ghosh further submits that Petitioner No. 1, in the capacity of agent of the receiver tried to locate the vehicle and ultimately got possession of the same from one Mangal Pandey at Mugalsarai on 23.3.95. He further submits that in token of delivery of possession, said Mangal Pandey gave a letter in which the name of Ajay Kumar Gupta has been mentioned as hirer. It is contended that under the aforesaid circumstances the vehicle was taken into possession by the receiver as ordered by the City Civil Court, Calcutta. Continuing his argument Mr. Ghosh says that as because Ajay Kumar Gupta failed to get any relief from the Arbitrator and as such in order to implicate not only the agent, the Petitioner No. 1, has ropped Petitioner No. 2 and 3 so in a false case and submits that from bare perusal of the complaint petition it would be clear that the complainant, Moinuddin is nothing but a set up person of said Ajay Kurrta Gupta. So far Petitioner Nos. 2 and 3 are concerned, according to him, there is no allegation which can make out a case against them except that the accused No. 1 is the agent of accused Nos. 2 and 3 i.e. the

Petitioners 2 and 3. So far Petitioner No. 1 (accused No. 1) Is concerned, Mr. Ghosh submits that he being the agent appointed on the basis of the order of the competent civil court, he has only done his duty by getting the possession of the vehicle and, as such, it cannot be said that he has committed any offence, as alleged.

4. Mr. Deepak Kumar, learned Counsel appearing on behalf of the opposite party No. 2 strongly refuting the argument of Mr. Ghosh has submitted that whether the allegations constitute an offence or not, has to be seen after the investigation is completed. According to him, there is clear averment that Petitioner No. 1 with the help of some unknown persons by giving threat at the point of revolver, robbed the truck and cash of Rs. 25,000/-. This allegation, he contends, definitely makes out a case against Petitioner No. 1. According to him, Petitioner No. 1 being the agent of Petitioners 2 and 3, It is clear, committed the said offence in connivance with Petitioner Nos. 2 and 3. He further submits that under such circumstance, the High Court while exercising its power u/s 482 of the Code, cannot and should not interfere with investigation.

5. The power of the High Court while exercising its jurisdiction u/s 482 of the Code, is well settled by now. A catena of decisions have been examined by their lordships of the Apex Court in the case of State of Haryana and others Vs. Ch. Bhan Lal and others, . At para 108 of the judgment, their Lordships have laid down certain guidelines, though not exhaustive, for exercising such powers by the High Court for quashing a proceeding at its threshold, two of which are as follows:

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; xxx xxx

Where a criminal proceeding is manifestly attended with malafide 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.

6. On the backdrops of this settled principle of law the allegation made in the complaint petition has to be examined. I am aware of my limitation in going through the documents which are not annexed with the complaint petition and, as such, in a quashing proceeding of this nature I am not supposed to look to the annexures which have been filed by the parties in their petitions and counter affidavit.

7. The complaint petition has been filed by Moinuddin without disclosing his parentage. In the counter affidavit also filed by him in this Court father's name is not disclosed. Most striking feature is that the vakalatnama executed by the alleged complainant for the purpose of this case has been signed by one Md. Moin and not Moinuddin. However, in the body of the vakalatnama father's name

of Moinuddin has been given as Abdul Gaffar. Another revealing factor is that though the complaint petition has been typed but the name of accused No. 1 that is Surajballi Tiwary has been filled up by ink. These are some of the features which keep one thinking as to the genuineness of the complaint itself. The allegation is that the complaint was driving the vehicle and was carrying Rs. 25,000/-. Accused No. 1 with five or six persons stopped the vehicle and asked the driver to vacate the driving seat. Threat was given to shoot him if the key, papers and cash are not handed over to accused No. 1. Second phase of allegation is that accused No. 1 by giving threat, got a letter written from one Mangal Pandey who happened to be there. One of the accused persons took out the amount of Rs. 25,000/- and gave it to accused No. 1. Thereafter they drove away the vehicle. Up to this, allegation is against Petitioner No. 1 (accused No. 1) but even if the complainant came to know the name of the Petitioner No. 1 from the letter alleged to have been written by Mangal Pandey, then why the name of Petitioner No. 1 was not typed in the body of the complaint. What was the reason for the complainant to keep the place meant for Petitioner No. 1 blank in para 2 of the complaint petition. There is no answer to this omission. If the allegation against Petitioner No. 1 is taken into consideration in its entirety it is clear from the statements made in paras 5 and 6 of the complaint petition that Ajay Gupta, the alleged owner of the vehicle, is the person behind the whole scene. The complainant has not disclosed his connection with the said Ajay Gupta. Whether he was actually the, driver of said Ajay Kumar Gupta or not, is not clear. Averments made in paras 5 and 6 of the complaint petition make the whole allegation suspicious. Moreover, these statements that Ajay Kumar Gupta was the owner of the vehicle and he had cleared off the dues of the Financier and if there was any order of the civil court at Calcutta, the same could have been executed, clearly goes to show that the dispute is of civil nature. This fact further finds support from the fact that the complainant has implicated Petitioner Nos. 2 and 3 without any specific allegation. Petitioner No. 3 is the Financier and he has been made an accused without being represented by any individual. Petitioner No. 2, it is said, is the Director of the Company, Petitioner No. 3. Only statement is that the Petitioner No. 1 is agent of Petitioner Nos. 2 and 3. The Petitioner No. 3 being a company has been proceeded against for an offence under Sections 147, 341, 342, 323, 379 and 120B of the Indian Penal Code. It is now well settled that in respect of offence where mens rea is an essential ingredient of an offence alleged and in respect of offence where the sentence prescribed is mandatory imprisonment and the court has no discretion to impose any other punishment, such as fine, a company cannot be prosecuted. My aforesaid view finds support from a decision in the case of A.K. Khosla v. T.S. Venkatesan, reported in 1991 (II) CHC 321. All the aforesaid sections mentioned above, require criminal intention and physical participation and the company being a juristic person cannot be liable for such offence.

8. Similarly, there is no allegation against Petitioner No. 2 who is said to be the Director of the Company. Only because his name appears from the letter of said

Mangal Pandey, in my opinion, Petitioner No. 2 cannot be made liable for the offence alleged.

9. Another important feature which is to be considered is the genuineness of the alleged letter of Mangal Pandey. The complainant very cleverly did not disclose the contents of the letter said to have been written by Mangal. If the contents of the said letter would have been disclosed by the complainant in the complaint petition suggesting some participation by Petitioner No. 2, the matter" would have been different, that is not so. It is true that if the complainant discloses some offence against the accused persons, generally the investigation of the criminal proceeding cannot, be quashed but if the High Court is satisfied that the criminal proceeding is malafide and instituted with oblique motive, in view of the guideline No. 7 laid down in Bhajan Lal's case (supra) the High Court definitely is right in quashing the proceeding at the very threshold.

10. It prima facie appears from the complaint petition that Ajay Kumar Gupta being the owner of the vehicle has set up the complainant, Moinuddin to file the complaint petition against the Petitioners. From the discussions above it is difficult even to suggest that Moinuddin is the real complainant or not because his parentage has not been given in the complaint petition and the vakalatnama also has been executed by one Moin, and not by Moinuddin. From these facts and the allegations made in the complaint petition, I am of the view that the proceeding in hand has been maliciously instituted with some oblique motive for wreaking vengeance on the Petitioners. In the case of State of West Bengal v. Swapan Guha reported in : AIR 1982 SC 941, their Lordships, inter alia, have held that liberty and property of any individual is sacred and sacrosanct and the court zealously guards them and protects them. Similarly in the case of Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others, it has been observed as follows:

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 feature which appears in a similar case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue.

11. Having given my anxious consideration to the facts and circumstances of the case, in my view, the criminal proceeding initiated against the Petitioners cannot be allowed to stand.

12. In the result, this application is allowed. The entire criminal proceeding including the investigation against the Petitioners are hereby quashed.