

GAHC010192252017



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./33/2017

RAJKESH BHUYAN
S/O. SRI DILIP BHUYAN, R/O. NAGAON DIMORUGURI, P.S. NAGAON, DIST.
NAGAON, ASSAM.

VERSUS

THE STATE OF ASSAM and ANR.

2:SRI KASHI NATH SARKAR

S/O. RAKHAL SARKAR
SENIOR GOODS GUARD
LUMDING- 782447

Advocate for the Petitioner : MS.B DAS

Advocate for the Respondent :

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

JUDGMENT

Date : 15-03-2023

- 1.** Heard Ms. B. Das, learned counsel for the petitioner. Also heard Mr. K.K. Das, learned Addl. P.P. for the respondent No. 1.
- 2.** The petitioner Shri Rajkesh Bhuyan has filed an application under Section 482 of the Code of Criminal Procedure, 1973 (Cr.PC for short) for quashing an FIR dated 17.05.2013 and

the Charge-Sheet dated 31.05.2013 lodged by Shri Kashi Nath Sarkar with the concerned police station. The FIR was registered as Guwahati Railway P.S. Case No. 49/2013 under Sections 380/411 of the Indian Penal Code (IPC for short). The corresponding G.R. Case No. 5906/2013 was registered on the basis of the FIR.

3. The FIR unfolds that when Kashi Nath Sarkar was travelling by 15657 UP Ex SDAH to Guwahati on 16.05.2013 in AC-II Tier D No. 30 PNO No. 651 8623181, two passengers namely, Sakil Islam and Rajkesh Bhuyan were found sitting on berth No. 29. After crossing Rangia station, the passengers opened his bag and committed theft of his camera and Rs. 5,000/-. After frisking both the passengers, the camera of the informant Kashi Nath Sarkar was recovered, but the money could not be recovered. The other passengers assaulted both the passengers, who allegedly committed the theft.

4. The charge-sheet reflects that the camera was recovered from the bag of the co-passengers Sakil Islam and Rajkesh Bhuyan. A prima facie case was well established against Md. Sakil Islam and Shri Rajkesh Bhuyan and charge-sheet was laid under Section 380/411 IPC. Copies of the lower court record (LCR in short) reflects that trial has not yet commenced after charge-sheet was submitted against the petitioner and his co-accused.

5. I have considered the submissions at the Bar.

6. The learned counsel for the petitioner laid stress in his argument that the petitioner was recruited and selected after following a selection process conducted by the Government, in the Environment & Forest Department in the year 2016 for the post of Forester Grade-I. On 16.05.2013 he was travelling on 15657 UP Express to Guwahati in an AC-II Tier Coach. After the train left Rangia Station, one co-passenger namely Shri Kashi Nath Sarkar suddenly found

his Nikon Camera and cash of Rs. 5,000/- missing from his bag. The petitioner and Md. Sakil Islam were held accountable for the disappearance of the afore-mentioned articles, which led to a heated verbal exchange. Finally this FIR was lodged against the petitioner and Md. Sakil Islam. After investigation charge-sheet was laid and the trial Magistrate, in a routine manner took cognizance of the offence and issued process to the petitioner vide order dated 02.08.2013. The case was then transferred by the Chief Judicial Magistrate, Kamrup to the Court of Special Judicial Magistrate, Kamrup for adjudication. The petitioner was not aware of the pendency of this case as he did not receive any summons. As the petitioner was undergoing training as a Forester, he moved an application through his Lawyer on 03.12.2016 with prayer for dispensation of his personal appearance, in view of his ongoing training which was allowed by the learned trial Court and the next date was fixed on 06.02.2017. The petitioner is aggrieved by the order dated 02.08.2013 as the order was passed mechanically by the learned Magistrate without taking note of the fact that the FIR and the charge-sheet prima facie lacked foundational facts for registration under Section 380/411 IPC. No case under Section 411 IPC can exist against the principal offender, but a case under Section 411 IPC exists against persons who are receivers of stolen property.

7. It is averred that the learned Trial Court has overlooked that the final step in investigation, namely, the formation of opinion regarding the existence of a case to place the accused on trial should invariably be of the Officer-in-Charge (OC in short) of the concerned PS, but in this case charge-sheet was laid by the ASI Dinesh Medhi. The charge-sheet was not in conformity with law as the Officer In-charge is under a statutory obligation to submit along with its report under Section 173(2) documents purporting to finding evidence collected in the course of investigation and the statement of witnesses, but charge sheet was laid

without any such documents and statements of witnesses forming the foundation of such satisfaction accompanying the charge-sheet.

8. The learned Addl. P.P. has submitted that the charge-sheet was indeed submitted by the ASI but the same has been forwarded by the OC which is clearly reflected in the charge-sheet.

9. I have scrutinised the charge-sheet. The brief facts of the case in the charge-sheet reflects that the charge-sheet has been laid with the list of witnesses along with the sketch-map and the seizure list. I have perused the LCR which consist only the Case Diary and the statement of the witnesses along with the FIR. The Case Diary was forwarded by the Special Judicial Magistrate, Assam, Guwahati.

10. Section 173(2) mandates that –

“As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating –

- (a) the names of the parties;**
- (b) the nature of the information;**
- (c) the names of the persons who appear to be acquainted with the circumstances of the case;**
- (d) whether any offence appears to have been committed and, if so, by whom;**
- (e) whether the accused has been arrested;**
- (f) whether he has been released on his bond and, if so, whether with or without sureties;**
- (g) whether he has been forwarded in custody under Section 170;**
- (h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB] or section 376E of the Indian Penal Code (45 of 1860)].”**

11. In the instant case, charge-sheet was laid as per Section 173(2) Cr.PC. At this

juncture it is not fathomable if there is a possibility of conviction or if the possibility of conviction is remote and bleak. It is also not fathomable that the proceeding may cause an abuse of the process of the Court. No irregularities vitiating the proceeding is discernible at this juncture. Trial has not yet been commenced. It is also to be borne in mind that the provision under Section 482 Cr.PC has to be exercised sparingly. This is not a case where offence alleged is predominantly private in nature. This is also not a case regarding borrowing or lending of money which has finally been settled between the parties. It is true that the petitioner is a government employee. It may be so that this case may end in an acquittal, but at this juncture I am not inclined to invoke the inherent jurisdiction under Section 482 Cr.PC.

12. I would like to rely on the decision of the Hon'ble Supreme Court in *Gian Singh v. State of Punjab*, reported in (2012) 10 SCC 303 wherein it has been observed that –

“The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under [Section 320](#) of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like [Prevention of Corruption Act](#) or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour

stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

13. Reverting back to this case it is held that this case is not predominantly private in nature. The complainant was aggrieved by the alleged act of the petitioner. He was even roughed up by the public as alleged. It is not a case which has been settled amicably between the parties. The charge-sheet has been endorsed and forwarded by the Officer Incharge. Moreover it was incumbent upon a newly inducted employee to refrain from such activities which is a slur against his integrity. Although no instance of offence under Section 411 IPC could be deciphered, yet a case under Section 380 IPC was *prima facie* made out. As per Section 460 Cr.PC, one of the irregularities which do not vitiate proceeding is (e) to take cognizance of an offence under Clause-a of Clause- b of sub-section 1 of Section 190.

In view of my foregoing discussions, the petition is rejected at this stage.

Send back the Case Diary.

JUDGE

Comparing Assistant