

GAHC010202632022



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

Case No. : Crl.Pet./1005/2022

BIRENDRA KUMAR JHA
S/O SRI HARI NATH JHA
PERMANENT RESIDENT OF VILL- BELA CHOWK, NEAR DURGA STHAN,
P.O. AND P.S. DARBHANGA, DIST. DARBHANGA, BIHAR AND PRESENTLY
RESIDING AT Q. NO. D3148, SECTOR-3, GUWAHATI REFINERY TOWNSHIP,
P.S. NOONMATI, GUWAHATI, DIST. KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:HITAJIT BHATTACHARYYA
CHIEF GENERAL MANAGER (HUMAN RESOURCES) INDIAN OIL
CORPORATION LIMITED
GUWAHATI REFINERY
NOONMATI
GUWAHATI- 781020
DIST. KAMRUP (METRO)
ASSAM

Advocate for the Petitioner : MR. D BORA

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

**JUDGMENT AND ORDER
(ORAL)**

Date : 01.03.2023

Heard Mr. B.K. Mahajan, learned counsel for the petitioner. Also heard Mr. D.P. Goswami alongwith Mr. Bankim Sarma and Mr. Bhaskar Sarma, learned APP for the State respondent no.1 as well as Mr. N. Deka, learned counsel for the respondent no.2.

2. By filing this criminal petition filed under section 482 Cr.P.C., the petitioner has prayed for quashing of the proceedings of PRC No. 2574/2022, arising out of Noonmati PS Case No. 265/2022 under sections 419/471/193/506 IPC read with sections 66 and 66D of the Information Technology Act, 2000 (IT Act for short).

3. The learned counsel for the petitioner had extensively referred to the FIR dated 02.06.2022, lodged by the then Chief General Manager (HR) on behalf of Indian Oil Corporation Limited, Guwahati Refinery. By extensively referring to the provisions under which the case was registered, it was submitted that if at all the allegations were true, the petitioner had merely impersonated a fake identity, but the ingredients of cheating by personation (sec.419 IPC), using as genuine a forged document (section 471 IPC), giving or fabricating false evidence in a judicial proceeding (section 193 IPC), criminal intimidation (section 506 IPC), hacking with computer system (section 66 IT Act), and cheating by personation by using computer resource (section 66D IT Act) were not present in this case. It was also submitted that the computer

related crime can only be investigated by a police of the rank of Inspector, but in this case, the FIR reveals that the investigation was carried out by a police officer of the rank of Sub-Inspector. Accordingly, it was submitted that this was a fit case for quashing the complaint.

4. It was also submitted that as per section 81 of the IT Act, the said Act would have an overriding effect. Hence, it was submitted that in view of the provision of section 66D of the IT Act, the case would not proceed under section 419 IPC.

5. In support of his contention, reliance has been placed on the following cases, viz., (i) *Sharat Babu Digumarti v. Government (NCT of Delhi)*, (2017) 2 SCC 18, (ii) *Mohd. Nizam v. State of U.P. & Anr.*, 2017 SCC Online All 3017, (iii) *N. Santhosh v. State by Basavanagudi Police*, Crl. Rev. Petition No. 994/2015, decided by Karnataka High Court on 23.03.2016.

6. The learned Addl. P.P. has made his submissions. The learned counsel for the respondent no. 2 has also made his submission and has placed reliance on the case of i) *R.A.H. Siguran v. Shankare Gowda @ Shankara & Anr.*, (2017) 16 SCC 126, (ii) *State of M.P. v. Chunnilal @ Chunni Singh*, (2009) 12 SCC 649, and (iii) *H.N. Rishbud and Inder Singh v. State of Delhi*, AIR 1955 SC 196.

7. Perused the materials available on record and the cases cited by the learned counsel for the petitioner and the respondent no.2 have been given due consideration.

8. As per the statement made in the instant petition, charge-sheet has been submitted by the I.O. and the learned trial Court had taken cognizance of the offence. No statement has been made as to whether charges have been explained and/or whether charges have been framed.

9. It may be stated at the outset that in the said FIR, in short, it was stated that in the month of April, 2022, a complaint dated 01.04.2022 was received by the Director (R) through an e-mail mentioned therein, purportedly by one Monika Anand with certain allegations against the employees of the Guwahati Refinery that they have disproportionate assets and were engaged in illegal gratification and taking bribes. The Corporation sought for supporting documents, but by e-mail dated 05.05.2022, the said complainant had refused to provide documents in support of the allegations. Amongst other statements, it was also stated that it was suspected that the complaint was sent by a person by concealing his identity with fake e-mail identity and impersonated as Monika Anand. Therefore, request was made for investigating the matter.

10. The petitioner was one of the employees of the Indian Oil Corporation Limited, Guwahati Refinery. Therefore, it is presumed that he would be known to its other officers and employees. Under such circumstances, the Court is of the considered opinion that it can only be on the basis of evidence that may come during trial, will the learned trial Court be able to determine the purpose why the petitioner had impersonated himself as another person by creating a fake identity and whether such an act was done with a criminal *mens rea*. Therefore, if the Court embarks to decide the issue by exercising

power under section 482 CrPC, it would only be an exercise on the basis of surmises and conjectures alone and not on the basis of any cogent evidence on record.

11. Thus, the Court is required to examine whether at this stage of trial it would be appropriate for the Court to examine the evidentiary value of the materials available on record and to arrive at a conclusion that there is no material at all to prosecute the petitioner, or in other words, when evidence is not concluded, whether it would be appropriate for the Court to invoke jurisdiction under Section 482 CrPC to evaluate the material and documents on record with a view to find out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence under Section 306 IPC.

12. In the case of *Saranya v. Bharathi*, 2021 (3) Crimes (SC) 292, the Supreme Court of India had observed as follows:-

7. We have heard the learned counsel for the respective parties at length. Before considering the rival submissions of the parties, few decisions of this Court on the principles which the High Court must keep in mind while exercising the jurisdiction under Section 482 Cr.P.C. at the stage of framing of the charge while considering the discharge application are required to be referred to and considered.

7.1 In the case of State of Madhya Pradesh v. Deepak, (2019) 13 SCC 62, to which one of us (Dr. Justice D.Y. Chandrachud) is the author, after considering the other binding decisions of this Court on the point, namely, Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460; State of Rajasthan v. Fatehkaran Mehdu, (2017) 3 SCC 198; and Chitresh Kumar Chopra v. State (Government of NCT of Delhi), (2009) 16 SCC 605, it is observed and held that at the stage of framing of charges, the Court has to consider the material only with a view to find out if there is a ground for "presuming" that the accused had committed the offence. It is observed and held that at that stage, the High Court is required to evaluate the

material and documents on record with a view to finding out if the facts emerging therefrom, take at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. It is further observed and held that at this stage the High Court is not required to appreciate the evidence on record and consider the allegations on merits and to find out on the basis of the evidence recorded the accused charge-sheeted or against whom the charge is framed is likely to be convicted or not.

13. The observations of the Supreme Court of India in the case of *Deepak (supra)* (see para 7.1 of para 12) are reproduced below:-

11. *The Court also enunciated a set of principles which the High Courts must keep in mind while exercising their jurisdiction under the provision: [Amit Kapoor (supra)]*

"27. .. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

* * *

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as

a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

* * *

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie."

14. Thus, as per the ratio of the two herein before referred cases, the Court ought not to marshal the record with a view to decide admissibility and reliability of the records. However, on examining the materials available on record, the Court is unable to hold that the prosecution materials available on record is so absurd that no person trained in law would accept that the ingredients of offence for which the petitioner is made an accused, was totally absent.

15. In so far as the prosecution under section 419 IPC and section 66D of the IT Act is concerned, if the learned trial Court, on perusal of the evidence finds that the investigation was not carried out by a competent police officer, it would definitely have the power to pass appropriate order, by taking note of the legal provisions that may be placed by the learned counsel representing the petitioner.

16. In the case of *R.A.H. Siguran (supra)*, the observations of the Supreme Court was as under:-

8. However, this conclusion was not enough for the High Court to quash the proceedings. It is well settled law that even if investigation is not conducted by authorized officer, the trial is not initiated unless a prejudice is shown.

9. *In H.N. Rishbud and Anr. v. State of Delhi, AIR 1955 SC 196, the question considered by this Court was whether after the court takes cognizance, trial can be held to be initiated merely on the ground that investigation was invalid. Answering in the negative, this Court held that if the plea of invalidity of investigation is raised at sufficiently early stage, the court, instead of taking cognizance direct reinvestigation by competent investigating officer. But, after cognizance is taken the trial cannot be quashed for invalidity of investigation.*

* * *

12. *In view of the above, we are satisfied that the High Court was not justified in quashing the proceedings merely on the ground that the investigation was not valid. It is not necessary for this Court to go into the question raised by learned counsel for the appellants that there was no infirmity in the investigation.*

13. *Accordingly, we allow this appeal, set aside the impugned order and direct the trial court to proceed with the matter in accordance with law."*

17. Thus, in light of the said decisions of the Supreme Court of India, the case of (a) *Mohd. Nizam (supra)*, and (b) *N. Santhosh (supra)*, would not have better persuasive value. Now coming to the case of *Sharat Babu Digumarti (supra)*, cited by the learned counsel for the petitioner is concerned, the said case was decided on the question which arose in that case as to whether the appellant who was discharged under section 67 of the IT Act could be proceeded against under Section 292 IPC. The said question does not arise in this case because the charges are yet to be framed.

18. Thus, this petition stands dismissed.

19. It is made clear that none of the observations made herein is intended to prejudice either side at the stage of framing of charges and/or trial.

20. The petitioner as well as the respondent no. 2, who are duly represented by their respective learned counsel are directed to appear before

the learned Court of Addl. Chief Judicial Magistrate, Kamrup (M), Guwahati on 20.03.2023, without expecting any further notice for appearance, and by producing a certified copy of this order, both sides shall await for further instructions and/or order from the said learned Court.

JUDGE

Comparing Assistant