

GAHC010101812024



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

Case No. : Crl.Pet./616/2024

SARFARAJ AHMED
S/O- ANSARUL HOQUE,
R/O- GAURIPUR, GAURIPUR WARD NO-13,
P.S- GAURIPUR, DIST- DHUBRI, ASSAM, PIN-783331

VERSUS

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

2:CHANAKYA DAS
S/O- GOLOK DAS
S.I (P) OF DHUBRI
P.O AND P.S- DHUBRI
DIST- DHUBRI
PIN-78330

Advocate for the Petitioner : MR A B DEY, MR. S SUTRADHAR
Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

30.09.2024

Heard Mr. P. Sharma, learned Sr. counsel assisted by Mr. A. B. Dey, learned counsel for the petitioner. Also heard Mr. B. Sharma, learned Additional Public Prosecutor representing the State.

2. By filing this application u/s 482 Cr.PC, the petitioner has prayed for quashing of the FIR vide Dhubri PS case No. 1403/2020, u/s 379 IPC read with section 11(1)(a)(b)(d) of Prevention of Cruelty to Animal Act, 1960 and the charge sheet vide No. 273/ 2023 dated 31/05/2023, in connection with PRC case No. 1054/2023, pending in the court of learned SDJM, Dhubri.

3. The FIR discloses that an information received regarding a group of smuggled cattle transporters loading some cattle in a boat were proceeding from Jaleswar side towards Bangladesh, accordingly, the police personnel of Dhubri PS went to the spot i.e., Ballarchar and found 4-5 boats loaded with cattle in the river Brahmaputra. Though, they signalled to stop the boats but without stopping the boats they tried to flee away but on being chased them with the help of government boat, the persons boarded in two numbers of boats keeping the boats at the bank of the river at Ballarchar, fled away with other boats loaded with cattle taking advantage of darkness. Police able to detain two boats along with 96 nos. of cattle who were tied with rope in cruel manner. Accordingly, a case was registered vide Dhubri PS case no. 1403/2020.

4. Learned counsel for the petitioner has submitted that in the month of October, 2020, the petitioner came to know that an FIR has been lodged at Dhubri Police station against some unknown persons pertaining to the illegal transportation of cattle to Bangladesh. The name of the petitioner is nowhere mentioned in the FIR, with any allegation. Subsequently, charge sheet has been laid showing the petitioner as absconder.

5. It is further submitted that subsequent to the registration of the FIR, neither any investigation was conducted nor the petitioner ever called for interrogation. But after a period of three years, the Investigating Officer submitted the charge sheet against the petitioner and his brother Miraj Ahmed. The entire charge sheet was prepared with malicious design of police authority by which they wanted to implicate the petitioner and his brother in false cattle smuggling cases.
6. It is also the submission of the learned counsel for the petitioner that on submission of the charge sheet, the learned trial court took cognizance of the case and issued summons to the accused persons including the petitioner. However, the petitioner did not receive any summons from the trial court in connection with the alleged offence. Accordingly, learned counsel for the petitioner submits that as no prima facie case is made out against the petitioner as per FIR and charge sheet, it is prayed that the impugned FIR as well as charge sheet and the proceeding of PRC case no. 1054/ 2023 be quashed.
7. Learned Additional PP on the other hand submits that accused/ petitioner was absconding during investigation and his brother co-accused Miraj Ahmed was arrested and subsequently, released on bail. During investigation, the Investigating Officer has collected sufficient incriminating materials against the petitioner to file charge sheet. The innocence of the accused/ petitioner cannot be adjudged at the pre-trial stage. Therefore, the accused/ petitioner does not deserve any indulgence.
8. It is to be noted that the High Court can exercise its inherent power

under Section 482 of Cr.P.C. for quashing an FIR. The Hon'ble Apex Court has laid down the guidelines in this regard in the case of State of Haryana v. Bhajan Lal, 1992 SCC (Cri) 426, which are extracted herein-under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- 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 F.I.R. do not disclose a cognizable 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 F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable 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 concerned Act (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 concerned Act, 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.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

9. In *Neeharika Infrastructure v. State of Maharashtra*, 2021 SCC OnLine 315, a three-judge Bench of Hon'ble Apex Court has summarized the relevant principles that govern the law on quashing of an FIR under Section 482 of the Cr.P.C. The relevant observations are as under:

"57. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognized to secure the ends of justice or prevent the abuse of the process by Section 482 Cr.P.C.

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law.

During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant,

the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self- restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR."

10. Thus, in view of the aforesaid legal mandates, the power under [Section 482](#) Cr.P.C. has to be exercised sparingly and that too in the rarest of rare cases. Tested on the touchstone of aforesaid judicial precedents, the plea of present petitioner for quashing of FIR is not covered under the said principles as material regarding commission of the offence has been collected and filed in the form of chargesheet before the Trial Court. The object of the law cannot be allowed to get defeated by quashing the FIR solely on the ground that police could not investigate the case properly and filed chargesheet in this case.

11. At the stage of issuing process, the trial court is not expected to examine and access in detail the material placed on record. Only this has to be seen whether any prima facie cognizable offence is disclosed or not.

12. In *S.W. Palankattkar and others vs. State of Bihar* (2002) 44 ACC 168, it

has been held by the Hon'ble Apex court that quashing of the criminal proceeding is an exception than a rule. The inherent powers of the High court u/s 482 Cr.PC itself envisages three circumstances under which the inherent jurisdiction may be exercised –

- a. To give effect an order under the Code,
- b. To prevent abuse of the process of the court,
- c. To otherwise secure the ends of justice.

The power of the High court is very wide but should be exercised very cautiously to do real and substantial justice for which the court alone exists.

13.The High court would not embark upon an enquiry as it is the function of the trial Judge/ court. The interference at the threshold of quashing of the charge sheet/summoning order in the case in hand cannot be said to be exceptional as it discloses prima facie commission of an offence. In the result, the prayer made for quashing is refused. The accused/ petitioner has ample opportunity to raise all the objections at the appropriate stage during trial.

14.Accordingly, the criminal petition is dismissed and disposed of.

JUDGE

Comparing Assistant