

GAHC010186952023



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

Case No. : Crl.Pet./889/2023

ROUNAK ALI HAZARIKA
S/O- LATE EUNUS ALI HAZARIKA, PROFESSION - D.I.G.P (BOARDER),
(UNDER SUSPENSION), R/O- HENGRABARI, SARUMOTORIA, DOWN
TOWN, P.S. DISPUR, P.O. HENGRABARI, DIST. KAMRUP(M), ASSAM,
GUWAHATI-781036.

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:NIRMAL KUMAR GOYAL
S/O- LATE DEEP CHAND GOYAL
R/O- TECHNO SPARE
GOYAL TOWER
SR-3
TRANSPORT NAGAR
AGRA ROAD
JAIPUR
PIN- 302003

Advocate for the Petitioner : WASIM RAJA

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 10.05.2024

Heard Mr. W. Raja, learned counsel for the petitioner. And also heard Mr. RJ Baruah, learned Additional PP for the State respondent no. 1 and Mr. S. Deka, learned counsel representing the respondent no. 2.

2. By filing this application u/s 482 Cr.PC, the petitioner has prayed for quashing of the FIR, being Paltan Bazar P.S. Case No – 412/2017 u/s 384 IPC and the charge sheet dated 04/10/2021 and the order of the magistrate dated 17/11/2021, taking cognizance of the offence under Section 384 IPC against the petitioner.

3. The brief facts of the case is that on 07/10/2016 at around 1:00 PM the complainant Shri. Nirmal Kumar Goyal, lodged an FIR before the CID police station stating inter alia that on 22/03/2013 the complainant was boarded in Rajdhani Express for his travel from Guwahati to New Delhi. In the morning, his baggages were checked by the GRPS patrolling party and found one signal gun without grooves purchased by him for his grandson through one Mr. Bhaba Kalita, Secretary Shooting Range, Assam Rifle Association. He was forced to cancel his travel and was taken to GRPS by OC Dhrubo Jyoti Hazarika and was subject to abuse.

4. It was further alleged that on direction from Ranauk Ali Hazarika, SRP, Pandu the signal gun was seized. He told the OC that it was not a firearms but he was threatened by OC to send him to jail. Bhaba Kalita spoke to OC and Pallab Bhattacharya, IPS, the then ADGP, SB and informed him that it was a signal gun. The OC demanded a bribe of Rs. 8 Lacs for the SRP and an apple ipad for himself.

5. It was also alleged in the FIR that in the evening, the SRP came to the police station and finally the SRP extorted Rs. 5 Lacs from him and the apple ipad worth of

Rs. 50,000/- by the OC. Then he was released later in the night. He was threatened by the SRP and the OC not to report the matter to any senior officers. After about a month he and Bhaba Kalita met ADGP, SB and narrated the incident. In the meantime he gave a statement to Anurag Agarwal, IPS, the then DIG (SR) Assam, Silchar. It is further stated that the informant later on he came to know that the gun was sent to FSL and the report was also received from FSL to be a signal gun.

6. On the basis of the FIR, a case was initially registered vide CID PS case no 33/2016 u/s 384 IPC against the present petitioner Raunak Ali Hazarika (the then SRP, Pandu) and SI Dhruba Jyoti Hazarika (the then OC, GRPS, Guwahati) and investigation was commenced. Subsequently, the case was transferred to Paltan Bazar PS as per order of Chief Judicial Magistrate, Kamrup (M), Guwahati and accordingly Paltan Bazar PS case no. 412/2017 was registered.

7. The learned counsel for the petitioner has argued that there is a legal bar against the institution of the proceedings against the petitioner u/s 468/473 of Cr.P.C., as the FIR was filed after three years of the incident without explaining the delay. It was narrated in the FIR that the incident occurred on 22/03/2013 but the FIR was lodged on 07/10/2016. But the inordinate delay in filing the FIR was never explained by the informant.

8. The learned counsel for the petitioner has further submitted that the FIR also reveals that the OC, GRPS demanded a bribe of Rs. 8 Lacs on behalf of the SRP i.e., the petitioner and an apple ipad worth Rs. 50,000/- for the OC himself for the release of the informant.

9. By referring the judgment of **State of Haryana vs. Bhajan Lal reported in 1992 SUPP (1) SCC 335**, the learned counsel has pointed out that the Hon'ble Apex court has held among others that "*where the allegation made in the Fir or complaint*

are so absurd or 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" and it is manifestly appears from the FIR that the OC, GRPS took the informant in his official capacity for the purpose of investigation and the petitioner had nothing to do with the investigation of the OC, GRPS and the allegation made by the informant of demand through the OC, GRPS on behalf of the petitioner is not tenable in the eye of law. It is also alleged that it is highly improbable that the OC, GRPS and the petitioner could have put the life of the informant in danger inside the GRPS in front of all the officials to extort money from the informant. Hence, no offence u/s 384 of IPC is made out and the FIR dated 07/10/2016 is liable to be quashed.

10. It is also the submission of the learned counsel for the petitioner that as per the proceeding, the gun recovered from the possession of the informant was seized and the informant was asked to cooperate with the investigation by the OC, GRPS as a part and parcel of his duty which make the informant missed the train on the date of incident. After fulfilling the required formalities by the OC, GRPS, the informant was allowed to go on the same day at night.

11. According to learned counsel for the petitioner, it is important to bring into the notice of this court that even after the bar of limitation set for in section 468 Cr.P.C., the FIR was received and registered on 07/10/ 2016 and the charge sheet was filed on 04/10/2021 without assigning any reason of delay in filing the FIR by the informant as well as the charge sheet by the police.

12. Learned counsel has referred the case of Lalita Kumari vs. Govt of UP, reported in (2014) 2 SCC 1, wherein the Hon'ble Apex court has categorically directed that preliminary inquiry must be conducted before registering of FIR if there is an abnormal delay in initiating criminal proceeding. The learned counsel has stated that in the instant case no such preliminary inquiry was ever conducted by the police even

though a serious delay was apparent from the FIR and the registration of the FIR. Accordingly, the learned counsel has prayed for quashing of further proceeding of PRC case no. 2374/2021 pending in the court of learned JMFC, Kamrup(M), Guwahati.

In support of his submission, the learned counsel has also relied on some other case laws –

a. (2014) 2 SCC 62 (Sarah Mathew vs. Institute of Cardiovascular diseases by its directors and others)

b. (1998) CRLJ 213 (Ladder Siddabasappa vs. State of Karnataka)

13. Opposing the petitioner's prayer, learned Additional Public Prosecutor has contended that the FIR discloses commission of a cognizable offence. The FIR pertains to a specific incident from which it reveals that the petitioner extorted Rs. 5 Lacs from the informant. The argument of the learned counsel for the petitioner is with regard to the factual aspects of the case which cannot be gone into by this court while exercising jurisdiction u/s 482 Cr.P.C.

14. The learned counsel for the respondent no. 2, representing the informant, has also argued in the same tune by stating that on perusal of the material on record and looking into the facts of the case at this stage, it cannot be said that no offence is made out against the petitioner and prays for dismissal of the quashing of the proceeding of the case.

15. It will be appropriate at this stage to take note of the observation of the Hon'ble Apex Court in the case of **Suresh Kumar Goyal and others vs. State of Uttar Pradesh and another**, reported in **(2019) 14 SCC 318**, wherein following steps were delineated for determining the veracity of a prayer for quashment raised by an accused for invoking the power vested in the High Court u/s 482 Cr.PC –

"12. While dealing with the jurisdiction under Section 482 CrPC to quash the proceedings at the stage of issuance of process, or at the stage of committal, or at the stage of framing of charges, that is to say before the commencement of actual trial, in the light of material placed on record by the accused, this Court in Rajiv Thapar v. Madan Lal Kapoor laid down as under:

"28. The High Court, in exercise of its jurisdiction under Section 482 CrPC, must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of the allegations levelled by the prosecution/complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused are. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. This is so because it would result in giving finality to the accusations levelled by the prosecution/ complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed by establishing his defences by producing evidence in accordance with law. There is an endless list of judgments rendered by this Court declaring the legal position that in a case where the prosecution/ complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed material before the Court, prima facie evidencing the truthfulness of the allegations levelled, trial must be held.

29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage

of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences inasmuch as it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for

quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/ complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused."

16. It being a settled principle of law that to exercise powers u/s 482 Cr.P.C., the complaint in its entirety shall have to be examined on the basis of the allegation made

in the FIR/charge sheet and the High Court at that stage is not under an obligation to go into the matter or examine its correctness. Whatever appears on the face of the FIR/charge sheet shall be taken into consideration without any critical examination of the same.

17. The question which is raised for consideration is that in what circumstances and categories of cases, a criminal proceeding may be quashed either in the exercise of the extraordinary power of the High court under Article 226 of the Constitution or in the exercise of the inherent powers of the High court u/s 482 Cr.P.C. This has often been hotly debated before the Hon'ble Supreme Court and various High Courts. Though in a series of decisions, this question has been answered on several occasions by the Hon'ble Supreme Court yet the same still comes up for consideration and is seriously debated.

18. The Hon'ble Supreme Court has clarified the broad contours and parameters in laying down the guidelines which have to be kept in mind by the High Courts while exercising inherent powers under Section 482 Cr.P.C. The aforesaid principles laid down by Hon'ble Supreme Court are illustrative and not exhaustive. Nevertheless, it throws light on the circumstances and the situation which is to be kept in mind when the High Court exercises its inherent powers under Section 482 CrPC.

19. It has been further elucidated recently by Hon'ble Supreme Court in ***Arnab Manoranjan Goswami Vs. State of Maharashtra and Others***, reported in **2020 SCC Online SC 964** where jurisdiction of the High Court under Article 226 of the Constitution of India and Section 482 Cr.P.C. has been analysed at great length.

20. It is thus settled that the exercise of inherent power of the High Court is an extraordinary power which has to be exercised with great care and circumspection before embarking to scrutinize the complaint/FIR/charge-sheet in deciding whether

the case is the rarest of rare case, to scuttle the prosecution at its inception.

21. It is settled that one is not supposed to dilate on this score, or intend to present that the allegations in the complaint will have to be accepted on the face of it and the truth or falsity of which would not be gone into by the Court at this stage, as noticed above, whether the allegations in the complaint were true is to be decided on the basis of the evidence led at the stage of trial and the observations on this score in the case of ***Nagpur Steel & Alloys Pvt. Ltd. Vs. P. Radhakrishna and Others***, reported in ***1997 SCC(Cri) 1073*** ought to be noticed. In para 3, it was observed:-

“3. We have perused the complaint carefully. In our opinion, it cannot be said that the complaint did not disclose the commission of an offence. Merely because the offence was committed during the course of a commercial transaction, would not be sufficient to hold that the complaint did not warrant a trial. Whether or not the allegations in the complaint were true was to be decided on the basis of evidence to be led at the trial in the complaint case. It certainly was not a case in which the criminal trial should have been cut short. The quashing of the complaint has resulted in grave miscarriage of justice. We, therefore, without expressing any opinion on the merits of the case, allow this appeal and set aside the impugned order of the High Court and restore the complaint. The learned trial Magistrate shall proceed with the complaint and dispose of it in accordance with law expeditiously.”

22. Be it noted that in the matter of exercise of inherent power by the High Court, the only requirement is to see whether continuance of the proceedings would be a total abuse of the process of the Court. The Criminal Procedure Code contains a detailed procedure for investigation, framing of charge and trial, and in the event when the High Court is desirous of putting a halt to the known procedure of law, it must use proper circumspection with great care and caution to interfere in the

complaint/FIR/charge-sheet in exercise of its inherent jurisdiction.

23. It is no more *res integra* that exercise of power under Section 482 Cr.P.C. to quash a criminal proceeding is only when an allegation made in the FIR or the charge sheet constitutes the ingredients of the offence/offences alleged. Interference by the High Court under Section 482 Cr.P.C. is to prevent the abuse of process of any Court or otherwise to secure the ends of justice. It is settled law that the evidence produced by the accused in his defence cannot be looked into by the Court, except in very exceptional circumstances, at the initial stage of the criminal proceedings. It is trite law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 Cr.P.C. for quashing criminal proceedings. It is clear from the law laid down by Hon'ble Supreme Court that if a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding.

24. Coming to the question of delay in lodging the FIR, the Hon'ble Supreme Court in the case of ***Skoda Auto Volkswagen (India) Private Ltd. vs The State Of Uttar Pradesh***, reported in **(2021) v. 5 SCC 95**, has held that in a petition for quashing the FIR, the court cannot go into disputed questions of fact. The mere delay on the part of the complainant in lodging the complaint, cannot by itself be a ground to quash the FIR. The court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or in the complaint or criminal proceedings ought not to be scuttled at the initial stage.

25. In the case of ***Ravinder Kumar And Anr vs State Of Punjab***, reported in **(2001) v.7 SCC 690**, Hon'ble Supreme Court has held that the attack on prosecution cases on the ground of delay in lodging FIR has almost bogged down as a stereotyped redundancy in criminal cases. It is a recurring feature in most of the

criminal cases that there would be some delay in furnishing the first information to the police. It has to be remembered that law has not fixed any time for lodging the FIR. Hence, a delayed FIR is not illegal.

26. The Hon'ble Supreme Court in the case of ***Mohammad Wajid vs State Of U.P and Ors.*** reported in ***AIR 2023 SC 3784***, has held that delay in the registration of the FIR, by itself, cannot be a ground for quashing of the FIR.

27. Thus it is clear that merely because according to the petitioner, there is delay in lodging the FIR by itself is not sufficient to quash the same.

28. In the instant case, on a careful reading of the FIR/ charge-sheet, it cannot be said that the FIR does not disclose the commission of any offence. The ingredients of the offence under Section 384 IPC cannot be said to be absent on the basis of the allegations in the FIR/charge-sheet. I would like to add that whether the allegations in the FIR are otherwise correct or not, has to be decided on the basis of the evidence to be led during the course of trial.

29. In view of the aforesaid legal proposition, as well as under the facts and circumstance of the case, this court is not inclined to interfere with the order of the trial court on taking cognizance of offence against the petitioner. Hence, the Criminal Petition is dismissed and disposed of accordingly.

JUDGE

Comparing Assistant