

GAHC010220332019



2020:GAU-AS:12790

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

Case No. : Crl.Pet./1073/2019

RANJAN KUMAR BARIK
S/O SRI RABINDRA KUMAR BANIK, AGM OPERATION, V.P.O.-RAISON, DS
DRINKS AND BEVERAGES PVT. LTD, PIN-175128

VERSUS

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

2:RAMESH CHANDRA KALITA
STATION OFFICER
LOKHRA FIRE AND EMERGENCY SERVICE STATION
LOKHRA
GUWAHAT

Advocates for the petitioner : Mr. P. Bora, Id. Sr. Adv.
assisted by Md. A. A. Hussain, Id. Adv.

Advocate for the respondents : Mr. P. Borthakur, Id. Addl. P.P. (R-1) and
Md. A. Hassan, Id. Adv. (R-2).

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

Date of hearing : 30.07.2024

Date of Judgment : 29.10.2024

JUDGMENT & ORDER (CAV)

Heard Mr. P. Bora, learned Senior Counsel assisted by Md. A. A. Hussain, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent No. 1 and Md. A. A. Hassan, learned counsel for the respondent No.2.

2. This is an application filed under Section 482 of the Code of Criminal Procedure, 1973, praying for quashing of the proceeding being Sessions Case No.223/2019, pending before the Court of learned Additional District & Sessions Judge, Kamrup, Guwahati in connection with Garchuk P.S. Case No. 397/16 dated 27.07.2016 registered under Sections 120(B)/436 of IPC including the Chage-Sheet No.111/17 dated 29.07.2017.

3. The brief facts of the case are as follows:

3.1. The petitioner was posted as the Factory Manager of Sunrise Biscuit Co. Pvt. Ltd., Gotanagar, Guwahati-33, from January 2014 to August 2016. On 24.07.2016, at about 2:14 A.M., a fire broke out on the factory premises. Upon hearing about the incident from Mr. Bhaskar Jyoti Das, the Maintenance Officer, the petitioner immediately rushed to the factory. He then communicated the incident to the Lokhra Fire and Emergency Service over the telephone. The officials of the Lokhra Fire and Emergency Service arrived at the factory, but prior to their arrival, the management staff had already extinguished the fire. Since the fire was under control, the officials left the premises.

3.2. The petitioner then conducted an inquiry and learnt that the union members including office bearers with host of their union workers first opened the valve of the diesel tank, resulting in approximately 300 liters of diesel gushing out. This was only noticed by the Maintenance Manager after it had happened. Subsequently, the workers set the CBB boxes on fire, which was again controlled by the timely intervention of the management staff. The petitioner was busy investigating the incident and identifying the conspirators behind the fire when some workers became hostile and started manhandling him.

3.3. Later, after collecting evidence, the petitioner went to his chamber to prepare the draft of the FIR against the individuals responsible for the fire incident. Suddenly, the union workers attacked the petitioner and the production manager, Sudipta Pal. The workers entered the petitioner's chamber, broke the glass panes of the doors, and threatened him with dire consequences if he filed any FIR against them. They also confined the petitioner and his two co-employees, Sudipta Pal and Abhijit Das, until 11:45 P.M.

3.4. Subsequently, the petitioner lodged a complaint on 28.07.2016, which was registered as Gorchuk P.S. Case No. 398/16 under Sections 120(B)/143/436/448/427/342/34 of the IPC. Later, he came to know that another case was pending regarding the fire incident, which had been lodged by officials of the Lokhra Fire and Emergency Service on 27.07.2016. This case was registered as Garchuk P.S. Case No. 397/2016 under Sections 120(B)/436 of the IPC. He also discovered that the investigating officer was searching for him in this case, and the petitioner managed to obtain anticipatory bail from this Court on 05.04.2017.

3.5. Furthermore, on the day following the incident, 25.07.2016, the petitioner

reported the entire matter to the higher officials of the company, who instructed him to take appropriate action against the workers. After gathering evidence, 17 workers were found to be involved in the incident and were subsequently dismissed. The management was compelled to issue a notice of temporary closure of the company on 29.07.2016.

3.6. To protect the involved workers, the General Secretary of the Workers' Union rushed to the Garchuk Police Station on 31.07.2016 and lodged a complaint, alleging that Umesh Das, acting on the petitioner's instructions, had set the factory on fire, and that he had been offered Rs. 5 lakhs. In response to this complaint, Garchuk Police Station registered a case against the petitioner, known as Garchuk P.S. Case No. 401/2016 under Sections 120(B)/109/436 of the IPC.

3.7. Thus, there are three cases lodged at Garchuk Police Station concerning the same fire incident that occurred on 19.06.2016, 20.06.2016, and 24.07.2016. The FIR lodged by respondent No. 2 was registered as Garchuk P.S. Case No. 397/16, the FIR lodged by the petitioner was registered as Garchuk P.S. Case No. 398/16, and the FIR lodged by the workers' union was registered as Garchuk P.S. Case No. 401/2016.

4. Mr. Bora, learned Senior Counsel for the petitioner, submits that the underlying cause of the fire incidents on three occasions was an internal dispute between the factory workers and the management. After an inquiry, the matter was referred to the higher officials of the company, who subsequently dismissed 17 workers found to be involved in the incidents. He further submitted that the General Secretary and other members of the workers' union provided written statements to the investigating officer, indicating that the statements they made before the I.O. of Garchuk Police Station in connection with Garchuk P.S. Case

No. 397/16, as well as those against the petitioner, were based on hearsay and made in the heat of the moment. It is stated, *inter alia*, that "We sincerely regret the statement made by me; in the heat of the moment and thereafter under provocation; holding people responsible for actions we have no direct/constructive knowledge of. The Statements made by me before your good self and subsequently before other personnels, have been made on the hearsay statements that were being made by the generic angry mob which we assume to be true".

5. It is further submitted that the 17 workers who were dismissed entered into a settlement with the management, resolving their dispute through a Settlement Agreement dated 08.02.2017. From the statements made in their affidavit, it is evident that the alleged fire incidents were exaggerated, deliberately implicating the petitioner.

6. In the case of Garchuk P.S. Case No. 397/16, a charge-sheet was filed vide C.S. No. 111/17 dated 29.07.2017 under Sections 120(B)/436/34 of IPC against the petitioner and one Umesh Das. Additionally, a charge-sheet in connection with Garchuk P.S. Case No. 401/2016, initiated on a complaint lodged by the General Secretary of the workers' union, was filed vide C.S. No. 30/2017 dated 17.03.2017 under Sections 120(B)/436 of the IPC against the petitioner and Umesh Das. However, the Garchuk P.S. Case No. 401/2016 has already been quashed by this Court's order dated 13.03.2019.

7. Furthermore, the complaint lodged by the petitioner, registered as Garchuk P.S. Case No. 398/16, was also charge-sheeted vide C.S. No. 130/2016 dated 29.08.2016 under Section 436 of IPC against Umesh Das and against 16 accused persons under Sections 143/448/342/298/506/34 of the IPC. It is stated that one Amal Saloi, who allegedly provided a statement before

respondent No. 2 regarding the incident, has also submitted a written letter to the investigating officer (I.O.), stating that he did not give any such statement to the fire department officer. A copy of the letter dated 27.01.2017 from Amal Saloi to the I.O. was forwarded to the petitioner's company. However, the I.O. filed the charge-sheet without considering this material, which is liable to be set aside.

8. Mr. Bora, learned Senior Counsel for the petitioner, further submits that the charge-sheet is patently absurd and inherently improbable, and no prudent person could conclude that there are sufficient grounds for criminal proceedings against the petitioner. He stated that it is evident from the record and the charge-sheet that there are no eyewitnesses to the fire incident, and therefore, the reasons behind the fire remain unknown. Additionally, no motive on the part of the petitioner is apparent at any point regarding the fire incidents.

9. He further submits that the I.O. suppressed relevant materials for the case, and as a result, the impugned charge-sheet does not present all material facts before the learned Trial Court. The charge-sheet in this case is a subsequent one, submitted after a charge-sheet had already been filed concerning the same fire incident in Garchuk P.S. Case No. 398/16, which was initiated based on a complaint made by the petitioner. Consequently, there cannot be two different outcomes of the investigation concerning the same incident. Therefore, the impugned charge-sheet No. 111/17 dated 29.07.2017 is liable to be set aside and quashed. Accordingly, he submits that this is a fit case in which the criminal proceedings and the charge-sheet can be set aside by invoking the power under Section 482 of the Cr.P.C.

10. He further submitted that the instant FIR, registered as Garchuk P.S. Case No. 397/16, was based on the FIR lodged by the Fire Extinguisher Officer. At the

time of lodging the FIR, the statements of Amal Saloi and Barun Panday were recorded. However, Amal Saloi later stated before the I.O. that on the night of the incident, 23.07.2016, he was not on duty, as he joined the morning shift on 24.07.2016. He claimed that he never made any other statement to any officer at the time of the relevant incident, as he was not present. Despite this declaration by Amal Saloi, the I.O. filed the charge-sheet mechanically, without conducting a proper investigation, only to harass the petitioner.

11. Moreover, the third FIR lodged by Mr. Lohit Das (General Secretary) included a statement indicating that he never claimed that Umesh Das voluntarily admitted of setting the factory on fire on the instruction of the petitioner. He also made a clarifying statement before the I.O. regarding the third FIR, which was subsequently quashed by this Court. Yet, even after such clarifying statements from both Amal Saloi and Lohit Das, the I.O. submitted the charge-sheet without any basis against the present petitioner. Therefore, the charge-sheet is liable to be set aside and quashed.

12. The charge-sheet submitted by the I.O. is purely mechanical and the result of a perfunctory investigation. Additionally, the charge-sheet submitted in connection with Garchuk P.S. Case No.398/16 on 29.08.2016 was filed only against Umesh Das and others. In contrast, the charge-sheet against the petitioner and Umesh Das was submitted on 29.07.2017 in connection with Garchuk P.S. Case No.397/16. Furthermore, respondent No. 2 himself admitted in the FIR that there were no eyewitnesses to the incident, and thus the reason behind the fire remains unknown. Thus, he submits that the petitioner is in no way involved in the offences alleged in the charge-sheet and that the petitioner has been unnecessarily harassed in connection with Garchuk P.S. Case No. 397/16 under Sections 120(B)/436 of the IPC and thus the same is liable to be

set aside and quashed.

13. Mr. Bora, learned Senior Counsel, further relied on the decision of the Hon'ble Supreme Court in the case of ***Rajiv Thapar and Others vs. Madan Lal Kapoor***, reported in **(2013) 3 SCC 330**. He emphasized paragraphs 27 and 29 of the judgment, which read as follows:

"27. Recently, this Court again had an occasion to examine the ambit and scope of [Section 482](#) of the Cr.P.C. in *Rukmini Narvekar Vs. Vijaya Satardekar & Ors.*, (2008) 14 SCC 1, wherein in the main order it was observed, that the width of the powers of the High Court under [Section 482](#) of the Cr.P.C. and under [Article 226](#) of the Constitution of India, was unlimited. In the instant judgment, this Court held that the High Court could make such orders as may be necessary to prevent abuse of the process of any court, or otherwise to secure the ends of justice. In a concurring separate order passed in the same case, it was additionally observed, that under [Section 482](#) of the Cr.P.C., the High Court was free to consider even material, that may be produced on behalf of the accused, to arrive at a decision whether the charge as framed could be maintained. The aforesaid parameters shall be kept in mind while we examine whether the High Court ought to have exercised its inherent jurisdiction under [Section 482](#) of the Cr.P.C. in the facts and circumstances of this case.

29. The issue being examined in the instant case is the jurisdiction of the High Court under [Section 482](#) of the Cr.P.C., 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](#) of the Cr.P.C., 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](#) of the Cr.P.C. 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](#) of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.”

14. He also relied on another decision of the Hon’ble Supreme Court in the case of ***Kapil Agarwal and Others vs. Sanjay Sharma and Others***, reported in ***(2021) 5 SCC 524***, wherein the Supreme Court expressed the view that “there is no bar to lodge the FIR for subsequent event, but, if it is found that the subsequent FIR is an abuse of process of law and/or the same has been lodged only to harass the accused, the same can be quashed in exercise of powers under Article 226 of the Constitution or in exercise of powers under Section 482 Cr.P.C.”

15. He further submitted that when dealing with a petition under Section 482

of the Cr.P.C., it is necessary to consider whether the trial is likely to result in a conviction. The broad test to be applied is whether the materials on record, if unrebutted, makes a conviction reasonably possible. In this context, he relies on the decision of the Hon'ble Supreme Court in the case of ***Yogesh Alias Sachin Jagdish Joshi vs. The State of Maharashtra***, reported in ***(2008) 10 SCC 394***, and emphasizes paragraph 16 of the judgment, which reads as follows:

"16. It is trite that the words "not sufficient ground for proceeding against the accused" appearing in the Section postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. However, in assessing this fact, the Judge has the power to sift and weigh the material for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine a prima facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the materials on record, if unrebutted, makes a conviction reasonably possible."

16. He further cited the decision of the Hon'ble Supreme Court in the case of ***Madhavrao Jiwajirao Scindia and Others vs. Sambhajirao Chandrojirao Angre and Others***, reported in ***(1988) 1 SCC 692***, wherein it is held in paragraph 7 of the judgment, which reads as follows:

"7. 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 features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

17. On the other hand, Mr. Borthakur, learned Additional Public Prosecutor, has submitted that the present FIR is the first one lodged by the Fire Extinguisher Officer. He further submitted that on three occasions, fires broke out in the company. After conducting an inquiry, the Fire Extinguisher Officer lodged the FIR after recording statements of some of the employees. Following a thorough investigation, the investigating officer filed the charge-sheet against the present petitioner and one Umesh Das. Therefore, it is not a fit case to quash the proceedings at this stage by invoking the power under Section 482 of the Cr.P.C.

18. Md. Hassan, learned counsel, has submitted that respondent No. 2 is a Fire Extinguisher Officer. He submits that the FIR was lodged based on statements made by the workers, as there were three occasions when a fire broke out in the company, which raised suspicions for the official. Accordingly, he lodged the FIR, based on which the investigation was carried out by the investigating officer, and the charge-sheet was subsequently submitted. Hence, there is no reason to quash or set aside the FIR or the charge-sheet filed against the present petitioner. He further submitted that this is not a fit case to invoke the power under Section 482 of the Cr.P.C. for quashing the proceedings.

19. After hearing the submissions made by the learned counsels for both sides, it is seen that three FIRs have been instituted for the same set of

incidents involving fire incident in the factory where the petitioner was working as a factory manager. The first FIR was lodged by the Fire Extinguisher Officer (respondent No. 2) on suspicion, noting that there were no eyewitnesses to the incident. However, there was reasonable suspicion, which led the fire extinguisher office to file the FIR. The second FIR was lodged by the present petitioner against one Umesh Das and some other workers, which has also been charge-sheeted against said Umesh Das and other factory workers of the company. The third FIR was lodged by the General Secretary, Mr. Lohit Das, and registered as Garchuk P.S. Case No. 401/16; it was also charge-sheeted against the present petitioner and Umesh Das. Subsequently, this FIR and charge-sheet were quashed by this court on 13.03.2019.

20. The third FIR was lodged by the General Manager, alleging that Umesh Das set the fire as per the direction of the present petitioner. After receiving this information from Umesh Das, the FIR was lodged. However, Mr. Lohit Das later clarified before the investigating officer (IO) regarding the third FIR, stating that Umesh Das never voluntarily admitted of setting the fire at the instruction of the present petitioner. He indicated that Umesh Das may have made such a statement under pressure from an angry mob when he was taken before the factory manager and that he sincerely apologized for the statement made in the FIR. The third FIR (Garchuk P.S. Case No. 401/16) was set aside and quashed by the Court considering it to be the subsequent FIR for the same cause of action and also considering other aspect of the case.

21. Regarding the present FIR, respondent No. 2 lodged it purely on suspicion, explicitly stating that there were no eyewitnesses to the incident. The FIR mentions that it was filed after recording the statements of Amal Saloi and Barun Pandey; however, Amal Saloi later clarified to the IO that he never made

any such statement and was not present at the time of the incident. He only joined his duty on 24.07.2016, after which he learnt about the incident.

22. Thus, from the clarifying statements made by Mr. Lohit Das, Amal Saloi, as well as the compromise deed between the union workers and management, it is evident that there are no eyewitnesses to the incident, nor there is any circumstance to hold the petitioner responsible for the fire incident that occurred in the company. It is a fact that the IO filed charge-sheets in three FIRs related to the same fire incident, but the third FIR filed by Mr. Lohit Das has already been quashed by this court. The second FIR, filed by the present petitioner, is charge-sheeted against Umesh Das and other union workers.

23. The instant FIR has also been charge-sheeted against Umesh Das and the present petitioner. Therefore, it is evident that all these cases arising from the same set of incidents. The charge-sheet was filed against Umesh Das and others based on the FIR lodged by the present petitioner. Thus, there are two different outcomes from the same incidents: in one case, the present petitioner is a complainant, and on the basis of his complaint, charge-sheet was filed against Umesh Das and others. In the same set of fire incidents, the petitioner, along with Umesh Das, was also charge-sheeted. This suggests that the IO conducted a perfunctory investigation and mechanically filed the charge-sheet in this case.

24. Furthermore, it is clear that the workers' association has already compromised the matter with the management, and considering the clarifying statements made by General Secretary Mr. Lohit Das and other circumstances, there is a remote chance of conviction even if proceedings is allowed to be continued rather, it would amount to an abuse of the Court process.

25. The Hon'ble Supreme Court in the case of **State of Haryana & Ors. Vs. Bhajan Lal & Ors.**, reported in **1992 Supp (1) SCC 335**, has held as 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 extraordinary 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 FIR 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 FIR 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."*

26. In the instant case, it is evident that the allegations in the FIR and the accompanying materials do not disclose a *prima facie* case against the present petitioner. Rather, it appears that respondent No. 2 lodged the FIR based on statements made by Amal Saloi and Barun Pandey. Amal Saloi later clarified that he did not disclose any information regarding the incident to any official, as he was not present on the day of the incident and reported back only on the following morning.

27. Furthermore, it is seen that the present petitioner conducted the inquiry as per the instructions of higher authorities and subsequently lodged the FIR, which was registered as Garchuk P.S. Case No. 398/16. This FIR was also charge-sheeted against Umesh Das and some other union workers. Thus, the allegation against the present petitioner is found to be improbable, and no prudent person could reasonably conclude that there are sufficient grounds to

proceed against the present petitioner. Moreover, for the same set of incidents, there cannot be two outcomes, and the charge-sheet appears to have been filed in a mechanical manner. In both cases, the charge-sheet was filed by the IO, one against the petitioner and Umesh Das and other charge-sheet is filed against some other workers, based on the complaint filed by the petitioner.

28. Under the above facts and circumstances of this case, and considering the view of the Hon'ble Apex Court in ***Bhajan Lal*** (supra), I am of the opinion that this is a fit case where the extraordinary power under Section 482 Cr.P.C. can be invoked to quash the criminal proceedings against the present petitioner.

29. In light of the above, this Court is of the opinion that it is appropriate to invoke the power under Section 482 of Cr.P.C. to quash Garchuk P.S. Case No. 397/16 dated 27.07.2016, registered under Sections 120(B)/436 of IPC, including charge-sheet No. 111/17 dated 29.07.2017, only in respect of the present petitioner. The prosecution is at liberty to continue the case against the other charge-sheeted accused, Umesh Das. Thus, this criminal petition stands allowed.

30. In terms of above, this criminal petition stands disposed of.

JUDGE

Comparing Assistant