In Re: Sankar Gope

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Court : Kolkata

Decided On : Aug-26-1994

Reported in : (1994)2CALLT254(HC),1995CriLJ1358

Judge : A.K. Dutta, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 41(1), 155(2), 156(1), 157, 161 and 482; ;Indian Penal Code (IPC) - Sections 34, 120B, 406, 420, 421, 424, 467, 468 and 471; ;Companies Act, 1956 - Sections 235, 237, 239, 240, 241 and 242; ;Constitution of India - Article 226; ;R.B.I. Act

Appellant : In Re: Sankar Gope

Advocate for Def. : Kazi Safiullah, ;Public Prosecutor and ;Swapan S. Mallick, Advs. for O.P. No. 2

Advocate for Pet/Ap. : Aloke Sengupta and ;Kellol Dasgupta, Advs.;Himangshu De, Adv.

Disposition : Petition allowed

Judgement :
ORDER

A.K. Dutta, J.

1. By this application under Section 482 of the Code of Criminal Procedure (hereinafter referred to as Code), the petitioner-accused Sankar Gope (hereinafter referred to as accused), has prayed the Court for setting aside the orders dated 5-8-94 and 7-8-94 passed by the Sub-Divisional Judicial Magistrate at Tamluk in G.R. case No. 347 of 1994, arising out of Durgachak P.S. Case No. 50 of 1994 dated 1 -8-94 pending before him, and for quashing of the said proceedings, along with the prayer for directing him (accused) to be forthwith released from his illegal detention in connection therewith for the reasons stated in detail and on the grounds made out therein.

2. The facts, as are relevant for the present purpose, may shortly be set out as follows :-

The accused was arrested in connection with the Kotwali P.S. (Nadia) Case No. 152 dated 30-4-94 pending before the Sub-Divisional Judicial Magistrate (hereinafter shortened into S.D. J.M.) at Krishnagar on the basis of the allegations made in the FIR lodged by one Rina Bibi for alleged offences punishable under Sections 406/420/120B/467/468/471/34, IPC. He was subsequently shown arrested in connection with the Kotwali P.S. (Nadia) Case No. 158 dated 2-5-94 before the S.D.J.M. at Krishnagar on the basis of FIR lodged by one Tapan Kr. Lana for alleged offences punishable under Sections 406/420/120B/467/468/471/34, IPC. The accused was, however, granted bail in the said two cases by orders of a Division Bench of this Court on 28-6-94. Three other cases, being (1) G.R. Case No. 294 of 1994, arising out of Tamluk P.S. Case No. 84 of 1994 dated 4-6-94 before the S.D.J.M. at Tamluk, Midhapore; (2) G.R. Case No. 522 of 1994, arising out of Mandirbazar P.S. Case No. 36 of 1994 before the S.D.J.M. at Diamond Harbour, 24-Parganas (South), and (3) G.R. Case No. 303 of 1994, arising out of Hasnabad P.S. Case No. 39 dated 3-5-94 before the S.D.J.M. at Basirhat, 24-Parganas (North), had been registered against him. On prayers made by the Investigating Officers (for short I.O.) in the said cases for showing him (accused) arrested and for issue of Production Warrants (for short P.W.) in connection therewith, the aforesaid three S.D.J.M.s had directed issue of P.Ws. against him (accused) in connection with the aforesaid three cases. On three Criminal Revision Cases having been filed on behalf of the accused before

this Court, being Criminal Revision Cases Nos. 1351, 1359 and 1388 of 1994, this Court by order dated 13-7-94 in Criminal Revision Cases Nos. 1351/94 and 1359 of 1994, and by order dated 22-7-94 in Criminal Revision Case No. 1388 of 1994 had stayed all further proceedings in the aforesaid three subsequent cases, and had also stayed the Production of warrants issued by the S.D.J.Ms. concerned in connection therewith.

3. The accused could not furnish Bail Bonds in connection with Kotwali P.S. Case No. 152 dated 30-4-94 and Kotwali P.S. Case No. 158 dated 2-5-94 in terms of the bail granted by a Division Bench of this Court on 28-6-94 till 14-7-94. Bail Bonds had been furnished on his behalf before the S.D.J.M. at Krishnagar in connection with the aforesaid two cases on 14-7-94, accepted by the latter, who had issued Release Orders to the Superintendent, Alipore Central Jail, where he (accused) had been lodged, for his release. Since the accused had not been released by the Superintendent, Alipore Central Jail, despite Release Orders issued by the S.D.J.M. at Krishnagar in connection with Kotwali P.S. Case Nos. 152 and 158, dated .30-4-94 and 2-5-94 respectively, and stay of all further proceedings, along with Stay of P.Ws. issued by the S.D.J.Ms. concerned in the aforesaid three subsequent cases, granted by this Court in the aforesaid three Criminal Revision Cases, an Application had been filed on behalf of the accused before this Court on 2-8-94 under Section 482 of the code for directing his release, in the aforesaid circumstances, being numbered Criminal Revision Case No. 1497 of 1994. This Court by order dated 3-8-94 had directed the said Application to appear in the list as Listed Motion on 5-8-94 upon due service to the opposite-party-State. The said Application was finally heard on 5-8-94, and the judgment/order was kept reserved.

4. It is contended that on 5-8-94 at about 9 p.m. the Learned Advocate for the petitioner-accused had received a phone call from his (accused's) wife intimating him (Lawyer) that a batch of C.I.D./D.D. Officers, West Bengal, had removed him (accused) from the Alipore Central Jail in the evening without any order from any Court. The petitioner's Advocate had thereupon sent a letter dated 6-8-94 to the Superintendent, Alipore Central Jail, who had refused to accept the same. The letter was thereupon sent by Registered Post with A/D. The petitioner's wife had

come to learn that he (accused) was arrested in connection with another case and would be produced before the S.D.J.M., Tamluk. The accused was eventually produced before the S.D.J.M.at Tamluk on 7-8-94, which was Sunday, in connection with Durgachak P.S. Case No. 50 of 1994 and was remanded by the Learned Magistrate to police custody till 21-8-94.

5. The aforesaid Criminal Revision Case No. 1497 of 1994 was eventually disposed of by judgment and order dated 8-8-94 directing the Superintendent, Alipore Central Jail, to forthwith release the accused, if not wanted in any other case. The Learned Advocate for the opposite-party-State had been prayed for stay of operation of the said order, which was refused by the Court. In the mean time, the petitioner-accused Sankar Gope having been produced under arrest before the S.D.J.M. at Tamluk on 7-8-94 in connection with G.R. Case No. 347 of 1994, arising out of Durgachak P.S. Case No. 50 of 1994 dated 1 -8-94 before him, and having been remanded by him (Magistrate) to police custody, the instant Application under Section 482 of the Code has been filed on behalf of the accused for the relief's prayed for, as already indicated.

6. The petitioner has prayed for setting aside the impugned orders dated 5-8-94 and 7-8-94 passed by the Learned S.D.J.M., Tamluk, and for quashing of the aforesaid relevant proceedings, being G.R. Case No. 347 of 1994, arising out Durgachak P.S. Case No. 50 of 1994 dated 1 -8-94 before him (hereinafter referred to as Durgachak case), and also for his release mainly on the following grounds, amongst others, as urged by his Learned Advocate, Sri Aloke Kumar Sen Gupta, during the hearing :-

(i) That the FIR (in the aforesaid Durgachak case), as it is, does not make out the alleged offence;

(ii) That it was incompetent for the police to institute a separate/fresh case (Durgachak case) on identical allegations/facts against the same accused giving rise to two earlier cases, being Kotwali P.S. (Nadia) Case No. 152 dated 30-4-94 and Kotwali P.S. (Nadia) Case No. 158 dated 2-5-94 before the S.D.J.M. at Krishnagar (hereinafter referred to as Nadia cases) still under investigation, not concluded as yet, which is the outcome of material disclosure during investigation

in the aforesaid two Nadia cases;

(iii) That the institution of the Durgachak case is a mere device to extend the investigational limit of the aforesaid two Nadia cases only for the purpose of re-arrest and further detention of the accused in custody with a mala fide intention to avoid the possible outcome of an order of this Court in Criminal Revision Case No. 1497 of 1994 (filed on 2-8-94 and moved on 3-8-94) in which the accused had prayed for his release from the jail custody for the reasons stated therein. It is thus contended that the Durgachak case is liable to be quashed under Section 482 of the Code to prevent abuse of the process of Court and miscarriage of justice;

(iv) That the institution of Durgachak case and arrest and detention of the accused in police custody in connection therewith is illegal and unauthorised, made in colourable exercise of power/jurisdiction by the police. It would not, therefore, be expedient in the interest of justice to allow the said proceeding to continue;

(v) That the detention of the accused in jail after 22-7-94 having been held by this Court in the aforesaid Criminal Revision Case No. 1497 of 1994 to be unauthorised unjust, and unlawful, the arrest and detention of the accused in connection with Durgachak case in a questionable manner without disclosing about it before this Court during the hearing of the aforesaid Criminal Revision Case No. 1497 of 1994 on the date of hearing on 5-8-94 and on the date when the judgment and order therein was pronounced on 8-8-94 is manifestly attended with mala fide and with some ulterior motive, resulting in miscarriage of justice necessitating interference by this Court under Section 482 of the Code;

(vi) That the allegations made in the FIR regarding the irregularies in the functioning of Verona Commercial Credit and Investment Company Ltd. (hereinafter referred to as Company), e.g., violation of conditions of R.B.I. Act, manipulation of accounts non-submission of periodical reports and statements, diversion of fund to subsidiary companies, mishandling of fund, etc., as alleged in the FIR, provide for particular remedy under the relevant provisions of the Companies Act, 1956, more particularly, the provisions of Sections 235, 237, 239, 240, 241 and 242 thereof. It was incompetent for the police to investigate the allegations to that effect relating to the affairs of the company in view of the

specific provisions therein.

7. As against that, the learned Advocate for the Opposite-party-State, Mr. Himangshu De, relying upon the decision of the Supreme Court in Municipal Corporation of Delhi v. Ram Kishan Rohtagi, AIR 1983 SC 67 :(1983 Cri LJ 159), had urged that the FIR read with the 'connecting papers', viz., the statements of some witnesses examined by the Investigating Officer (for short I.O.) under Section 161 of the Code, makes out the alleged offence. But to that I must at once note that the statements of witnesses recorded by an I.O. under Section 161 of the Code in course of investigation could never be deemed to be papers 'accompanying' the FIR. The Supreme Court in the aforesaid decision had held that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers 'accompanying the same', no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or substracting anything, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers under Section 482.

8. Mr. De, secondly, referring to a Full Bench decision of the Allahabad High Court in Ram Lal Yadav v. State of U.P. 1989 Cri LJ 1013, had submitted that the power of the police to investigate into a report which discloses the commission of a cognizable offence is unfettered and cannot be interfered with by High Court in exercise of its inherent powers under Section 482, Cr. P.C. The High Court has no inherent power under Section 482, Cr. P.C. to interfere with the arrest of a person by a police officer even in violation of Section 41(1)(a), Cr. P.C. either when no offence is disclosed in the first information report or when the investigation is mala fide as the inherent powers of the Court to prevent the abuse of the process of the Court or to otherwise secure the ends of justice come into play only after the charge sheet has been filed in Court and not during investigation which may even be illegal and unauthorised. If the High Court is convinced that the power of arrest by a police officer will be exercised wrongly or mala fide in violation of Section 41(1)(a), Cr. P.C, the High Court can always issue a writ of mandamus under Article 226 of the Constitution restraining the police officer from misusing his legal power.

9. Mr. Kazi Safiulla, the learned P.P., appearing for the Opposite-party No. 2, has echoed the submissions of Mr. De by further referring to the decisions of the Supreme Court in Dr. P. Nalla Thampy Thera v. Union of India, (1992) 4 SCC 305 : (1993 Cri LJ 600), Union of India v. V. N. Chadha, AIR 1993 SC 1082 : (1993 Cri LJ 859) and Union of India v. B.R. Bajaj (1994) 2 SCC 277 : (1994 Cri LJ 2086). Relying upon the said decisions, he had submitted that the power of the police to investigate into a report which discloses the commission of a cognizable offence is unfettered, and cannot be interfered with by the High Court in exercise of its inherent powers under Section 482 of the Code. He had further submitted that when the entire matter is only at a preliminary stage and when the investigation has yet to go a long way to gather the requisite evidence, the Court should not come to a conclusion one way or the other on the plea of mala fide at such a stage.

10. In order to deal with the submissions of the learned Counsels for the contending parties in the light of the FIR and the facts and circumstances, indicated above, let us consider the principles of law laid down by the Supreme Court in some other decisions on the aforesaid relevant question of law involved herein.

11. The Supreme Court in State of West Bengal v. Swapan Kumar Guha and State of West Bengal v. Sanchaita Investments, AIR 1982 SC 949 : (1982 Cri LJ 819), has held as follows :-

'A First Information Report which does not allege or disclose that the essential requirements of the penal provision are prima facie satisfied, cannot form the foundation or constitute the starting point of a lawful investigation.

An investigation can be quashed if no cognizable offence is disclosed by the FIR. It is surely not within the province of the police to investigate into a Report (FIR) which does not disclose the commission of a cognizable offence and the Code docs not impose upon them the duty of inquiry in such cases.'

'The condition precedent to the commencement of investigation under Section 157 of the Code is that the FIR must disclose, prima facie, that a cognizable offence

has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation under Section 157 of the Code. Their right of inquiry is conditioned, by the existence of reason to suspect the commision of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the FIR, prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on. The Court has then no power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. On the other hand, if the FIR does not disclose the commission of a cognizable offence, the Court would be justified in quashing the investigation on the basis of the information as laid or received. The power to investigate into cognizable offences must, therefore, be exercised strictly on the condition on which it is granted by the Code.'

'Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. If on a consideration of the relevant materials, the Court is satisfied that an offence is disclosed, the Court will normally not interfere with the investigation into the offence and will generally allow the investigation in the offence to be completed for collecting materials for proving the offence. If, on the other hand, the Court on a consideration of the relevant materials is satisfied that no offence is disclosed, it will be the duty of the Court to interfere with any investigation and to stop the same to prevent any kind of uncalled for and unnecessary harassment to an individual.'

12. The Supreme Court in Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre, AIR 1988 SC 709: (1988 Cri LJ 853), has held as follows (para 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 feature 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 are 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.'

13. The Supreme Court in State of Haryana. v. Ch. Bhajan Lal, (1990) 4 JT (SC) 650, has indicated certain categories of cases by way of illustration wherein the inherent power of the High Court under Section 482 of the Code in quashing criminal proceedings could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, some of which, as are relevant for the present purpose, are reproduced below :-

(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.'

14. Keeping the aforesaid principles of law laid down by the Supreme Court in mind let us now turn to the FIR (in Durgachak case) to examine whether the allegations made therein prima facie disclose the commission of any offence or make out a case against the accused.

15. On perusal of the xerox copy of the certified copy of the aforesaid FIR on record, it appears that the FIR has been lodged for alleged offences punishable under Section 406/420/421/424/120B/, IPC against the petitioner-accused, Sankar alias Satyabrata Gope, and others on the allegations made therein. It is alleged in para 3 of the FIR 'that complaints were received from different investors of

different areas revealing allegation of cheating and commission of criminal breach of trust in respect of the deposited money.' But none of these complaints appears to have been annexed with the FIR. In para 8 of the FIR it is further alleged that as a consequence of nefarious acts committed by the Directors and their associates of the company 'over a number of years countless investors/depositors were cheated to the tune of crores of rupees and would continue to be cheated.' But unhappily for the prosecution, none of the alleged depositors/investors, who had allegedly been cheated has been named in the FIR, nor the requisite particulars thereof have been indicated therein. The allegations regarding cheating and misappropriation made in the FIR appear to be too vague and wild and not specific, definite and positive to be proceeded with. Suchlike bald allegations in the FIR that 'countless investors/depositors were cheated to the tune of crores of rupees and would continue to be cheated', even if uncontroverted, taken in their face value and accepted in their entirety, without adding anything thereto or substracting anything therefrom, without anything more, without the statement of the requisite facts constituting the alleged offence, viz., whom (which specific person or persons) cheated, how cheated, and when cheated, do not, and could not clearly make out the alleged offence of cheating and criminal breach of trust, the way alleged. The FIR as it is, does not, therefore, seem to make out/disclose the alleged offences.

16. It would also seem significant and observable to note that there is no whisper in the FIR about the Terms and conditions of Deposits made by the Depositors/Investors and Repayments to be made by the Company on maturity of such Deposits! There is neither the merest and faintest allegation in the FIR that there was ever any failure, neglect or refusal to pay any matured deposit to any of the Depositors/Investors by the Company. In the absence of any allegation about any such refusal by the company, there could conceivably be no cause for such-like complaint. In the absence of any such allegation in the FIR, the alleged offence of cheating or criminal breach of trust in respect of the deposited money by the company could not clearly be said to be disclosed or made out.

17. It is stated in paragraph 3 of the FIR that the earlier complaints did not depict the modus operandi followed by the Company in the matter of syphoning off funds

possibly because of absence of their fair understanding of the nature of operation. This gave rise to the necessity of instituting a separate case 'to protect the interest of fairly large number of investors, the present petitioners and countless investors who were cheated and continue to be cheated in the process.' As already indicated above not a single Depositor/ Investor alleged to have been cheated has been named in the FIR! It would appear from paragraph 1 of the FIR that the Informant Ashes Kumar Roy, D.D.I., Krishnagar, has lodged this complaint covering sequences of offences in the entire chain against the management of the Company 'on the basis of material disclosure' as revealed in course of Investigation of Kotwali Police Station, District - Nadia, Case No. 152/ 94 dated 30-4-94 and Kotwali Police Station, District -Nadia, Case No. 158/94 dated 2-5-94. The modus operandi for commission of the alleged offences in the aforesaid two cases, disclosed in course of the investigation of the same, could not and does not, by itself, make out the alleged offences, unless a distinct, definite, positive and separate offence is disclosed in the FIR Curiously, however, the FIR does not seem to disclose any distinct, definite, positive or separate offence, other than the offences alleged in the aforesaid two cases, in which the modus operandi followed by the Company is merely revealed in course of the investigation of the same. There is no whisper in the FIR that the Informant himself is one of the Depositors/Investors, who has been-cheated! But amazingly, it has been stated in para ' 3 of the FIR that the necessity of instituting a separate case arose to protect the interest of the 'present petitioners' and others, seeking to suggest that the Informant himself is one such Depositor/Investor! The Informant clearly appears to have exhibited extreme over-jealousness in lodging the FIR, as he did!

18. In paragraph 2 of the FIR it is stated that in order to promote the quantum of business, the management of the Company had set up a large number of branches within and outside the State, in addition to its Head-Office and Registered Office at Durgachak, Haldia District- Midnapore. It is admitted in the same breadth that the Head-Office and Registered Office have subsequently been shifted to Calcutta and Midnapore on 1st January. 1982 and 1st April, 1984 respectively. At present, both the Head Office and Registered Office are 'housed' in the Company's own premises situate at 68-B, Acharya Prafulla Chandra Roy Road. Calcutta - 700 009. The Head Office and the Registered Office of the

Company having thus, admittedly, long been shifted from Durgachak, Haldia, (District-Midnapore) to Calcutta, in the absence of any specific allegation in the FIR about the commission of any specific offence at Haldia, within the local limits of the jurisdiction of the SDJM at Tamluk, the relevant case/proceedings before him could not clearly lie and proceed according to law.

19. On perusal of the FIR it would further appear that a number of other allegations have been listed therein, viz., the irregularities in the functioning of the Company, violation of conditions of RBI Act, manipulation of accounts, non-submission of periodical reports and statements, diversion of fund to subsidiary companies, mishandling of fund, etc. But the said allegations, such as they are, could neither make out the alleged offences for which the FIR has been lodged. The Companies Act 1956 takes care of the aforesaid allegations made against the Company, providing for appropriate remedy thereunder. It is certainly not within the domain of the police to investigate into the affairs of the Company relating to its alleged mismanagement, the way they sought to do.

20. Upon the discussions above, there could be little mistaking that the FIR, such as it is, taken in its face value and accepted in its entirety, without adding any thing to it or substracting anything therefrom, does not make out the alleged offences. The series of decisions of the Supreme Court, some of which have been reproduced above, would at once make clear that the High Court could and should exercise its power of quashing a Criminal Proceedings under Section 482 of the Code if the FIR does not disclose any offence. It would, however, be incompetent for a High Court to quash a criminal proceedings if the FIR discloses a cognizable offence. Since the FIR before us does not disclose any cognizable offence for the reasons discussed above, the relevant proceedings (in Durgachak case) is liable to be outright quashed.

21. Let alone the allegations in the FIR, it was also incompetant for the police, in the facts and circumstances of the matter, to institute a separate and fresh case when no distinct, definite, positive and separate offence is stated to have been made out in course of investigation of the aforesaid two Nadia cases. If such things are allowed to continue it might lead to multiplicity of proceedings and

investigations at the whims and caprice of the police to the prejudice of the subjects, which can become ruthless destroyer of their personal freedom. The following observations of the Supreme Court in the decision) reported in AIR 1982 SC 949 : (1982 Cri LJ 819), would seem worth bearing in mind in this context :

'There is no such thing like unfettered discretion in the realm of powers defined by statutes and indeed, unlimited discretion in that sphere can become a ruthless destroyer of personal freedom. The power to investigate into cognizable offences must, therefore, be exercised strictly on the condition on which it is granted by the Code.'

22. The following instructive warning uttered by Mathew, J. in Prabhu Dayal Deorah v. The District Magistrate, Kamrup, AIR 1974 SC 183 : (1974 Cri LJ 286), may also be recalled (Para 67):-

'We say, and we think it is necessary to repeat, that the gravity of the evil to the community resulting from anti-social, activities can never furnish an adequate reason for invading the personal liberty of a citizen, except in accordance with the procedure established by the Constitution and the laws. The history of personal liberty is largely the history of insistence on observance of procedure. Observance of procedure has been the bastion against wanton assaults on personal liberty over the years. Under our Constitution, the only guarantee of personal liberty for a person is that he shall not be deprived of it except in accordance with the procedure established by law.'

23. As regards the petitioner's contention that his arrest and detention in connection with Durgachak case was mala fide, unauthorised and illegal, Mr. De, on behalf of the Opposite-party-state, had urged, as already indicated above, relying upon the Full Bench decision of the Allahabad High Court reported in 1989 Cri LJ 1013 that the High Court has no inherent power under Section 482 of the Code to interfere with the arrest of a person by a police officer. But the following observations of the Supreme Court in Joginder Kumar v. State of U.P., 1994 Cri LJ 1981 can neither be lost sight of in this context (Para 24 of Cri LJ):-

'No arrest can be made because it is lawful for the Police Officer to do so. The existence of the power to arrest is one thing. The justification for the (exercise of it is quite another. The Police Officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a Police Officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the funadmental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the Officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave station without permission would do.'

24. The Supreme Court in Uday Chand v. Sheikh Mohd. Abdullah, Chief Minister, J & K, 1983 SCC (Cri) 529, has also held that an accused enlarged on bail by Court cannot be re-arrested soon thereafter without apprising such' Court especially when no disclosure was made to that Court before it granted bail that investigation for any other offence was then pending against the accused. Such arrest has been held by the Supreme Court to be illegal. The aforesaid decision of the Supreme Court is applicable with greater force, in the facts and circumstances of the matter before us. The petitioner-accused had been granted bail by a Division Bench of this Court in the aforesaid two Nadia cases on 28-6-94. The three other subsequent criminal proceedings' against him, being G. R. Case No. 294 of 1994, arising out of Tamluk PS Case No. 84 of 1994 dated 4-6-94, G. R. Case No. 522 of 1994, arising out of Mandirbazar PS (South 24-Parganas) Case No. 36 of 1994, and G. R. Case No. 303 of 1994, arising out of Hasnabad P.S. Case No. 39 dated 3-5-94 and the production of warrants issued against him by

the SDJM concerned had been stayed by orders dated 13-7-94 and 22-7-94 in Criminal Revision Case Nos. 1351, 1359 and 1388 of 1994, as indicated above. He having not been released by the Superintendent, Alipore Central Jail, even thereafter, an Application was filed on his behalf before this Court for directing his release, being numbered as Criminal Revision Case No. 1497 of 1994 before this Court, filed on 2-8-94, moved on 3-8-94 and heard by the Court on 5-8-94. The judgment and order therein was delivered on 8-8-94. The Court by its judgment and order on 8-8-94 therein had directed the Supreintendent, Alipore Central Jail, to forthwith release the accused, if not wanted in any other case (other than the five cases noted therein). After the pronouncement of the judgment and order therein in open Court on 8-8-94, the learned Advocate for the Opposite-party-State. Mr. Himangashu De, had prayed for stay of operation of the same, obviously suggesting and giving the clearest indication that the accused was still then in jail custody. 'The Durgachak case appears to have been started on 1-8-94. But it was never disclosed before this Court during the hearing of the aforesaid Criminal Revision Case No. 1497 of 1994 on 5-8-94, or on 8-8-94 when the judgment and order therein was pronounced, that there was another case (Durgachak case) under investigation against the petitioner-accused. It is painfully disappointing and utterly regrettable to note that this minimum and elementary courtesy to this Court was not even shown on behalf of the State The question of release of the accused from jail custody being under consideration of the Court in the aforesaid Criminal Revision Case which was heard on 5-8-94, and the judgment and order wherein was pronounced on 8-8-94. directing his release from jail custody forthwith, if not wanted in any other case, his release and subsequent arrest in connection with Durgachak case (started on 1-8-94) without disclosing before the Court that investigation for any other offences was then pending against him, his rearrest in connection with the said case, in the manner effected, must clearly be held to be illegal in terms of the aforesaid decision of the Supreme Court; who must be forthwith released. In view of the mala fide manner in which he was released from the jail, re-arrested (in connection with Durgachak case) and detained in custody during the pendency of the aforesaid Criminal Revision Case No. 1497 of 1994, to avoid the possible outcome of the order which might be passed therein, non-interference by this Court, to my judgment, would indeed

result in miscarriage of justice for which the aforesaid relevant proceedings is required to be quashed in terms of the decision of the Supreme Court in Eastern Spinning Mills, Shri Virendra Kumar Sharda v. Shri Rajib Poddar, 1985 Cri. LJ 1858.

25. The petitioner's contention that the institution of Durgachak case is a mere device to extend the investigational limit of the aforesaid two Nadia cases only for the purpose of his re-arrest and further detention in custody with a mala fide intention to avoid the possible outcome of an order which might be passed in the aforesaid Criminal Revision Case No. 1497 of 1994, in colourbale exercise of power/jurisdiction by the police, cannot also be lightly discarded, in the facts and circumstances indicated above. It would not, therefore, be expedient in the interest of justice to allow the proceedings to continue, which should be quashed under Section 482 of the Code to prevent abuse of the process of Court and miscarriage of justice. The petitioner's application should accordingly be allowed.

26. The learned Advocate for the petitioner-accused Mr. Sen Gupta at the close of the hearing had submitted that this Court had held in its judgment and order dated 8-3-94 in the aforesaid Criminal Revision Case No. 1497 of 1994 that his detention in jail custody from 22-7-94 onwards is unlawful, unauthorised and unjust. By referring to the decisions of the Supreme Court in (i) Rudal Sah v. State of Bihar, AIR 1983 SC 1086 : (1983 Cri LJ 1644) (ii) Bhim Singh v. State of J & K, AIR 1986 SC 494 : (1986 Cri LJ 192), (iii) Smt. Nilabati Behera v. State of Orissa, 1993 Cri LJ 2899 (SC); and (iv) Bhuwaneshwar Singh v. Union of India, 1993 Cri LJ 3454 (SC). Mr. Sengupta had waxed eloquent that in view of the aforesaid illegal detention of the accused, resulting in the deprivation of his fundamental rights to life and liberty and invasion of his constitutional and legal rights, he would be entitled to suitable monetary compensation. The said submission could neither be written off from consideration, in the facts and circumstances disclosed herein.

27. Undisputedly, the accused was granted bail by a Division Bench of this Court on 28-6-94 in the aforesaid two Nadia cases. The Bail Bonds therein had been furnished by him on 14-7-94, and accepted by the Sub-Divisional Judicial Magistrate, Krishnagar, who had issued his Release Orders. Subsequently, the

aforesaid three other Criminal Proceedings instituted against him (being G. R. Case No. 294 of 1994, arising out of Tamluk PS Case No. 84 of 1994 dated 4-6-94, G. R. Case No. 522 of 1994, arising out of Mandirbazar PS (South 24-parganas) Case No. 36 of 1994, and G. R. Case No. 303 of 1994, arising out of Hasnabad PS Case No. 39 dated 3-5-94) and the production of warrants issued therein by the SDJM's concerned for his production before them in connection therewith had been stayed by this Court by orders dated 13-7-94 and 22-7-94 in the aforesaid three relevant Criminal Revision Case Nos. 1351, 1359 and 1388 of 1994. Petitioner's Advocate had thereupon written to the Superintendent. Alipore Central Jail, requesting him to release the accused, intimating him the aforesaid orders passed by this Court in the aforesaid Revision Cases. But he having not been released from jail, an Application under Section 482 of the Code had been filed on his behalf before this Court on 2-8-94, praying for directing him to be released forthwith, being Criminal Revision Case No. 1497 of 1994, which was moved on 3-8-94, as already indicated above. The said Application was heard on 5-5-94. The question of release of the accused was under consideration of this Court in the aforesaid matter to the knowledge of the Jail Superintendent concerned, as appearing of the copies of letters addressed to him by the Petitioner's Advocate, on record. The judgment in the said case was kept reserved on 5-8-94. and was delivered on 8-8-94. The accused presumably had not been released from jail during the hearing of the aforesaid Revision Case before this Court on 5-8-94, in which case the parties must have made appropriate submissions before the Court therefore. But the accused appears to have been released, in the meantime, rendering the judgment and order passed therein (directing the Superintendent, Alipore Central Jail, to release the accused forthwith) infructuous, amounting to interference with the administration of justice, clearly amounting to criminal contempt of Court, calling for appropriate action therefore.

28. For the reasons amply and appallingly discussed above, the Petitioner's Application under Section 482 of the Code succeeds and is allowed. The impugned orders dated 5-8-94 and 7-8-94 passed by the learned SDJM concerned be hereby set aside. The relevant proceedings before the Court below, being G. R. Case No. 347 of 1994, arising out of Durgachak P.S. Case No. 50 of

1994 dated 1-8-94 be hereby quashed. The Sub-Divisional Judicial Magistrate at Tamluk is hereby directed to release the Petitioner-accused Sankar Gope forthwith.

29. The Superintendent, Alipore Central Jail, be directed to appear in person before this Court on 8-9-94, along with the relevant official records, and report the date and time of release of the aforesaid accused from jail, and explain why he had not been released earlier in view of the orders dated 13-7-94 and 22-7-94 passed in the aforesaid three relevant Criminal Revision Cases before this Court, for consideration whether he should be proceeded against for criminal contempt of Court and/or whether there should be an order for payment of suitable monetary compensation by him and/or the State to the accused for his illegal detention.

30. The Criminal Section is directed to supply certified copies of the judgment and order to the parties at the earliest, preferably within a week, on appropriate applications being filed therefor.

31. Let plain copies of the operative part of this order, duly countersigned by the Assistant Registrar (Court), be made available to the learned Advocate for the parties.