

Surendra Kumar Surana and ors. Vs. State of West Bengal and anr.

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Court : Kolkata

Decided On : Nov-30-2006

Reported in : (2007)1CALLT663(HC)

Judge : Biswanath Somadder, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 15G(3), 154, 154(1), 156(3), 173(2), 190, 401 and 482; ;[Indian Penal Code \(IPC\), 1860](#) - Sections 34, 341, 427, 504 and 506

Appeal No. : C.R.R. No. 1245 of 2006

Appellant : Surendra Kumar Surana and ors.

Respondent : State of West Bengal and anr.

Advocate for Def. : H.K. Mitra and ;Bhaskar Sen, Sr. Advs. and ;Amalendu Mitra and ;Abhijit Adhya, Advs. for Opposite Party No. 2 and ; Sk. Kasem Ali Ahmed, Adv.

Advocate for Pet/Ap. : Milon Mukherjee, ;Joymalya Bagchi, ;Ganesh P. Shaw and ;Anuj Singh, Advs.

Judgement :

Biswanath Somadder, J.

1. This is an application under Section 482/401 of the Code of Criminal Procedure, 1973 (for short, 'the Code').

The Petitioners have prayed for quashing of proceeding, being Ekbalpore Police Station Case No. 83, dated 05.04.2006 under Sections 341/427/504/506(ii)/34 of the Indian Penal Code corresponding to C.G.R. No. 800 of 2006 pending before the learned Chief Judicial Magistrate, Alipore.

2. The facts of the case, in a nutshell, are as follows:

(i) On or about 27th March, 2006, one Raquaia Ayaz filed an application under Section 156(3) of the Code, before the Court of learned Chief Judicial Magistrate at Alipore alleging commission of offences punishable under Sections 341/427/504/506(ii)/34 of the Indian Penal Code.

(ii) The learned Magistrate, by his order dated 27th March, 2006, directed the officer-in-charge of Ekbalpore Police Station to register a case upon the said complaint and cause investigation into the offences complained.

(iii) Subsequently the complaint was registered by the concerned Police Station on 5th April, 2006 and was numbered as FIR No. 83 dated 5th April, 2006.

(iv) Petitioners thereafter took out the instant application before this Court and the same was filed on 18th April, 2006.

3. The instant application was earlier heard on 12th May, 2006. The Court upon hearing the petitioners was, inter alia, pleased to stay all further proceedings in C.G.R. No. 800 of 2006 pending before the learned Chief Judicial Magistrate, Alipore.

4. The application was thereafter taken up for final hearing by this Court on 6th November and was heard on subsequent dates from time to time and the hearing was concluded on 22nd November, 2006.

5. The learned advocate appearing on behalf of the petitioners has submitted that this is a fit case for quashing of the complaint case filed before the learned Magistrate Court under Section 156(3) of the Code. According to the learned

advocate appearing on behalf of the petitioners, the de facto complainant has not been able to make out even a prima facie case of a cognizable offence of 'wrongful restraint' in the complaint petition so as to have enabled the Learned Magistrate to direct the concerned Police Station to treat the complaint petition as a FIR for the purpose of investigation, inter alia, in respect of the said cognizable offence punishable under Section 341 of the Indian Penal Code. In this regard, the learned advocate has drawn my attention to certain portions of the complaint petition and submitted that from a mere reading of the same it would be clear that the complaint petition does not disclose any cognizable offence of 'wrongful restraint' which is punishable under Section 341 of the Indian Penal Code. He has referred, in particular, to paragraphs 4, 6 and 11 of the complaint petition.

6. In order to substantiate his case, the learned advocate for the petitioners has relied on a Judgment of the Gauhati High Court (Single Bench) reported in 1975 CRI LJ 1077 Shankarlal Sarma (Bhatra) v. State of Assam and Anr. He has also relied on a Judgment of this Court reported in : AIR1935 Cal252 Durga Pada Chatterjee and Anr. v. Nilmani Ghose.

7. The learned advocate for the petitioners submitted that in the facts of the instant case, the aforementioned two Judgments were squarely applicable and prayed that the proceedings before the learned Magistrate and the FIR be quashed by this Court.

8. On the other hand, the learned advocate appearing on behalf of the private opposite party No. 2, being the de facto complainant, countered the submissions made by the learned advocate appearing on behalf of the petitioners and submitted that the Judgments cited by the learned advocate for the petitioners were rendered under different factual context, i.e., upon submission of chargesheet, in one case and after an order of conviction was passed, in another. The learned advocate for the de facto complainant submitted that in the facts of the instant case, the learned Magistrate had merely directed the police to treat the complaint petition as a FIR and to investigate into the alleged offences as stated in the said complaint petition and such investigation was not over yet, since till date

no chargesheet has been filed before the learned Magistrate by the investigating authorities, namely the police. He, therefore, submitted that, at this stage of investigation, this Court ought not to interfere and the prayer for quashing of the complaint proceeding and FIR should not be granted. The learned advocate for the de facto complainant has further submitted that the two Judgments cited by the learned advocate appearing on behalf of the petitioners could be further distinguished and in this regard relied on a Bombay Court Judgment reported in 27 Cr LJ 1926 page 139(Lahanu Manaji v. Emperor). He has also cited Judgments of this Court reported in (Emperor v. Khwaja Nazir Ahmed) and : AIR1964 Cal286 (Madhab Chandra Charchari v. Nalini Manna and Anr.). He also relied on the decision of the Madras High Court reported in AIR (34) 1947 Madras 124 : 48 Cr.LJ 1947 page 459(Pipireddigari Gopala Reddi and Anr. v. N. Lakshmi Reddi). He further relied on another Judgment of the Madras High Court reported in 1954 Cr.LJ 283(Peraiah and Ors. v. Chendriah). Finally, he relied on the decisions of the Apex Court reported in : 2001 CriLJ4195 S.M. Datta v. State of Gujarat and Anr. and 1999 CRI LJ 1833(Rajesh Bajaj v. State NCT of Delhi and Ors.). The learned advocate upon citing the aforementioned decisions submitted that not only the Judgments cited by the learned advocate of the petitioners were distinguishable, for reasons stated hereinbefore, they had no manner of application in the present facts of the case. He further submitted that the Court should not, at the stage of investigation, adopt a strict hyper technical approach and that the complaint petition or the FIR should be read as a whole and should be indicative of an offence broadly and not with mathematical accuracy and nicety. Learned advocate, therefore, submitted that Court ought not to entertain the instant application for quashing of the proceedings under Section 15G(3) of the Code of Criminal Procedure and the FIR, at the stage of investigation.

9. The learned advocate appearing on behalf of the State has more or less adopted the submissions made on behalf of the de facto complainant and stressed that at this stage of investigation by the police authorities, particularly when the chargesheet has not yet been filed by the said authorities, this Court ordinarily should not interfere or quash the proceeding. In this regard he has relied on several decisions. The decisions so relied on by the learned advocate appearing for the State are:

(i) 2004 SCC (Cri) 1805 State of (A.P. v. Galconda Linga Swamy and Anr.).

(ii) 2004 SCC (Cri) 118 (M. Narayandas v. State of Karnataka and Ors.).

(iii) 2003 CRI LJ 4538 (G.P. Sinha v. State of Gujarat and Ors.).

(iv) 1999 CRI LJ 1833 (Rajesh Bajaj v. NCT at Delhi and Ors.).

(v) : 1996 CriLJ1372 (State of Bihar v. Rajendra Agarwalla).

(vi) 1989 CRI LJ 1013 Ram Lal Yadav v. State of U.P. (F.B.)

10. I have considered the submissions made by the learned advocates appearing on behalf of the respective parties. The genesis of the FIR lodged before Ekbalpore Police Station is the complaint, petition filed by the de facto complainant before the learned SC-2007-781 Chief Judicial Magistrate, Alipore, under the provisions of Section 156(3) of the Code. It may be seen from paragraph 14 of the complaint petition that the de facto complainant wanted a thorough investigation through a superior officer, like officer-in-charge of the Ekbalpore Police Station, in order to unearth the real truth. The facts of the de facto complainant's case would appear from paragraphs 1 to 14 of the said complaint petition. It was in that factual backdrop, as would appear from the complaint petition, that a prayer was made before learned Chief Judicial Magistrate, Alipore, by the de facto complainant, to send the complaint petition to the officer-in-charge of Ekbalpore Police Station for investigation, treating the petition of complaint as a FIR. The learned Chief Judicial Magistrate by his order dated 27th March, 2006, considered and allowed the prayer of the de facto complaint and directed the petition of complaint to be sent to the officer-in-charge of Ekbalpore Police Station for investigation under Section 156(3) of the Code after treating the same as a FIR in respect of the complaint under Sections 341/427/504/506(ii)/34 of the Indian Penal Code. The first information report was consequently lodged by the Ekbalpore Police Station on 5th April, 2006, being FIR No. 83.

11. What appears for consideration before this Court is whether this is a fit case for quashing of the proceeding under Section 156(3) of the Code and the FIR at this stage, that is to say, at the stage of investigation. It is the admitted position

that investigation has not yet been completed. No final report/charge sheet has yet been filed by the police authorities under the provisions of Section 173(2) of the Code. This report, if and when filed, is an intimation to the learned Magistrate that upon investigation into a cognizable offence, the investigating officer has been able to procure sufficient evidence for the Court to enquire into the offence and in this regard necessary information was being forwarded to the Magistrate so empowered to take cognizance of the offence, based on the said report. The Magistrate may, thereafter, in accordance with the provision of Section 190 of the Code, take cognizance of such offence.

12. Admittedly, the fact situation is completely different in the instant case. As observed before, the Learned Magistrate had merely directed the police authorities to treat the complaint petition as a FIR for the purpose of investigation under Section 156(3) of the Code. The two Judgments cited by the learned advocate for the petitioners were rendered under different factual context and therefore has no manner of application in the facts of instant case.

13. There is a difference between a cognizable offence and the Magistrate taking cognizance of an offence. The Magistrate, while directing the police officer to investigate a complaint under Section 156(3) of the Code by treating the same as a FIR is merely asking the police to look into the complaint and file a final report/charge sheet under the provisions of Section 173(2) of the Code upon completion of investigation, so as to enable him to take a decision whether to take cognizance of the alleged offence. It may be so, that in a given situation, the Magistrate after receiving the final police report/charge sheet as contemplated under Section 173(2) of the Code, may not take cognizance of the offence, alleged to have been committed. It is squarely within the domain of the Magistrate's power under Section 190 of the Code, to decide whether he will ultimately take cognizance of an alleged offence or not. In the present facts of the case, that will be possible only when he receives a final police report/charge sheet under the provisions of Section 173(2) of the Code. It is only then that the Magistrate 'may' (emphasis supplied) take cognizance of the offence under the provisions of Section 190 of the Code. That stage has not yet come. Moreover, the Apex Court has time and again consistently held that the scope of exercise of power under

Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of Court, or otherwise to secure the ends of justice, should be sparingly exercised by the High Court, and that too in the rarest of the rare cases. In this regard one may look into the following decisions of the Hon'ble Supreme Court:

(i) : 1960 CriLJ1239 (R.P. Kapoor v. State of Panjub).

(ii) : AIR 1992 SC81 (State of Haryana v. Bhajanlal).

(iii) : 1999 CriLJ1833 (Rajesh Bqjaj v. State NOT of Delhi).

(iv) : 2005 CriLJ92 (Zandu Pharmaceutical Works Ltd. v. Sharaful Haque).

(v) : AIR 2006 SC2780 (Indian Oil Corporation v. NEPC India Ltd.).

14. When the High Court exercises inherent jurisdiction under the provisions of Section 482 of the Code, the same should be sparingly exercised carefully and with caution and only when such exercise is justified by the test specified by the section itself. It is to be exercised *ex debitojustitiae* to prevent abuse of process of Court. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The submission of the learned advocate for the petitioners with regard to the fact that there is no distinction between charge sheet and a FIR or a complaint, is also unacceptable. As discussed earlier, the chargesheet is nothing but a final report of the police officer, see: : (1992)IILLJ53b SC K. Veeraswami v. Union of India. Section 173(2) of the Code provides that on completion of the investigation the police officer investigating into a cognizable offence shall submit a report, whereas a first information report is made under the provisions of Section 154 of the Code. Although the term 'FIR' is not used in the Code, an information given under Sub-section (1) of Section 154 of the Code is commonly known as a 'FIR' see: : 2001 CriLJ3329 (T.T.Antony v. State of Kerala). In a situation where the officer-in-charge of a police station refuses to register a 'FIR', a person may approach the Court of the Magistrate with a complaint petition, who may, in turn, order the said complaint petition to be treated as a FIR by the police authority, for the purpose of investigation of such complaint which discloses

a cognizable offence, under the provisions of Section 156(3) of the Code. Thus, there is a clear difference between the stage of 'FIR'/complaint and the stage of charge sheet/final report.

15. When an application under Section 156(3) of the Code is filed before the learned Magistrate it is not necessary that each and every detail should be minutely recorded therein, by the complainant with mathematical precision/accuracy. What has to be considered by the learned Magistrate, at that stage, is whether the complaint was frivolous, vexatious or oppressive or does not disclose any cognizable offence at all. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statements made on oath of the complaint that the ingredients of the offence or offences are disclosed and that there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. It is squarely for the police authorities to consider the complaint and for treating the same as a FIR for the purpose of investigation under Section 156(3) of the Code in terms of the direction of the Magistrate.

16. In the circumstances and in view of the foregoing discussion, I am unable to accept the contention of the learned advocate of the petitioners that the proceeding under Section 156(3) of the Code and the FIR should be quashed. The application for quashing of the proceeding and the FIR, thus, fails. Interim order, passed earlier, stands automatically vacated. However, police is directed to complete the investigation based on the FIR, dated 5th April, 2006, as expeditiously as possible and file their report before the learned Magistrate without undue delay and strictly in accordance with the provisions of the Code. I make it clear that nothing that has been observed by me herein shall be construed in any manner as an expression of an opinion with regard to the factual merit of the case and particularly in respect of the further course of action, which is to be done strictly in accordance and in conformity with law.