

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Ptn. No.3/2018

Date of Order: 31.05.2018

Shri Subhash Chandra Srivastava Vs. State of Meghalaya & anr

Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir, Chief Justice

Appearance:

For the Petitioner/Appellant(s) : Mr. S Deka, Adv

For the Respondent(s) : Mr. K Khan, Add.PP (For R1)

: None for R2

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| i) | Whether approved for reporting in Law journals etc.: | Yes |
| ii) | Whether approved for publication in press: | No |

1. The petitioner seeks quashment of the case registered as FIR No.76 (11)/2017 P/S Tura Women under Sections 506 and 509 of Indian Penal Code.

2. At the very outset, it is to be made clear that the power exercisable under Section 482 of CrPC is exceptionally permissible so as to ensure prevention of abuse of process of the Court or otherwise to secure the ends of justice. The scope for invoking the powers under Section 482 of CrPC has been prescribed in the judgment “**State of Haryana & ors v. Bhajan Lal & ors**”: 1992 Supp (1) 335. Paras 102 and 103 of the said judgment are advantageous to be quoted:

“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 channelised 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.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or

inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

3. Applying the test as has been laid down by the Hon’ble Apex Court, no ground is forthcoming from the records which would persuade this Court to exercise the power. Though, in the memo of petition as many as 14 grounds have been projected in support whereof, reliance has been placed on the guidelines prescribed by the Hon’ble Apex Court in Bhajan Lal’s case but on scrutiny of all such grounds, the guidelines prescribed in Bhajan Lal’s case are not satisfied.

Background of the case:

I) The complainant (respondent No.2) resident of Barapani, Ri Bhoi District, Meghalaya is temporarily residing at NEHU Girls Hostel, Sampalgre, West Garo Hills as being a Ph.D. scholar. The petitioner, a professor and Head of Department, Department of Rural Development and Agricultural Production (RDAP) under North Eastern Hill University (NEHU), Tura. According to the complainant, petitioner would send her inappropriate and disturbing messages through Facebook messenger and whatsapp, particularly at late night hours. According to her, words used by the petitioner were totally inappropriate. Even though she had ignored the same but getting uncomfortable with unexpected rumors against her within and outside the campus harming her reputation, health and work, complained it to the Vice Chancellor of the University, a copy of the letter was also sent to the Chairperson of Women’s Cell and President of NEHU Students Union, Shillong, Meghalaya on 03.10.2017.

II) Respondent No.2 has also alleged that she was not alone affected by the atrocious attitude of the petitioner but some other Research Scholars and female PG students were also affected

who have opted to remain silent but she stood up for her dignity and reputation. She wanted an action to be taken by the Vice Chancellor that is why she had not lodged the report with the police. In the meantime, the Research Scholars also took up the matter vide their letter dated 16.10.2017 with Warden NEHU Girls Hostel, Sompalgre, Tura.

III) The petitioner was suspended but in order to negate the allegations levelled by the complainant (respondent No.2), he lodged an FIR against her on 13.10.2017 leveling certain allegation against the respondent No.2 (complainant) to the effect that she being a Ph.D. scholar working under somebody else appeared on his Facebook account without any request, used the Facebook but then blocked the same, has also mentioned therein that she has complained to the authorities charging him of misuse of power and authority and sexual harassment by using selected and edited social media interactions.

IV) Enquiry report prepared by S.I. Z.E.R. Thieite, as placed on record, reveals that according to the inquiry officer, both petitioner and the complainant (respondent No.2) had been text messaging for quite some time. He has found the modesty of respondent No.2 to have been affected by the petitioner, has also pointed out that the biggest cause is that the University had failed to take initiative in solving the issue and the un-decisive mindset of the complainant (victim) as to whether to take up with the Women's Cell or the police department is also forthcoming.

V) The Research Scholars Department of RDAP, NEHU, Tura Campus, Tura, Meghalaya, have filed a complaint before the Vice Chancellor of the University on 11.10.2017 requesting for taking an action. Then again on 16.10.2017, said scholars issued a reminder requesting the Vice Chancellor for taking action against the petitioner for sending informal, inappropriate and

unacceptable messages to the Research Scholars and PG students of the department. It has also been mentioned therein that the petitioner had taken the matter outside the campus and lodged an FIR against the respondent No.2 in a way he is defaming and threatening the respondent No.2.

VI) The respondent No.2 finally lodged an FIR with the P/S concerned on 19.10.2017 and it is this FIR which sought to be quashed by the petitioner.

4. Keeping in view the whole gamut of factual position, allegations and counter allegations, the investigation by police is imperative.

5. The contention of the petitioner is that the offence under Sections 506 and 509 IPC on the strength of allegations, is not made out, therefore, investigation into the matter would amount to abuse of the process and will defeat the ends of justice.

6. The allegations as levelled by the respondent No.2 are such which can be elucidated by the respondent No.2 during investigation. She being a female scholar has used decent language by saying that inappropriate messages that too particularly at late night hours were unacceptable. What are the details of the allegations can be explained by her to the Investigating Agency during investigation.

7. It is for the Investigating Agency to investigate the matter in a manner so as to separate the grain from the chaff and it is only after proper investigation, the Investigating Agency can conclude as to which of the offences are established to have been committed.

8. The attempt of the petitioner appears to have been to scuttle the entire process that is why he has filed the instant petition.

True it is that no innocent shall suffer on account of baseless allegations nor shall suffer on account of misuse of the process of law but for that, there has to be a cast iron case warranting indulgence so as to truncate the proceedings to save a person from unnecessary harassment i.e. by facing police enquiry, investigation or trial.

9. Every case has to be adjudged on its own peculiar facts and features. The guidelines issued by the Apex Court as referred to above are not exhaustive. There is a scope for its enlargement depending upon the facts so as to advance the cause of justice. The FIR lodged on 13.10.2017 against the respondent No.2 is not under challenge but under the grab of lodging the said FIR, he has questioned the entire process initiated by respondent No.2, who first has attempted to get the matter solved through the intervention of University authorities. The said attempt has been neutralized by the petitioner by lodging an FIR on 13.10.2017 against the respondent No.2. It is subsequent thereto, respondent No.2, in the background of the process which she had initiated i.e. representation to the Vice Chancellor dated 03.10.2017, complaint dated 11.10.2017 and then complaint by the Research Scholars of the University dated 16.10.2017, has lodged the FIR on 19.10.2017.

10. Contention of the petitioner that lodging of the FIR on 19.10.2017 was to counter the case i.e. FIR lodged by the petitioner on 13.10.2017, is without any logic because the respondent No.2 right from 03.10.2017 has been agitating against the approach of the petitioner and she was trying to get her grievance redress through University authorities. It is the petitioner who has lodged the FIR on 13.10.2017 prompting the respondent No.2 to lodge FIR on 19.10.2017.

11. To comment as to whether Section 354 (D) of IPC will apply against the acts allegedly committed by the petitioner or any other provision of IPC will apply is better to be left to the Investigating Agency otherwise either side may get prejudiced. There is a material warranting investigation. Applicability of Sections 506 and 509 IPC at this stage cannot be ruled out when the respondent No.2 in her report dated 19.10.2017 has clearly alleged that while waiting for justice from the respected authorities of the University, the petitioner has taken the matter outside the campus and now she is afraid that he could do anything to harass her physically or mentally and she does not feel safe and secure as the petitioner has been intimidating her.

12. In the background of the facts and circumstances, there is no scope for entertaining this petition or to interfere with the investigation as is being conducted by the Investigating Agency. In short, no case for interference under Section 482 CrPC is made out, petition accordingly dismissed.

13. The observations made hereinabove, shall not in any manner be deemed to be an expression of opinion. Same shall remain confined to the disposal of this petition only. The Investigating Agency shall investigate the matter on its own merits and conclude the same in accordance with law.

(Mohammad Yaqoob Mir)
Chief Justice

Meghalaya
31.05.2018
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