

Crl. Misc. Case No. 04/2017
Ranjit Bajaj vs. State of Sikkim

THE HIGH COURT OF SIKKIM : GANGTOK
(Criminal Jurisdiction)

S.B.: HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI, CJ.

Crl. Misc. Case No. 04 of 2017

Ranjit Bajaj,
Son of Shr. B. R. Bajaj,
Aged 38 years,
Resident of House No.31,
Sector 2,
Chandigarh.

... **Petitioner.**

versus

State of Sikkim,
Through:
Ld Public Prosecutor,
High Court of Sikkim.

... **Respondent.**

**Petition under Section 482 of the Code of Criminal
Procedure, 1973**

Appearance:

Mr. Tashi Rapden Barfungpa, Mr. S. P. Bhutia, Ms.
Mingma Lhamu Loday and Mr. Ugen Lepcha,
Advocates for the Petitioner.

Mr. Karma Thinlay, Addl. Public Prosecutor with Ms.
Pollin Rai, Assistant Public Prosecutor for the State.

Mr. Santosh Baniya, Investigating Officer.

ORDER (ORAL)
(01.06.2017)

Satish K. Agnihotri, CJ

The Petitioner, being a co-accused in G.R. Case No.165 of 2016 (State of Sikkim vs. Atsushi Yonezawa & Anr.) pending on the file of the Court of Judicial Magistrate Chungthang Sub Division, North Sikkim, has come up with the instant petition under provisions of Section 482 of the Code of Criminal Procedure, 1973 (for short, the Code) for quashment of First Information Report (FIR) No.105/2016 dated 07.04.2016 and consequential proceedings in G.R. Case No.165 of 2016.

2. The brief facts, as projected by the Petitioner, are that on the basis of a report filed by HC Nima Sherpa of Special Branch, FRO Section to the Station House Officer, Sadar Police Station, Gangtok, a case was registered. It was alleged in the report that one Mr. Atsushi Yonezawa, a Japanese National, holder of P.P. No.TK 5735699 valid upto 28.11.2021, Visa No. (T) 7197080 valid upto 28.06.2016, was enlisted as a football player of Minerva Academy Football Club under the ownership of the present Petitioner. Mr. Atsushi Yonezawa was permitted to play a 2nd Division I-League football match between Minerva Academy Football Club and Gangtok Himalayan Sporting Club

without having requisite sanction in the Tourist Visa granted in his favour. It was further alleged that the present petitioner threatened the police authorities with dire consequences stating that he had connection with senior officers of MHA. It has come on record that on registration of the case, the investigation was carried out. Thereafter, a charge-sheet for having committed an offence under Section 14 of The Foreigners Act, 1946 against Mr. Atsushi Yonezawa, the Japanese National and under Section 14C of The Foreigners Act, 1946 against the petitioner, was filed in the Court of Judicial Magistrate, Chungthang Sub Division, North Sikkim. The case is pending trial before the Court. Thus, this Petition for quashing of FIR and pending criminal case.

3. Mr. Tashi Rapden Barfungpa, learned Counsel appearing for the Petitioner, would contend that the complaint (report), which formed the basis for charge-sheeting the petitioner, does not make out a case against the Petitioner as the Petitioner, on having come to know that the other co-accused was not having permission on Tourist Visa to play football, withdrew him from the field. It was further contended that he was not in employment of Minerva Academy Football Club, Chandigarh, Punjab under his ownership. The other co-accused, i.e. Mr. Atsushi Yonezawa, was registered with Aizawl

Football Association, Mizoram on permanent basis and was on loan to Chandigarh Football Association to play for Minerva Academy Football Club for a limited period of a few months and, as such, the Petitioner was not party to any misdeed, if any, committed by Mr. Atsushi Yonezawa. Mr. Barfungpa would also contend that the Petitioner has not committed any offence as alleged and there is no intention or motive to commit an offence under provisions of Section 14 or 14C of The Foreigners Act, 1946. Thus, the FIR against the Petitioner and consequential criminal case deserve to be quashed.

4. Per contra, Mr. Karma Thinlay, learned Additional Public Prosecutor appearing for the State, would contend that the Japanese National, Mr. Atsushi Yonezawa was found playing without proper permission from the Government of India on behalf of the Minerva Academy Football Club, Chandigarh, Punjab owned by the Petitioner. Genuineness and authenticity of the complaint is the subject matter of the trial. It is for the Petitioner to establish that he had no intention or he had not permitted the other co-accused, namely, Mr. Atsushi Yonezawa, the Japanese National, to play without having a valid permit under his Visa condition in the ongoing trial proceedings. Mr. Thinlay would further contend that if the charge-sheet makes out a *prima facie* case of having committed offences under

provisions of Section 14C of The Foreigners Act, 1946, this Court may not go into the genuineness and authenticity of the complaint.

5. Heard learned Counsel for the parties, perused the pleadings and documents appended thereto.

6. The Foreigners Act, 1946 (for short, the Act of 1946) is enacted to regulate entry of foreigners into India, their presence therein and their departure therefrom, which came into force with effect from 15.12.1947. Section 14 contemplates penalty for contravention of provisions of the Act, etc., that is whoever, a foreigner, remains in any area in India for a period exceeding the period for which the visa was issued to him or any act in violation of the conditions of the valid visa issued to him for his entry and stay in India or any part thereunder and/or contravenes the provisions of this Act or of any order made thereunder or any direction given in pursuance of this Act or such order which no specific punishment is provided under this Act, shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine. The other co-accused, a Japanese National, was charge-sheeted for violation of conditions of the Visa granted to him. The Petitioner was charge-sheeted under Section 14C of

the Act of 1946 which provides that whoever abets any offence punishable under Section 14 or Section 14A or Section 14B. The Court is not concerned with an offence punishable under Section 14A or Section 14B in the instant case. The petitioner, having been found as owner of Minerva Academy Football Club, Chandigarh, Punjab for which it appears that Mr. Atsushi Yonezawa, a Japanese National, was enlisted as a team member. Thus, a charge-sheet was filed against the Petitioner for having committed offence under Section 14C of the Act of 1946. On evaluation the complaint filed by HC Nima Sherpa of Special Branch, FRO Section and further charge-sheet on the basis of investigation taking on its face value do constitute an offence under 14C of the Act of 1946. Thus, at this stage, without going into merits of the case, the case is not made out for invocation of extra-ordinary jurisdiction of this High Court under Section 482 of the Code.

7. It is well settled principle of law that while examining the material for the purpose of examining the case under Section 482 Cr.P.C. to quash the criminal proceedings, the material and documents on record be evaluated with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence.

8. In *State of Haryana & Ors. vs. Bhajan Lal & Ors.*¹, the Supreme Court had examined the scope of exercise of jurisdiction under Section 482 Cr.P.C. and observed 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 disclosed the commission of any offence and make out a case against the accused.

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- (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."

9. Again, in ***Chand Dhawan (Smt) vs. Jawahar Lal & Ors.***², the Supreme Court observed as under:-

" 7. This Court has in various decisions examined the scope of the power under Section 482 CrPC, and has reiterated the principle that the High Court can exercise its inherent jurisdiction of quashing a criminal proceeding only when the allegations made in the complaint do not constitute an offence or that the exercise of the power is necessary either to prevent the abuse of the process of the court or otherwise to secure the ends of justice. No inflexible

guidelines or rigid formula can be set out and it depends upon the facts and circumstances of each case wherein such power should be exercised. When the allegations in the complaint prima facie constitute the offence against any or all of the respondents in the absence of materials on record to show that the continuance of the proceedings would be an abuse of the process of the court or would defeat the ends of justice, the High Court would not be justified in quashing the complaint.”

10. In *Suryalakshmi Cotton Mills Ltd. vs. Rajvir Industries Ltd.*³, the Supreme Court elaborated the parameters of jurisdiction of the High Court in exercising its jurisdiction under Section 482 Cr.P.C. and observed as under:-

“ 17. The parameters of jurisdiction of the High Court in exercising its jurisdiction under Section 482 of the Code of Criminal Procedure is now well settled. Although it is of wide amplitude, a great deal of caution is also required in its exercise. What is required is application of the well-known legal principles involved in the matter.

18. It is neither feasible nor practicable to law down exhaustively as to on what ground the jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure should be exercised, but some attempts have been made in that behalf in some of the decisions of this Court as for example *State of Haryana v. Bhajan Lal* :1992 Supp (1) SCC 335, *Janata Dal v. H.S. Chowdhary* : (1992) 4 SCC 305, *Rupan Deol Bajaj v. Kanwar Pal Singh Gill* : (1995) 6 SCC 194 and *Indian Oil Corpn. v. NEPC India Ltd.* : (2006) 6 SCC 736.”

11. In ***Rallis India Ltd. vs. Poduru Vidya Bhushan & Ors⁴***, the Supreme Court further observed as under:-

“ 12. At the threshold, the High Court should not have interfered with the cognizance of the complaints having been taken by the trial court. The High Court could not have discharged the respondents of the said liability at the threshold. Unless the parties are given opportunity to lead evidence, it is not possible to come to a definite conclusion as to what was the date when the earlier partnership was dissolved and since what date the respondents ceased to be the partners of the firm.”

12. The Supreme Court in ***Vinod Raghuvanshi vs. Ajay Arora & Ors.⁵***, further expounded the scope of exercise of jurisdiction under Section 482 Cr.P.C. to quash the criminal proceedings, observed as under: -

“ 30. It is settled legal proposition that while considering the case for quashing of the criminal proceedings the court should not “kill a stillborn child”, and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegations have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the court is whether the uncontroverted allegation as made, prima facie establish the offence. At this stage neither can the court embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor should the court judge the probability, reliability or genuineness of the allegations made therein. More so, the charge-sheet filed or charges framed at the initial stage can be altered/amended or a charge can be added at the subsequent stage, after the evidence is adduced in view of the provisions of Section 216 CrPC. So, the order passed even by the High Court or this Court is subject to the order which would be passed by the trial court at a later stage.”

4 (2011) 13 SCC 88
5 (2013) 10 SCC 581

13. Considering the afore-stated proposition of law laid down by the Supreme Court at earlier point of time, it was observed recently in the case of ***Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited***⁶, as under: -

“ 16. As is clear from the above observations of this Court, it is well settled that while dealing with a quashing petition, the court has ordinarily to proceed on the basis of averments in the complaint. The defence of the accused cannot be considered at this stage. The court considering the prayer for quashing does not adjudicate upon a disputed question of fact.”

14. Applying the well settled proposition of law in reference to exercise of power under Section 482 Cr.P.C. by the High Court to the fact of the case, it is evident that the Petitioner, owning the Minerva Academy Football Club, Chandigarh, Punjab, had come to Sikkim to play a football match with Gangtok Himalayan Sporting Club on 07.04.2016. Mr. Atsushi Yonezawa, a Japanese National, was apparently found to be a part of the team. A complaint was lodged that he was in possession of Tourist Visa without any prior permission to play football herein. Accordingly, a charge-sheet was filed. The other issues in respect of intention, purpose and also the authenticity of the allegations are subject matter of trial. This

6 (2016) 10 SCC 458

Court cannot examine the evidence to find out whether the trial may lead to conviction or acquittal, which is beyond the scope of the jurisdiction exercisable under section 482 Cr.P.C.

15. Thus, I am not inclined to allow the petition and quash the FIR as well as consequential criminal proceedings, as sought for.

16. At this stage, Mr. Tashi Rapden Barfungpa, learned Counsel appearing for the Petitioner, submits that the Petitioner is a resident of Chandigarh and he has to come regularly to attend the trial. Thus, the Petitioner be exempted from appearance in the criminal proceedings pending before the Judicial Magistrate, Chungthang Sub Division, North Sikkim. In that event if an application is made to the learned trial Magistrate for exemption from appearance by the Petitioner, the trial Magistrate is competent to take decision in accordance with law.

17. It is further stated that the facts involved, herein, are not complicated and much disputed, thus, to avoid further complication, a direction be issued to the trial Magistrate to expedite trial.

18. Learned Additional Public Prosecutor submits that the prosecution has no objection to both the submissions made by the Petitioner.

19. Accordingly, having regard to the fact situation, the trial Magistrate is directed to expedite the trial and conclude the same as early as possible, preferably within three months.

20. With the afore-stated observations and directions, the petition stands disposed of.

Chief Justice
01.06.2017

Approved for Reporting : Yes/~~No~~.
Internet : Yes/~~No~~.

pm