

GAHC040000582023



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

Case No. : Crl.Petn. 11/2023

1:Goto Kamdak
S/o Shri Ego Kamdak,
R/o Village Kamdak, PO/PS Basar, Leparada Disttict, Arunachal Pradesh.

VERSUS

1:THE STATE OF AP and Anr.
Represented by the Public Prosecutor, Arunachal Pradesh.

2:Bomyir Kamdak
W/o Shri Bika Kamdak

Village Kamdak
PO/PS Basar
Leparada District
Arunachal Pradesh

Advocate for the Petitioner : Adam Tatak

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MR. JUSTICE KARDAK ETE

ORDER

Date : 16-06-2023

Heard Mr. T. Gyatso, learned counsel for the petitioner and Ms. L. Hage, learned Additional PP for the State of Arunachal Pradesh. None appears for the

respondent No. 2 though the service of notice is shown to be completed.

2. This application under section 482 of Cr.PC, 1973 has been filed by the petitioner praying for quashing of the GR case no. 23/2021 under section 294 IPC, 1860 pending before the learned Chief Judicial Magistrate, Aalo.

3. The case of the petitioner in a nutshell is that the respondent no. 2 namely Smti. Bomyir Kamdak had lodged an FIR on 25.12.2020 before the OC PS Basar alleging that on the night of 23.12.2020 at around 2130 hrs approximately, someone threw stones over her rooftop repeatedly and created nuisance. When she along with her husband came out from the house, the petitioner along with Jumi Kamdak, Kare Kamdak, Jumge Kamdak were found available at the spot with their vehicle. On asking as to why they threw stones, the petitioner uttered abusive words to her openly in front of his accomplices and her husband and outraged her prestige and modesty and defamed her by imputing her without any reason.

4. Upon receipt of the FIR, the OC, PS Basar had registered a case being Basar PS case no. 30/2020 under section 447/506/34 of IPC, 1980. On completion of the investigation, the IO had submitted the charge sheet against the petitioner along with other co-accused(s) under section 447/506/34 of IPC, 1860.

5. During the consideration of charges, the learned Chief Judicial Magistrate, Aalo by the order dated 12.12.2022 had dropped the charges against the petitioner under section 447/506/34 IPC and discharged the other co-accused Shri. Jumi Kamdak from the case. However, the learned CJM, Aalo has framed the charge under Section 294 of IPC, 1860 against the petitioner.

6. Mr. T. Gyatso, learned counsel for the petitioner submits that the accusation made by the informant against the petitioner of using unparliamentary words cannot be sustained as there is no incriminating evidence to support such allegation and there is nothing to substantiate the claim of using any unparliamentary words against the informant.

7. Mr. T. Gyatso, learned counsel submits that the main ingredient under section 294 of IPC is that the place of occurrence should be public place before public. As per the statement of the witnesses under section 161 of Cr.PC, it clearly shows that the petitioner was standing outside the house and in the property of Bomken Kamdak therefore, it was not in a public place.

8. Mr. T. Gyatso, learned counsel submits that the occurrence was during the time of Panchayat Election, 2020 when the petitioner and the informant were supporters of the rival party and candidates. It was only when the informant accused the petitioner and his friends of pelting stones at her rooftop, there was an argument between the petitioner and the informant. Taking advantage of the adversity during the Panchayat Election, the informant has filed the FIR without any basis.

9. Mr. T. Gyatso, learned counsel further submits that since there is no ingredient establishing the case under section 294 of IPC, the framing of the charge against the petitioner under section 294 IPC while dropping the charges under section 447/506/334 IPC thereby discharging the co-accused, is not sustainable and no case for trial against the petitioner is made out, which in turn would be an abuse of the process of the court. As the charge has been framed by the learned Chief Judicial Magistrate, Aalo without there being any

material to establish such charge, therefore, the proceeding of GR case no. 23/2021 under section 294 IPC, 1860 may be set aside and quashed.

10. To support his submission, Mr. T. Gyatso has placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***N.S. Madhanagopal and Anr V. K. Lalitha*** passed on 10.10.2022.

11. Ms. L. Hage, learned Additional PP submits that the test of obscenity under section 294 of IPC is whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences. Referring to the materials available on record she submits that though there appears to be exchange of words between the petitioner and the informant on the accusation of throwing stones on the rooftop of the house of the informant, there is no material to show that there was an obscene word uttered in any public place which could attract section 294 of IPC. The statements of the witnesses recorded under section 161 Cr.PC does not disclose any ingredient which may attract the offence under section 294 of IPC.

12. I have considered the submissions advanced by the learned counsel for the parties and perused the materials available on record.

13. All that has been averred in the complaint is that the petitioner had used unparliamentary words and outraged the modesty of the informant. After the investigation, the police has submitted the charge sheet under section 447/506/34 IPC and the learned Chief Judicial Magistrate, Aalo has dropped the charges against the petitioner. However, subsequently framed the charge against the petitioner under section 294 of IPC which relates to obscene acts and songs which is reproduced herein below:

"294. Obscene acts and songs- Whoever, to the annoyance of others-

(a) does any obscene act in any public place, or

(b) sings, recites or utters any obscene song, ballad or words, in or near any public place,

Shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both."

14. As held by the Hon'ble Supreme Court that the test of obscenity under section 294 of IPC is whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences.

15. On bare perusal of the FIR, though the allegation is of using unparliamentary words by the petitioner, the statement of the witnesses recorded under section 161 of Cr.PC does not disclose such words which may support the allegations of the informant alleged to have been uttered by the petitioner which would constitute an offence punishable under section 294 IPC. None of the records discloses the alleged words used by the petitioner support the allegation of the informant. It may be merely abusive, humiliating or defamative words which would not attract the offence under section 294 of IPC.

16. As held by the Hon'ble Supreme Court, to prove the offence under section 294 of IPC mere utterance of obscene words are not sufficient but there must be further proof to establish that it was to the annoyance of others. No one has deposed or stated about the obscene words which they felt annoyed and in the absence of such material to show that the words uttered by the petitioner

annoyed others it may not be said that the ingredient of offence under section 294 of IPC is made out.

17. As noted above, to prove the offence under section 294 of IPC mere utterance of obscene words are not sufficient, but there must be further proof to establish that it was to the annoyance of others which, on scrutiny of the record in the present case is lacking.

18. In view of what has been discussed herein above, this court is of the view that the proceeding of GR case no. 23/2021 under section 294 of IPC, 1860 pending before the learned CJM, Aalo may amount to abuse of the process of court, accordingly, it deserves to be set aside and quashed.

19. Consequently, the proceeding in GR. Case no. 23/2021 under section 294 of IPC, 1860 pending before the learned CJM, Aalo is hereby set aside and quashed.

20. In the result, the criminal petition is allowed and disposed of.

JUDGE

Comparing Assistant