

GAHC040011172023



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

Case No. : Crl.Rev.P./21/2023

Takar Rie and Anr.

S/o Jopen Rei, R/o Pakarijo, P.O/P.S Dumporijo, District Upper Subansiri, Arunachal Pradesh. Mobile 73082231712: Smti. Yari Siyum

Age:

Occupation

VERSUS

The State of AP and Anr.

represented through Public Prosecutor 2:Gekar Digli

Age: 0

Occupation

Advocate for the Petitioner : Khoda Tama

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MR. JUSTICE NANI TAGIA

ORDER

Date : 21.08.2023

Heard Mr. K. Tama, learned counsel for the petitioner. Also heard Mr. T. Ete, learned Addl. Public Prosecutor for the State respondent no. 1.

2. This revision petition, under Sections 397/482 of the Code of Criminal

Procedure, 1973, has been filed, challenging the Order, dated 30.03.2023 passed by the learned Chief Judicial Magistrate, Daporijo in DRJ CR No. 04/2022, whereby, the complaint filed by the respondent no. 2, against the petitioners under Sections 190/200 Cr.P.C., for taking cognizance of offence under Section 193 IPC against the petitioner and thereby fixed the complaint case on 22.05.2023 for examination of the complainant and witnesses under Section 200 of the Cr.P.C. Also put to challenge is the Order, dated 22.05.2023, passed by the learned Chief Judicial Magistrate, Daporijo in DRJ CR No. 04/2022, whereby, summons were issued to the petitioners for appearance on 23.06.2023 and the Order, dated 05.08.2023, passed by the learned Chief Judicial Magistrate, Daporijo in DRJ CR No. 04/2022 on a Misc. application No. 08/2023 filed by the petitioner no. 1 for stopping the proceeding of the complaint case No. DRJ CR No. 04/2022, contending that the same is barred by Section 195 (1)(b)(i) of Cr.P.C., 1973, which contention was rejected and 12.09.2023 has been fixed for appearance of both the petitioners.

3. The Order, dated 30.03.2023, by which, the complaint case no. DRJ CR No. 04/2022, filed by the respondent no. 2, against the petitioners, for the offence under Section 193 IPC against the petitioners have been taken cognizance of by the learned Chief Judicial Magistrate, Daporijo is reproduced herein below:

“DRJ CR. No. 04/22
Takar Digli Vrs. Takar Rei & Another.

DATE: 30.03.2023

ORDER

Complainant has filed this complain under Section 190, 200 CrPC for taking cognizance of offence under section 193 IPC against both the accused persons.

Learned counsel Mr. N. Sikom is present on behalf of the complainant.

It is the case of the complainant that in the year 2015, he filed a complaint against accused no. 1, Takar Rei for committing cruelty against his wife, and for marrying another woman Smt. Yari Siyum (accused no. 1) during the lifetime of his wife. The said complaint was sent for investigation to the police, which was registered as DMJ P.S. Case NO. 24/15 under section 494, 498(A) IPC and GR Case no. 131/15. That during the trial of the said case, both the accused persons gave false evidence before the trial court that they are not husband and wife, and Master Kartik Rei and Karsum Rei are not their children. However, in the family detail register and household survey record of 2019 maintained by Tajapada Angawadi Centre, accused persons are husband and wife. Furthermore, as per maternity discharge certificate of accused no. 2, Yari Siyum issued by TRIHMS, Naharlagun, she gave birth to a child on 22.06.2019 for accused no. 1, Takar Rei. In order to substantiate his claim, complainant had produced the deposition the both the witnesses in the aforesaid case, and the family detail register and household survey record of 2019 maintained by Tajapada Angawadi Centre as well as maternity discharge certificate of accused no. 2, Yari Siyum issued by TRIHMS, Naharlagun.

I have carefully perused the complaint and the documents enclosed with it. On perusal of the same, I am of the opinion that complain discloses a prima facie against the accused person of offence under section 193 IPC. Accordingly, cognizance of the offence is taken against both the accused.

The complainant has made a prayer for sending the complaint to the police for investigation. However, this Court on perusal of the complaint do not deemed it necessary to send for police investigation. Hence, the prayer is rejected.

List the mater on 22.05.2023 for examination of complainant and witnesses under 200 CrPC on the next date.

Chief Judicial Magistrate,
Daporijo.”

5. From perusal of the Order, dated 30.03.2023, It appears that the learned Chief Judicial Magistrate, Daporijo has taken cognizance of the complaint lodged by the respondent no. 2 against the petitioners for giving false evidence before the Trial Court in DMJ P.S. Case NO. 24/15, under Sections 494/498(A) IPC and GR Case no. 131/15.

6. The contention of the petitioners is that the learned Chief Judicial Magistrate, Daporijo could not have taken cognizance of the complaint case filed against the petitioners by the respondent no. 2 for the offence under Section 193 IPC as there is a bar for taking cognizance of such a complaint case filed for the offence under Section 193 IPC as provided under Section 195 (1)(b)(i) of Cr.P.C., 1973.

7. Section 195 (1)(b)(i) of Cr.P.C., is reproduced herein below:

”195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(1) No Court shall take cognizance—

(a) (i)

(ii)

(iii)

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii)

(iii)

[except on the complaint in writing of that Court or by such officer of the Court as that Court may authorize in writing in this behalf, or of some other Court to which that Court is subordinate].”

8. Section 195 (1)(b)(i) of Cr.P.C., provides that no Court shall take cognizance of any offence punishable *inter alia* under Section 193 of the IPC, except on the complaint in writing of that Court or by such officer of the Court as that Court may authorize in writing in this behalf, or of some other Court to which that Court is subordinate.

9. In the instant case, there appears to be no complaint in writing of the Court or by such officer of the Court as that Court may authorize in writing in this behalf alleging commission of an offence under Section 193 of the IPC, namely, giving false evidence in any stage of judicial proceedings etc.

10. Thus, in the absence of a complaint in writing of the Court or by such officer of the Court as that Court may authorize in writing in this behalf,

wherein, a false evidence at any stage of judicial proceedings is alleged to have been given, the learned Chief Judicial Magistrate, Daporijo, could not have taken cognizance of an offence under Section 193 IPC on a complaint lodged by the respondent no. 2 as has been done by the impugned Order, dated 30.03.2023.

11. Where such a complaint is lodged for an offence under Section 193 IPC, the proper course for the Court concerned, is to follow the provisions of Sections 195 and 340 of the Cr.P.C., and proceed thereafter.

12. In that view of the matter and with the consent of the learned counsel for the petitioner as well as learned Addl. Public Prosecutor, this revision petition is disposed of at the motion stage itself by setting aside the Orders, dated 30.03.2023, 22.05.2023 and 05.08.2023, passed by the learned Chief Judicial Magistrate, Daporijo in DRJ CR No. 04/2022 with a direction to the learned Chief Judicial Magistrate, Daporijo to act in accordance with the provisions of Sections 195 and 340 of the Cr.P.C., on the complaint filed by the respondent no. 2 against the petitioners.

It is, hereby, ordered accordingly.

The revision petition stands disposed of in terms above.

JUDGE

Comparing Assistant