

GAHC040015132023



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

Case No. : Crl.Rev.P./28/2023

Takar Rei and Anr.

S/o Jopen Rei, R/o Pakarijo, P.O/P.S Dumporijo, District Upper Subansiri Arunachal Pradesh, Mobile No 7308223171 2: 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 MRS. JUSTICE MITALI THAKURIA**

ORDER

09.11.2023

Heard Mr. K. Tama, learned counsel for the petitioner. Also heard Mr. T. Ete, learned Additional Public Prosecutor representing the State respondent.

2. This application is filed under Section 397/482 of the Code of Criminal Procedure, 1973 praying for setting aside and quashing of the impugned Orders dated 12.09.2023 and 05.10.2023 passed by the learned Chief Judicial Magistrate, Daporijo, whereby, the learned Chief Judicial Magistrate has taken cognizance against the petitioners namely, Shri Takar Rie and Smti. Yari Siyum under Section 193 of IPC on a private complaint case filed by the respondent No.2 under Section 200 of Cr.P.C.

3. It is submitted by the learned counsel for the petitioner, Mr. K. Tama that in the year 2015 the respondent No.2 filed a complaint case against the petitioner No.1 before the Judicial Magistrate First Class, Daporijo (in short CJM) with the allegation of mental and physical torture upon her sister i.e. the petitioner No.2 as well as for marrying another woman during the lifetime of his sister. Accordingly, a case was registered vide Daporijo P.S. Case No.24/15, under Section 494/498A of IPC against the petitioner No.1. and on completion of trial the learned Court of Chief Judicial Magistrate, Daporijo was pleased to acquit the petitioner No.1 vide its judgment dated 31.05.2023. The said acquittal order was never put to challenge, however, the respondent No.2 filed another complaint case before the learned CJM under Section 190, 200 and 204 of Cr.P.C. against the petitioners *inter alia* that they have given false evidence

during the proceeding in trial of G.R. Case No.135/15 corresponding to Daporijo P.S. Case No.24/15, praying to take cognizance of an offence under Section 193 I.P.C. with an allegation that during the judicial proceeding in G. R. case No.131/15 under Section 494/498A of IPC, the accused persons gave false evidence.

4. Thereafter, vide order dated 30.03.2023, the learned CJM took cognizance of offence under Section 193 of IPC against the petitioners and vide order dated 22.05.2023, issued a process to summon both the petitioners. The petitioners after receiving the summon from the learned CJM, the petitioner No.1 filed a Crl. Misc. Case No. 08/2023 on 23.06.2023 before learned CJM to stop the proceeding of CR. Case No.04/2023 against the petitioners in view of embargo under the provision of section 195 clause (b) (1) of Cr.P.C. 1973. But, vide order dated 05.08.2023 the Misc. application was rejected by the learned CJM with an observation that the Court has no review power, and asked the petitioners to approach before this Hon'ble Court by way of revision.

5. Thereafter, being highly aggrieved by the order dated 30.03.2023, 22.05.2023 and 05.08.2023, the petitioners have approached this Court by filing a Criminal Revision petition No.21(AP)/2023 and the same was disposed of by this Court vide order dated 21.08.2023 and thereby, set aside and quashed the order dated 30.03.2023, 22.05.2023 and 05.08.2023. Further, this Court had directed the learned CJM to act in accordance with provision of section 195/340 of Cr.P.C. on the complaint filed by the respondent No.2 against the petitioners. On the basis of this Court in revision petition, the matter was taken up by learned CJM on 12.09.2023 and passed the order whereby the complaint was converted into private complaint under Section 340 Cr.P.C. and observed that "it

is expedient in the interest of justice that an enquiry should be made into allegations made by the complainant” and has fixed the matter on 05.10.2023 for recording the statement of the complainant.

6. Accordingly, the respondent No.2 appeared and his statement was recorded on oath and thereafter, vide impugned order dated 05.10.2023, the learned CJM has again took the cognizance of offence under Section 193 of IPC against the petitioners and has sent the case record to the learned Judicial Magistrate First Class, Daporijo for trial. But, the learned CJM again committed the same mistake and did not comply with the provision of Sections 195/340 of Cr.P.C.

7. He further submits that “No Court shall take the cognizance of offence punishable as mentioned in Section 195 Clause (b) (1) of Cr.P.C. that includes Section 193 of 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 subordinate. The only procedure to draw a complaint in respect of the offences mentioned in Section 195 of the Cr. P.C. 1973 is Section 340 of Cr.P.C. and without resorting to that provision, if the Magistrate takes cognizance of any offences mention in the Section 195 of Cr.P.C., 1973 in a private complaint, this will be grave error that would vitiate the outcome of the orders, if any passed by the magistrate.

Further, upon the enquiry by the learned CJM, Daporijo under the proviso of Section 340 Cr.P.C., it ought not to have taken cognizance of the offence rather, it ought not to have records its finding and make a complaint in writing by itself or by its authorized subordinate officer(s) to a competent Court having jurisdiction that too, by taking into consideration “whether, it is in public interest to allow criminal proceedings to be instituted.”

8. The learned counsel for the petitioners further submitted that a complaint filed by the respondent No.2 who is a private party, before the learned CJM, Daporijo under Section 190, 200 and 204 of Cr.P.C. for taking a cognizance of offence under Section 193 IPC bears a fundamental defect on the face, as to initiate a proceeding against the accused person under Section 193 of IPC, a complaint has to be filed in writing of that court, or by some subordinate official to which that Court is subordinate.

9. It is submitted by the learned counsel for the petitioners that the order passed by the learned CJM is illegal and arbitrary and is liable to be set aside and quashed.

10. In this context, Mr. T. Ete, learned Additional Public Prosecutor also agreed to the submissions made by the learned counsel for the petitioners and submitted that the learned CJM did not comply with the provision provided under Sections 195/340 of Cr.P.C. and thus, passed the order which is not tenable in the eye of law.

11. In support of his submissions, he relies on the decision passed by the Hon'ble Apex Court in the case of ***K. T. Thomas & Others vs. State of Maharashtra & Ors.***, reported in ***(2001) 8 Supreme 336***, wherein, he stressed mainly paragraph Nos. 8 and 9 of the said judgment, which read as under:-

8. Reading of the sub-section makes it clear that the hub of this provision is formation of an opinion by the court (before which proceedings were to be held) that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. In order to form such opinion the court is empowered to hold a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the court can form such

an opinion when it appears to the court that an offence has been committed in relation to a proceeding in that court. It is important to notice that even when the court forms such an opinion it is not mandatory that the court should make a complaint. This sub-section has conferred a power on the court to do so. It does not mean that the court should, as a matter of course, make a complaint. But once the court decides to do so, then the court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into. If the court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding its opinion. It should again be remembered that the preliminary inquiry contemplated in the sub-section is not for finding whether any particular person is guilty or not. Far from that, the purpose of preliminary inquiry, even if the court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.

9. Inquiry is defined in [Section 2\(g\)](#) of the Code as every inquiry, other than a trial, conducted under this Code by a magistrate or court. It refers to the pre trial inquiry, and in the present context it means the inquiry to be conducted by the magistrate. Once the court which forms an opinion, whether it is after conducting the preliminary inquiry or not, that it is expedient in the interest of justice that an inquiry should be made into any offence the said court has to make a complaint in writing to the magistrate of first class concerned. As the offences involved are all falling within the purview of warrant case [as defined in Sec.2 (x)] [of the Code](#) the magistrate concerned has to follow the procedure prescribed in Chapter XIX of the Code. In this context we may point out that [Section 343](#) of the Code specifies that the magistrate to whom the complaint is made under [Section 340](#) shall proceed to deal with the case as if it were instituted on a police report. That being the position, the magistrate on receiving the complaint shall proceed under [Section 238](#) to [Section 243](#) of the Code.”

12. After hearing the submissions made by the learned counsels of both sides, I have perused the case record and also perused the order passed by this Court in Criminal Revision Petition No.21/2023, wherein this court had directed the learned CJM, Daporijo to act in accordance with law as provided under Sections 195/340 Cr.P.C on the complaint filed the respondent No.2 against the petitioners. It is settled law that when a complaint is lodged for an offence under Section 193 of IPC the proper procedure should be followed as provided

under Section 195/340 of Cr.P.C., but, it is seen that inspite of the direction given by this Court the learned CJM has committed the same mistake and took cognizance of an offence and thereafter, the same has been transferred for disposal to learned JMFC to which in my opinion is not proper and the learned CJM has failed to comply with the provision of Sections 195/340 of Cr.P.C., whereby, the complaint was lodged under Section 193 of IPC for adducing false evidence before this Court.

13. Accordingly, the order dated 12.09.2023 and 05.10.2023 passed in complaint case No.04/2023 passed by the learned CJM, Daporijo is hereby set aside and quashed with a direction to passed an order following the procedure provided under Sections 195/340 of Cr.P.C.

14. In terms of above, this criminal revision petition stands disposed of.

JUDGE

Comparing Assistant