

GAHC010006672013



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

Case No. : Crl.Pet./307/2013

ROHINI GOGOI and ANR.
S/O LT. SONARAM GOGOGI R/O 2NO. APBN HEADQUARTER, MAKUM, P.O.
and P.S. MAKUM DIST. TINSUKIA, ASSAM.

2: SMTI.NIRU GOGOI
W/O SRI ROHINI GOGOI R/O 2 NO. APBN HEADQUARTER
MAKUM
P.O. and P.S. MAKUM DIST. TINSUKIA
ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
Represented By PP,Assam

2:SRI ANUP KAKOTI
S/O SRI GULAP KAKOTI
PO - KATHALGURI GAON
PS - DULIAJAN
DIST - DIBRUGARH
ASSAM
PIN - 786602
PHONE - 943572314

Advocate for the Petitioner : MR. P K GOGOI

Advocate for the Respondent : PP, ASSAM

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

02.03.2023

Heard the learned counsel Mr. P.K. Gogoi appearing for the petitioners as well as Mr. KK Das, the learned Addl. Public Prosecutor representing the State of Assam/respondent no.1. Also heard Mr. I. Rahman, the learned counsel appearing for the respondent no.2.

2. This is an application under Section 482 of the CrPC read with Section 401 and 397 of the said Code praying for quashing the criminal proceedings of G.R. Case No.1028/212 arising out of Makum P.S. Case No.150/2012 under Section 420 and 406 of the Indian Penal Code.

3. The first petitioner Rohini Gogoi is a police constable. In order to purchase a plot of land, he borrowed a sum of Rs.8 lakhs in cash from the informant.

4. In the meantime, the informant had applied for the post of Excise Inspector in the Excise Department, Assam. By that time, Rohini Gogoi was posted as the PSO of a high ranking Excise official. Therefore, Rohini Gogoi promised to the informant that he will manage to procure the job for him on payment of Rs.8 lakhs. The informant agreed. Rohini Gogoi failed to procure the job for the informant. Therefore, the informant demanded his money back.

5. The informant has alleged that Rohini Gogoi and his Niru Gogoi (petitioner no.2) always gave false assurances and thereby cheated him.
6. On the basis of the aforesaid story, police started the investigation and finally filed the *charge sheet* against Rohini Gogoi and Niru Gogoi under Sections 406 and 420 of the Indian Penal Code.
7. The learned counsel Mr. Gogoi submits that a civil case has given the colour of criminal case because the informant could have filed a civil suit for recovery of his money.
8. I have given my anxious considerations to the submissions made by the learned counsel of both sides.
9. The principles, on which a petition under Section 482 of the CrPC can be disposed of, are elaborately discussed by the Supreme Court in *State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335*. Paragraph 102 of the said judgment is quoted 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 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."

10. Supreme Court has, however, cautioned that the power of quashing of criminal proceedings should be exercised very sparingly and with circumspection and that too in rarest of rare cases. While dealing with a

petition under Section 482 of the CrPC, the High Court is not required to embark upon an inquiry as to the reliability or genuineness or otherwise of the allegation made in the FIR.

11. In the case in hand, Rohini Gogoi borrowed Rs.8 lakhs in cash from the informant and he failed to return the money on demand.

12. The allegation made in the First Information Report even if it is taken at its face value and accepted in its entirety, does not *prima facie* constitute any offence or make out a case against the accused. The informant has other forums to seek relief.

13. There are no materials for a *prima facie* case under Sections 420 and 406 of the Indian Penal Code against the present petitioners. Allowing this proceeding to continue in a trial court, would be an abuse of the process of the court.

14. Therefore, this Court is of the opinion that this is a fit case for exercising the power under Section 482 of the CrPC.

15. Accordingly, G.R. Case No.1028/212 arising out of Makum P.S. Case No.150/2012 under Section 420 and 406 of the Indian Penal Code is quashed.

The criminal petition stands accordingly disposed of.

JUDGE

Comparing Assistant