

GAHC010007762010



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

Case No. : Crl.Pet./407/2010

DR. HEMENDRA RAM PHOOKUN
S/O LT. BALENDRA RAM PHOOKUN R/O T R PHOOKUN ROAD,
BHARALUMUKH, GHY-9, UNDER BHARALUMUKH P.S., IN THE DIST.
KAMRUP, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR

2:SMTI PARIJAT SAIKIA
D/O SRI NALIN KUMAR BORA R/O TEZPUR
IN THE DIST. OF SONITPUR
ASSAM

Advocate for the Petitioner : P K GOSWAMI

Advocate for the Respondent : PP, ASSAM

:: PRESENT ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Petitioner : Mr. A.K. Bhattacharyya,
Senior Advocate.

For the Respondents : Mr. M. Biswas,
Advocate.

Date of Hearing : 22.06.2023.

Date of Judgment : 05.08.2023.

JUDGMENT AND ORDER (CAV)

Heard Mr. A.K. Bhattacharyya, the learned senior counsel appearing for the petitioner. Also heard Mr. M. Biswas, the learned counsel representing the respondents.

2. This is an application under Section 482 of the CrPC praying for quashing the criminal proceeding of All Women P.S. Case No.7/2008 under Sections 197/199/420/307/120(B)/34 of the Indian Penal Code.

3. The respondent no.2 Smti Parijat Saikia (hereinafter referred to as the respondent no.2) was married to Arijit Saikia. Their marriage was solemnised on 03.03.2003. On 10.03.2004, the couple was blessed with a male child. Within a very short time, the couple fell from cloud nine. Marital disputes like demand of dowry etc. started to appear. Several litigations came into being.

4. The respondent no.2 alleged that her husband conspired to make her a psychiatric patient. The respondent alleged that the present petitioner issued a certificate on 24.12.2007 declaring her to be a psychiatric patient.

5. At this stage, the respondent no.2 states that without examining her, the said certificate was issued by the present petitioner. She, however, states that the medicines prescribed by the present petitioner were of high doses, which might have caused psychological and mental disorder.

6. Therefore, the respondent no.2 went to Dr. Sangeeta Dutta of Down Town Hospital. Dr. Sangeeta Dutta examined her on 28.12.2007,

29.12.2007 and on 07.01.2008 and issued a certificate declaring that the respondent no.2 was not having any psychiatric problems.

7. Narrating the aforesaid facts, the respondent no.2 filed a complaint case against her husband Arjijit Saikia and the petitioner Dr. Hemendra Ram Phukan under Sections 197/199/420/307/120(B)/34 of the Indian Penal Code.

8. The learned Chief Judicial Magistrate, Kamrup, Guwahati referred the matter to All Women Police Station for registering a case.

9. I have considered the submissions made by the learned counsels of both sides.

10. The power under Section 482 of the CrPC is the inherent power of the High Court for preventing the abuse of the process of the Court. The guidelines for exercising power under Section 482 of the CrPC are laid down by the Supreme Court in *State of Haryana v. Bhajan Lal*, AIR 1992 SC 604. The relevant paragraph 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."

11. Reverting to the case in hand, the allegation brought by the

respondent no.2 has two parts. The first part is– that without examining her, the present petitioner had issued a certificate stating her to be a psychiatric patient. The second part of the allegation is– that the petitioner had given some strong medicines to her, which could have caused psychological and mental complications.

12. Thus, it goes to show that the respondent no.2 had lied when she stated that without examining her, the petitioner had given the certificate. She was taking medicines prescribed by the petitioner.

13. Now, it is clear that the complaint lodged by the respondent no.2 is meant to wreck vengeance upon the petitioner. It is clear from the record that the complaint filed by the respondent no.2 against the present petitioner, is full of *mala fide* intention.

14. This Court is of the opinion that allowing the criminal proceeding to continue against the present petitioner, would be an abuse of the process of the court. Therefore, this Court finds that this is a fit case for exercising the inherent power of this Court under Section 482 of the CrPC.

15. Under the aforesaid premised reasons, the All Women P.S. Case No.7/2008 under Sections 197/199/420/307/120(B)/34 of the Indian Penal Code against the present petitioner Dr. Hemendra Ram Phukan, is quashed.

The criminal petition is disposed of accordingly.

JUDGE

Comparing Assistant