

GAHC010017862017



**IN THE GAUHATI HIGH COURT
(The High Court of Assam: Nagaland: Mizoram &
Arunachal Pradesh)**

Crl. Rev.Pet. No. 105/2017

LALIT CH. BORAH

S/O LT. GOLOCK CHANDRA BORAH R/O TALAP BALI BAZAR P.O. BALI

BAZAR, P.S. DOOMDOOMA, DIST.

TINSUKIA, PIN - 786156, ASSAM

..... Petitioner

Versus

SARFARAZ ALAM

S/O MD. ASGAR R/O R.N.B. ROAD, KOLIAPANI SULEMAN BARRACK, P.O.

and P.S. DOOMDOOMA, PIN - 786156, DIST. TINSUKIA, ASSAM

2:THE STATE OF ASSAM

REP. BY THE PUBLIC PROSECUTOR

ASSAM

..... Respondents

BEFORE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Advocate for the Petitioner : Mr. I.A. Hazarika

Advocate for the Respondent : Mr. A.K. Gupta, (Res no. 1.)
Mr. D. Das, (Res No. 2.)

Date of Hearing : **03.05.2023**

Date of Judgment : **03.08.2023.**

Judgment and ORDER (CAV)

1. Heard Mr. I.A. Hazarika, learned counsel for the petitioner. Also heard Mr. A.K. Gupta, learned counsel for the respondent no. 1 and Mr. D. Das, learned Addl. P.P. for respondent no. 2.

2. The petitioner, namely, Lalit Chandra Borah, has filed this application under Section 397/401 Cr.P.C. read with Section 482 of the Code of Criminal Procedure (Cr.P.C. for short), against the impugned judgment and order dated 22.02.2017 passed by the learned Additional Sessions Judge No. 2 (F.T.C), Tinsukia in Criminal Revision No. 24(2) of 2016. Vide order dated 22.02.2017, learned Additional Sessions Judge No. 2, (F.T.C.) at Tinsukia, set aside the impugned order dated 12.04.2016 passed by the learned Addl. C.J.M., Tinsukia in connection with C.R. Case No. 65/2015 and partly allowed the revision petition, directing the learned Addl. CJM to take cognizance u/s 120-B/385 IPC against the petitioner.

3. The genesis of the case was that the respondent no. 1, Md. Sarfaraz Alam, filed a complaint petition before the learned Chief Judicial Magistrate, at Tinsukia, which was registered as C.R. Case No. 65^c/2015. It was contended through the complaint that on 25.06.2015, at about 2:15 P.M., the complainant along with Jahangir Alam, Manjar Islam, Zakir Alam, Prince Jaiswal and some others went to the house of accused No. 2, Md. Bilaluddin, who sustained injuries in a public assault, in retaliation of an accident on 23.06.2015 at Chotahapjan under Makum P.S., as the bus driver fled away after the accident, the accused no. 2 Md. Bilaluddin was assaulted by the public and the accused No. 3 named in the complaint petition lodged an FIR, registered as Makum P.S. Case No. 191/2015 and in connection with the Makum P.S. Case No. 191/2015, the respondent no. 1, elder brother

(cousin) Md. Samim Mohammad was arrested. It is contended that the FIR was concocted and the Officer-in-Charge of Makum P.S. Shri Lalit Borah (hereinafter referred to as petitioner) was actively involved in foisting the case to extort money with threats of injury.

4. It is alleged that the petitioner maliciously got a case foisted to implicate and arrest the respondent no. 1's cousin. The accused No. 2, Md. Bilaluddin named in the FIR and the accused No. 3, Jubeda Begum demanded Rs. 2,00,000/- from the respondent no. 1 to disclose the truth to enable the respondent no. 1's, cousin Md. Samim Mohammad to obtain bail, as he was arrested in connection with a false case. When the respondent no. 1 and the other persons named in the complaint petition disagreed to succumbed to their demand, the accused no.1 and 2, named in the complaint petition verbally abused them with filthy language. It was alleged that the accused persons, including the present petitioner, with a view to extort money, framed a false story and lodged the false case and in an illegal manner got the cousin of the respondent no. 1 arrested.

5. This complaint petition was registered as C.R. Case No. 65^c/2015, under Section 120(B)/166/167/294/387/34 IPC. The complaint was thereafter transferred to the Court of learned Additional Chief Judicial Magistrate, Tinsukia, who examined the respondent no. 1 under Section 200 Cr.P.C along with 4(four) other witnesses, whereafter, vide order dated 01.09.2015, the learned trial Court had directed the Superintendent of Police (SP for short), Tinsukia to investigate into the matter, whether there is sufficient ground for proceeding against the petitioner and other accused. On 28.01.2016, a reply was submitted by the Superintendent of Police (S.P. for short), Tinsukia, who examined the accused No. 3, Jubeda Begum, who was the informant of Makum P.S. Case No. 191/2015. Jubeda Begum stated before the S.P. that there was no coercion from the petitioner who lodged the FIR registered

as Makum P.S. Case No. 191/2015 and she had vehemently denied demanding money for withdrawal of the aforementioned criminal case. Vide order dated 12.04.2016, the trial Court dismissed the complaint petition for lack of necessary materials. Against this order, the respondent no. 1, preferred a criminal revision petition registered as Criminal Revision No. 24(2)/2016 before the learned Sessions Judge, Tinsukia, which was transferred for disposal to the learned Additional Sessions Judge, (F.T.C) No. 2. Vide order dated 22.02.2017, learned Additional Sessions Judge, (F.T.C) No. 2 set aside the order dated 12.04.2016 passed by the learned Additional C.J.M in connection with C.R. Case No. 65^c/2015 by allowing the petition and by directing the learned trial Court to take cognizance under Section 120(B)/385 IPC to issue process against the petitioner.

6. It is contended that the impugned order was passed without appreciating the materials on record that no prima facie case against the petitioner, under Section 120(B)/385 IPC exists. The complaint does not disclose any incriminating materials against the petitioner. On the basis of the statement of the co-accused, the petitioner has been dragged into this case. It was alleged through the complaint that the co-accused has visited the respondent no.1's house and demanded money by taking the petitioner's name, who was posted as the Officer-in-Charge of the Makum P.S. The S.P. had also exonerated the petitioner. The prosecution sanctioned under Section 197 Cr.P.C. was required, as the petitioner was a Government servant at the time of the incident. The impugned order is liable to be set aside and quashed.

7. The learned counsel for the respondent laid stress in his argument that no prosecution sanctioned is required because the offence alleged to have been committed by the petitioner was not an act done during the discharge of his official duty. He was not on duty when he

allegedly demanded gratification. It has been by the Hon'ble Supreme Court in ***U.P. Pollution Control Board Vs. Dr. Bhupendra Kumar Modi and Anr.*** reported in **2009 CRI.L.J. 1148**, that:-

“14. AIR1976 SC 1947

It is settled legal position that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused. In Smt. Nagawwa vs. Veeranna Shivalingappa Konjalgi and Others, (1976) 3 SCC 736, this Court has held that it is not the province of the Magistrate to enter into a detailed discussion on the merits or demerits of the case. It was further held that whether a process should be issued, the Magistrate can take into consideration improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. It was further held that once the Magistrate has exercised his discretion, it is not for the High Court or even this Court to substitute its own discretion for that of the Magistrate or to examine their case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. This Court has held that in the following cases, an order of the Magistrate issuing process against the accused can be quashed.

“(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is

alleged against the accused;

2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like." No doubt the grounds mentioned above are purely illustrative and it provides only guidelines to indicate contingencies where the High Court can quash the proceedings. Though argument was advanced based on the decision in State of Karnataka vs. Pratap Chand and Others, (1981) 2 SCC 335, it was decided in a case relating to conviction under Drugs and Cosmetics Act, 1940 and not quashing of a complaint based merely on a petition or an affidavit. Hence, the said decision is not applicable to the case on hand."

8. I have perused the LCR of Criminal Revision Case No. 24(2)/2016 and the scanned copies of the LCR of C.R. Case No. 65^C/2015. It was held by the learned Sessions Judge that the learned Additional C.J.M. has committed an error in fact as well as in law by emphasising and accepting only the inquiry report in toto, and not taking into consideration, the statements of the CW-1, 2, 3, 4, to decide about the cognizance of the case. From the initial deposition of CW-1, 2, 3 and 4, it was clear that the allegation set out by the complainant/respondent no. 1 is corroborated and indicates that the respondent no. 1 was

able to make out a prima facie case with sufficient grounds to proceed against the petitioner and the co-accused. Although, the learned CJM had not discussed anything about the requirement of sanction, it was held by the learned Addl. Sessions Judge that Section 197 of the Cr.P.C is not attracted as the petitioner was a Sub-Inspector of Police, and the Superintendent of Police (S.P. for short) can take action against him, as per the Assam Police Manual Rule. Moreover, the offence alleged against the petitioner was that he in connivance with the other accused, namely Md. Bilaluddin and Jubeda Begum foisted a case against the cousin of the respondent no. 1 and to withdraw the case registered as Makum P.S. Case No. 191/2015, a demand of Rs. 2,00,000/- was made by the petitioner and the other accused. It was also held that the petitioner was not on official duty at that time. Moreover, as per Schedule to Para XII of Rules 66 of the Assam Police Manual III, Superintendent of Police is empowered to take action against Sub-Inspector. Hence, Section 197 Cr.P.C. is not applicable against the Opp. Party No. 1 in the instant case. The learned Additional Sessions Judge set aside the order of the learned trial Court and directed the trial Court to take cognizance under Section 120(B)/385 IPC.

9. I have perused the order of the learned Addl. CJM dated 12.04.2016 in connection with C.R. Case No. 65/2015 marked as Annexure-6, and the entire order is reproduced herein below verbatim:-

“The complainant is absent with steps vide petition No. 2068/16. Cause shown. Allowed.

The complainant alleged of criminal conspiracy, disobey of law by public servant, uttering of slang languages against her and extortion by putting a person in fear of death or grievous hurt.

The complainant and four other witnesses were examined during inquiry whereby they stated that the accused Jubeda Begum had filed case against Md. Samim @ Gabbar. the brother of the complainant with allegation of assault upon her husband by him. They also stated that when they went to ask jubeda Gegum as to why she had filed case against Samim she told that O.C., Makum P.S. told her to file the

case to get money. They further stated that she demanded Rs.2,00,000/- to withdraw the case.

From the aforesaid facts, I do not find any basis of allegations as made in the complaint petition against any of the accused persons. Further the Superintendent of Police, Tinsukia vide his report dated 28.01.2016 submitted that during inquiry by the Addl.S.P.(HQ), Tinsukia did not find any truth in the aforesaid allegations and said Jubeda Begum stated before the inquiry officer that she had lodged the FIR with the hope of getting justice and there was no initiative, force or coercion from the O.C.; Makum P.S. namely, S.I. Lalit Borah or any other public at the time of filing the FIR. She further stated that there was no demand from her side in withdrawing the case.

In the aforesaid facts and circumstances, I do not find any fault on the part of the O.C., Makum P.S. in registering a case on receipt of ejahar filed by Jubeda Begum whose husband was assaulted.

On perusal of the statements of the complainant and his witnesses also reveals that the accused Jubeda Begum demanded Rs.2,00,000/- to withdraw the case but it is not justified to force a person to withdraw her case by visiting her house and even if she demanded money to give relief to the alleged accused of that case it cannot amount to extortion. Moreover, abusing a person within the house premises of the accused cannot make an offence u/s.294 IPC as it is not a public place.

Hence, I do not find any prima-facie case against any of the accused persons. Moreover, it is a very premature stage to state a case to be false wherein the same is pending for investigation and as such there is nothing on record to take cognizance of the offences alleged against the accused persons named in the complaint petition.

Hence, due to lack of materials the complaint case stands dismissed.”

10. I have also perused the statements of the witnesses recorded under Section 200 Cr.P.C marked as Annexure-II, III, III-(a) and III-(b). It has been overlooked by the learned Addl. Sessions Judge that the statements of the witnesses have been considered, while exonerating the petitioner and the other accused. Moreover, the complaint petition along with the statement of the complainant and the other witnesses has been considered along with the report of the Superintendent of Police and thereafter, the complaint was dismissed. It is apparent from the order that the petitioner registered the Makum P.S. Case No. 191/2015 and he was indeed on duty. It would be apt to reiterate that it was observed by the learned Addl. CJM that it is not justified to force a person to withdraw her case by visiting her house. It would be apt to reiterate that when the respondent went to meet the accused Jubeda Begum, the amount of Rs. 2,00,000/- was demanded by Md. Bilaluddin and Jubeda Begum as

a condition for withdrawal of her case against the respondent no.1's brother Md. Samim Mohammad. The learned Addl. CJM vide order dated 12.04.2016 has spelt out sound reasonings why no case under Section 120-B/385/294 IPC exists against the petitioner and other accused. The statements of the complainant and the witnesses under Section 200 Cr.P.C was taken into consideration and the complaint petition was also taken into consideration along with the report of the Superintendent of Police. As no prima facie case was found against the present petitioner no cognizance was taken against him. Without a prima facie case against the present petitioner, further proceedings may result in an abuse of the process of the Court.

11. In view of my foregoing discussions, the revision petition as far as the present petitioner is concerned is allowed, by setting aside the judgment and order dated 22.02.2017 passed in Criminal Revision No. 24(2)/2016 against the present petitioner upholding the order of the learned Addl. CJM dated 12.04.2016 in connection with C.R. Case No. 65/2015 so far as the present petitioner is concerned.

12. Send back the LCR.

JUDGE

Comparing Assistant