

GAHC010019582021



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

Case No. : Crl.Pet./72/2021

SAMSUL HOQUE AND ANR.
S/O- REZZAK ALI, RESIDENT OF VILL.- BANJARAPARA, P.S. AND DIST.-
BARPETA, ASSAM.

2: FIRUZ ALI AHMED
S/O- REZZAK ALI
RESIDENT OF VILL.- BANJARAPARA
P.S. AND DIST.- BARPETA
ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE PUBLIC PROSECUTOR, ASSAM.

2:HAMIDA KHATUN
D/O- HAZRAT ALI
VILL.- KUMULLIAPARA
P.O. GAREMARI BAZAR
P.S. HOWLY
DIST.- BARPETA
ASSAM
PIN- 871316

Advocate for the Petitioner : MR. R ALI

Advocate for the Respondent : MR. P. BORTHAKUR(ADDL.PP, ASSAM)

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

JUDGMENT

Date : 17-03-2023

- 1.** Heard Mr. R. Ali, learned counsel for the petitioners, namely, [1] Samsul Hoque and [2] Firuz Ali Ahmed. Also heard Mr. P. Borthakur, learned Addl. P.P. for respondent No. 1.
- 2.** Both the petitioners have filed an application under Section 482 read with Sections 397/401 of the Code of Criminal Procedure, 1973 (Cr.PC for short) for quashing the impugned proceedings of Compliant Case being C.R. Case No. 1872 of 2013 pending before the Judicial Magistrate, First Class at Barpeta.
- 3.** A complaint was lodged by the respondent No. 2 against the present petitioners and the co-accused Shahjahan Ali and Rajak Ali. Both the petitioners are brother-in-laws of respondent No. 2. The Respondent No. 2 is the wife of accused No. 1, named in the FIR. At the time of their marriage some articles were given to the respondent by her parents. These articles along with some cash were in the custody of the accused No. 1. Both the accused No. 1 and the respondent were blessed with two children after their marriage, but unfortunately their marital life has been struck by a chord of disharmony. The accused No. 1 and his family members used to subject the respondent No. 2 to cruelty to meet his illegal demand of dowry. On 10.05.2013 the accused No. 1 and his family members demanded Rs. 50,000/- as dowry from the respondent No. 2's father and when he refused to oblige, they assaulted her and drove her out of her matrimonial home but they retained the articles gifted to her at the time of the marriage. An FIR regarding this incident was lodged by respondent no. 2 with the police and the accused No. 1 and his family members threatened the respondent No. 2 with dire-consequences. The other family members of the accused No. 1 connived and solemnized the accused No. 1's second marriage. The accused No. 1 thereafter ignored to maintain his first wife and children. On 01.08.2013 the informant went to the accused No. 1's house to

take back her Stridhan articles but the accused No. 1 and the petitioners did not allow her to enter into her matrimonial home and drove her out. The respondent No. 2 apprehends that the Stridhan articles will be misappropriated and sold by the accused No. 1 and petitioners and so she has prayed for issuance of a search warrant to recover her Stridhan articles retained by the accused No. 1 and petitioners.

4. After the aforesaid complaint was filed, the complainant was examined and vide order dated 03.10.2013 the learned trial Court, on finding a prima facie case, took cognizance and issued notice to the accused No. 1 and the petitioners. Search warrant was also issued along with summons under section 91 Cr.PC.

5. The petitioners have vehemently denied the allegation stating that after accused No. 1's marriage to the respondent No. 2, they were leading a happy married life but the respondent No. 2 insisted to stay separately from the petitioner's joint family to which the accused No. 1 disagreed. This led to frequent quarrels and skirmishes between both the parties and the accused No. 1 was impelled to stay separately as a nuclear family along with the respondent No. 2. Suddenly on 10.05.2013 the respondent No. 2 left her matrimonial home along with her two children without informing her husband, and started staying in her parental home. Thereafter, she lodged an FIR and accused No. 1 was arrested by the police. After being released on bail the accused No. 1 along with his family members went to meet his wife to request her to return back to her matrimonial home.

6. A false complaint has been lodged against the accused and the present petitioners. The complainant/respondent No. 2 did not bring any articles with her at the time of her marriage. As the accused No. 1 and the respondent no. 2 have been staying separately, there is no

question of subjecting the respondent No. 2 to cruelty by the other petitioners. No Stridhan articles are lying in the ancestral house of the accused No. 1. The other accused and petitioners are not responsible for any Stridhan article lying in the house of the accused No. 1.

7. It is also averred that after the complaint petition was filed, the statement of the respondent No. 2 under Section 200 Cr.PC was recorded. Her complaint is reiterated by her statement under Section 200 Cr.PC, but she has not incriminated the petitioners and the other accused named in the complaint. She has not incriminated that she was subjected to cruelty by the petitioners or her Stridhan articles are lying in the ancestral home of her husband. It is contended that the learned trial Court took cognizance without a prima facie case against both the petitioners. Both the petitioners are brother-in-laws of respondent No. 2. Her statement under Section 200 Cr.PC does not implicate them as complicit. Offence under Section 120(B)/406/427/506/34 IPC is not made out against both the petitioners. The trial Court took cognizance without applying judicial mind. There is no prima facie evidence against both the petitioners. Allowing the proceeding to continue against both the petitioners will be an abuse of the process of the Court and miscarriage of justice.

8. I have considered the submissions at the Bar. The Stridhan articles are enlisted in the complaint petition. The statement of the respondent No. 2 does not incriminate the petitioners. Petitioners have been incriminated in the complaint petition in an omnibus manner. There is no incrimination that a conspiracy has been hatched up by the petitioners along with the respondent No. 2's husband to retain the Stridhan articles to commit an offence under Section 406 IPC. There is also no allegation that both the petitioners committed mischief or threatened the respondent No. 2 with dire-consequences. I have scrutinized the

complaint petition as well as the statement of the respondent No. 2 under Section 200 Cr.PC with circumspection. I have also relied on the decision of the Hon'ble Supreme Court in the case of *State of Madhya Pradesh v. Lakshmi Narayan & Others*, reported in (2019) 0 AIR SC 1296 wherein it has been observed that –

“13.Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

i) that the power conferred under [Section 482](#) of the Code to quash the criminal proceedings for the non-compoundable offences under [Section 320](#) of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

ii) such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

iii) similarly, such power is not to be exercised for the offences under the special statutes like [Prevention of Corruption Act](#) or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

iv) offences under [Section 307](#) IPC and the [Arms Act](#) etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under [Section 307](#) IPC and/or the [Arms Act](#) etc. which have a serious impact on the society cannot be quashed in exercise of powers under [Section 482](#) of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of [Section 307](#) IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of [Section 307](#) IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under [Section 307](#) IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of *Narinder Singh* (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

v) while exercising the power under [Section 482](#) of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do

not have a serious impart on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc.”

9. Reverting back to this case, it is held that the petitioners are bothers of the accused No. 1. The main grievance of the respondent no. 2 is against her husband. It is apparent that both the petitioners have been roped in this case in an omnibus manner. The corresponding case is a consequence of a marital dispute between the respondent No. 2 and the accused No. 1 named in the complaint petition. Both the petitioners will be highly prejudiced if they are proceeded upon. This appears to be a case where the inherent jurisdiction under Section 482 Cr.PC can be invoked. Therefore, the proceedings of C.R. Case No. 1872/2013 under Sections 120(B)/406/427/506/34 IPC and the order dated 03.10.2013 passed by the learned trial Court is hereby set aside and quashed as far as petitioners Samsul Hoque and Firuz Ali Ahmed are concerned.

JUDGE

Comparing Assistant