

GAHC010026272022



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

Case No. : Crl.Rev.P./54/2022

SHAIB ALI @ SAIBELLI MNDAL AND 2 ORS
S/O. LT. BAHEZ ALI, VILL. SHYAMCHARANERKUTI PART-III, P.S.
GAURIPUR, DIST. DHUBRI, ASSAM, PIN-783331.

2: SHAJAHAN @ SHAJAHAN MANDAL

S/O. LT. BAHEZ ALI
VILL. SHYAMCHARANERKUTI PART-III
P.S. GAURIPUR
DIST. DHUBRI
ASSAM
PIN-783331.

3: SHAIB UDDIN @ SAIBUDDI MANDAL

S/O. LT. BAHEZ ALI
VILL. SHYAMCHARANERKUTI PART-III
P.S. GAURIPUR
DIST. DHUBRI
ASSAM
PIN-783331

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY PP, ASSAM.

2: SURMAN ALI
S/O. LT. ABED ALI
VILL. GERAMARI PART-I
P.S. GAURIPUR
DIST. DHUBRI
ASSAM
PIN-783339

Advocate for the Petitioner : MR. M S ALAM

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 16.02.2023

Heard Mr. S. Alom, learned counsel for the petitioners and Ms. S.H. Bora, learned APP for the State.

2. By filing this criminal revision under Section 397 and 401 read with Section 482 CrPC, the petitioner have assailed the impugned order dated 01.11.2021 passed by the learned Sub-Divisional Magistrate, Dhubri in Misc. Case No. 9/2021. By the said impugned order, the learned Sub-Divisional Magistrate, Dhubri, by exercising power under Section 107 CrPC had directed the petitioners to furnish a bond of Rs.1,000/- with surety for good behavior with the respondent no.2 and not to disturb the respondent no.2 from enjoying peaceful possession of land by further providing that on violation of the same, strict legal steps would be initiated against the petitioners.

3. The learned counsel for the petitioners has submitted that the petitioners had engaged a learned counsel to represent them in the proceedings, but the engaged learned counsel had neither produced any documents before the Court of learned Magistrate nor filed any written statement to contest the case. Accordingly, it is submitted that when the petitioners engaged another set of counsel, they realized their position. Hence,

petition was filed to provide them some more time to file written objection which was rejected by the learned Executive Magistrate, Dhubri vide order dated 07.10.2021. Thereafter, the learned Sub-Divisional Magistrate, Dhubri by order dated 01.11.2021, had recorded that no written objection was filed despite giving enough opportunity to the petitioners. Hence, the prayer to submit their written objection was rejected by order dated 07.10.2021. Accordingly, the said learned Court proceeded to pass the order which is impugned in this revision.

4. The learned counsel for the petitioners has further submitted that on 29.12.2021, they had filed another petition before the said learned Court for review of the order dated 01.11.2021 with a prayer to recall the said order. The learned Court below had rejected the said prayer on the ground that on 01.11.2021, order under Section 107 CrPC has already been passed.

5. The learned counsel for the petitioners has submitted that due to inaction on part of their earlier set of engaged counsel, the petitioners had also submitted a representation before the Dhubri Bar Association for taking action against their learned counsel. Hence, it is submitted that the impugned order be interfered with.

6. The learned counsel for the petitioners has also submitted that as per the provisions of Section 107 CrPC, the currency of the order passed under Section 107 CrPC would be for a period not exceeding one year. Hence, it is submitted that the said order has already lapsed by efflux of time.

7. In this regard, the learned APP has also made his submission.

8. Considered the materials available on record. In the considered

opinion of the Court once a final order is passed under Section 107 CrPC by ordering security for keeping peace, the proceedings come to a natural end. Therefore, as a final order was passed under Section 107 CrPC, the learned Sub-Divisional Magistrate, Dhubri was bound by provisions of Section 362 CrPC and could not have altered the judgment/ final order.

9. In view of the said position of law, the Court does not find any infirmity in order dated 01.11.2021 by which the prayer made by the petitioners to allow them to file their written objection was rejected. Under such circumstances, the petitioners may seek appropriate advice regarding remedy that may be available to them. The said order is not assailable in this proceeding under Section 482 CrPC.

10. This application is a composite application under Section 397/401 CrPC read with Section 482 CrPC. In view of the time for which the orders under Section 107 CrPC would be in force has already lapsed, in the considered opinion of this Court the challenge to the said impugned order has become infructuous and it would only serve an academic purpose and no other purpose.

11. Accordingly, the Court finds that this matter has become infructuous by efflux of time. Moreover, the Court does not find any merit in the challenge to the order dated 01.11.2021 because the opportunity of the petitioner to file their written objection was already rejected by order dated 07.10.2021, which is not under challenge. Hence, this matter has become infructuous. Accordingly, this composite application for quashing stands dismissed having been rendered infructuous.

12. Let the proceedings of the learned lower Court be returned along with

the copy of this order to be made as a part of record.

JUDGE

Comparing Assistant