

GAHC010030392022



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

Case No. : Crl.Pet./124/2022

MD. SHAHJAHAN ALI
S/O LATE AYAN AKOND
VILL- TAKACHIA
P.S. KALGACHIA
DIST. BARPETA, ASSAM

VERSUS

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

2:JAKIR HUSSAIN PARAMANIK
S/O ABDUL KADER PARAMANIK
VILL- TAKAKATA
P.O. SONABARI
P.S. KALGACHIA
DIST. BARPETA
ASSAM
PIN-78131

Advocate for the Petitioner : MR. P RAHMAN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 16.06.2023

Heard Mr. P. Rahman, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State/respondent No. 1 and Mr. M.Z. Shah, learned counsel for the respondent No. 2.

2. The petitioner has filed an application under Section 482 Cr.P.C. with a prayer for quashing the proceeding of C.R. Case No. 86/2019 pending before the Judicial Magistrate First Class, Barpeta.

3. The case of the petitioner is that one Jakir Hussain Paramanik lodged a complaint before the JMFC, Barpeta on 26.02.2019 alleging *inter alia* that on 16.06.2017 and 17.06.2017, the petitioner handed over two computerized Foli copies to the respondent No.2 and the complainant submitted the said two Foli copies before the Foreigners Tribunal which were found fake. Therefore, the complainant met petitioner with the said Foli copies and asked about the same. Then the petitioner attempted to assault the complainant and abused him with filthy languages and threatened that if the complainant comes again for the said Foli copies, he will be victimized. It is also stated that the petitioner took Rs.1500/- from the complainant to obtain the said two fake Foli copies.

4. On receipt of the complaint, a case was registered vide C.R. Case No. 86/2019. Thereafter, the statement of the complainant was recorded under Section 200 Cr.P.C. On perusal of the complaint petition as well as the statement recorded under Section 200 Cr.P.C., the JMFC, Barpeta found prima facie case against the petitioner under Section 406/420 IPC and took cognizance and charge was framed under the said section of law.

5. According to the petitioner, the actual fact of the case is that the petitioner is a lawyer practicing at Barpeta Bar. The complainant approached

him to get certified copies of voter lists from DC Office, Election Branch. Accordingly, the petitioner submitted an application on behalf of the complainant for the voter lists of 2008 and 2016 respectively. Thereafter, the petitioner received two computerized certified copies of the voter lists with digital signature and the petitioner handed over the same to the complainant. In both the voter lists, the name of the complainant has been recorded along with his father and other relatives. The alleged two voter lists are not of Foli copies as stated in the complaint petition. The said alleged two voter lists are digitally signed certified copies. The said two voter lists also bear certificate number, application number and authentication number. So there is no question of fake voter lists being handed over to the complainant.

6. The learned counsel for the petitioner has argued that the allegation brought against the petitioner are totally false, baseless with concocted facts and the petitioner has no relation with the allegation that has been brought against him. It is also submitted that the complainant did not receive any Foli copies from the petitioner. The complainant asked the petitioner to obtain the voter lists of 2008 and 2016 and the said voter lists have been handed over to the complainant which are computerized certified copies but not Foli copies as alleged.

7. According to the learned counsel for the petitioner, while taking cognizance, the learned trial court should consider the material facts of the case and also should consider the contradicted statement of the complainant before further proceeding with the case. In the impugned proceeding, the learned trial court ignored the contradicted statement of the complainant and failed to apply judicial mind and as such, the charge framed against the petitioner under Section 420/406 IPC in complaint case No. 86/2019 is illegal and bad in law and liable to be quashed.

8. In support of his submissions learned counsel for the petitioner has placed reliance on the following case laws –

(i) (2022) 1 GauLT 689 (Ajay Haldia vs State of Assam).

(ii) Amit Pareek vs. State of Assam & Anr. (Criminal Petition No. 2566 of 2020, Gauhati High Court).

(iii) (2021) 4 GauLT 773 (Pulok Deb vs State of Arunachal Pradesh)

9. On the other hand, the learned counsel for the respondent No. 2/complainant has submitted that the complainant/respondent No.2 asked the petitioner Shahjahan Ali to prepare two Foli copies for which he gave Rs.1500/- to him. After fifteen days, he handed over two Foli copies to the respondent No. 2 and accordingly, respondent No2/complainant submitted the said Foli copies to the court in Guwahati. The court sent those Foli copies to Barpeta for verification and after verification, those Foli copies were found fake. Then the respondent No.2/complainant met with the petitioner and told him for which he was threatened by the petitioner. The learned counsel for the respondent No.2/complainant showed two Foli copies dated 16.06.2017 and 17.06.2017 before this Court which were found fake.

10. According to the learned counsel for the respondent No.2/complainant, sufficient incriminating materials are found against the petitioner and the learned trial court has rightly framed the charge for further proceeding of the case.

11. I have considered the submissions for the parties and also perused the scanned copy of C.R. Case No. 86/2019.

12. It is of course a settled legal proposition that in a case where there is sufficient evidence against the accused, which may establish the charge against him/her, the proceedings cannot be quashed. *In Medchl Chemicals &*

Pharma (P) Ltd. v. Biological E. Ltd. reported in **(2000) vol.3 SCC 269**, it was observed that *"a criminal complaint or a charge-sheet can only be quashed by superior courts in exceptional circumstances, such as when the allegations in a complaint do not support a prima facie case for an offence."*

13. Similarly, in **Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque** reported in **(2005) vol.1 SCC 122**, it was held that *criminal proceedings can be quashed but such a power is to be exercised sparingly and only when such an exercise is justified by the tests that have been specifically laid down in the statutory provisions themselves. It was further observed that superior courts "may examine the questions of fact" when the use of the criminal law machinery could be in the nature of an abuse of authority or when it could result in injustice.*

14. In **Shakson Belthissor v. State of Kerala**, reported in **(2009) vol.14 SCC 466**, it was observed that *a High Court while exercising its inherent jurisdiction should not interfere with a genuine complaint but it should certainly not hesitate to intervene in appropriate cases. In fact, it was observed:*

"One of the paramount duties of the superior courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint."

15. The Hon'ble Supreme Court in the case of **Sangeeta Agrawal v. State of U.P.**, reported in **(2019) 2 SCC 336** has held as under :

"In our view, the Single Judge ought to have first set out the brief facts of the case with a view to understand the factual matrix of the case and then examined the challenge made to the proceedings in the light of the principles of law laid down by this Court and then recorded his finding as to on what basis and reasons, a case is made out for any interference or not."

16. The Supreme Court in the case of **Amit Kapoor v. Ramesh Chander** reported in **(2012) 9 SCC 460** has held as under :

“..The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers..”

17. The Supreme Court in the case of **State of A.P. v. Gourishetty Mahesh** reported in **(2010) 11 SCC 226** has held as under :

“While exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge/Court. It is true that the Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, otherwise, it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time, Section 482 is not an instrument handed over to an accused to short-circuit a prosecution and brings about its closure without full-fledged enquiry.

Though the High Court may exercise its power relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice, the power should be exercised sparingly. For example, where the allegations made in the FIR or 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 or allegations in the FIR do not disclose a cognizable offence or do not disclose commission of any offence and make out a case against the accused or where there is express legal bar provided in any of the provisions of the Code or in any other enactment under which a criminal proceeding is initiated or sufficient material to show that the criminal proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused due to private and personal grudge, the High Court may step in.

Though the powers possessed by the High Court under Section 482 are wide, however, such power requires care/caution in its exercise. The interference must be on sound principles and the inherent power should not be exercised to stifle a legitimate prosecution. We make it clear that if the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of inherent powers under Section 482."

18. The Supreme Court in the case of ***Padal Venkata Rama Reddy Vs. Kovuri Satyanarayana Reddy*** reported in ***(2012) 12 SCC 437*** has held as under :

"Though the High Court has inherent power and its scope is very wide, it is a rule of practice that it will only be exercised in exceptional cases. Section 482 is a sort of reminder to the High Courts that they are not merely courts of law, but also courts of justice and possess inherent powers to remove injustice. The inherent power of the High Court is an inalienable attribute of the position it holds with respect to the courts

subordinate to it. These powers are partly administrative and partly judicial. They are necessarily judicial when they are exercisable with respect to a judicial order and for securing the ends of justice. The jurisdiction under Section 482 is discretionary, therefore the High Court may refuse to exercise the discretion if a party has not approached it with clean hands.

In a proceeding under Section 482, the High Court will not enter into any finding of facts, particularly, when the matter has been concluded by concurrent finding of facts of the two courts below. Inherent powers under Section 482 include powers to quash FIR, investigation or any criminal proceedings pending before the High Court or any court subordinate to it and are of wide magnitude and ramification. Such powers can be exercised to secure ends of justice, prevent abuse of the process of any court and to make such orders as may be necessary to give effect to any order under this Code, depending upon the facts of a given case. The Court can always take note of any miscarriage of justice and prevent the same by exercising its powers under Section 482 of the Code. These powers are neither limited nor curtailed by any other provisions of the Code. However, such inherent powers are to be exercised sparingly, carefully and with caution.”

19. In ***Indian Oil Corpn. v. NEPC India Ltd.*** reported in **(2006) vol.6 SCC 736**, a petition under Section 482 was filed to quash two criminal complaints. The High Court by a common judgment allowed the petition and quashed both the complaints. The order was challenged in appeal to the Hon’ble Supreme Court. While deciding the appeal, the Hon’ble Supreme Court laid down the following principles:

1. The High Courts should not exercise their inherent powers to

repress a legitimate prosecution. The power to quash criminal complaints should be used sparingly and with abundant caution.

2. The criminal complaint is not required to verbatim reproduce the legal ingredients of the alleged offence. If the necessary factual foundation is laid in the criminal complaint, merely on the ground that a few ingredients have not been stated in detail, the criminal proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is bereft of even the basic facts which are absolutely necessary for making out the alleged offence.

3. It was held that a given set of facts may make out:

(a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence.

20. In ***State of Orissa v. Saroj Kumar Sahoo***, reported in **(2005) vol.13 SCC 540**, it has been held that *probabilities of the prosecution version cannot be analysed at this stage. Likewise, the allegations of mala fides of the informant are of secondary importance. The relevant passage reads thus: "It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with."*

21. In ***Madhavrao Jiwajirao Scindia v. Sambhajirao Chandojirao Angre***, reported in **(1988) vol.1 SCC 692**, it was observed that *"the legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the*

uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

22. In the present case, uncontroverted allegations prima facie makes out an offence because the informant by paying Rs.1500/- made a request to the petitioner who is an advocate by profession to provide two Foli copies which are required to be furnished before the Foreigners Tribunal at Guwahati. Accordingly, the petitioner furnished the Foli copies to the informant which he subsequently submitted in the Foreigners Tribunal at Guwahati. According to the complainant, the said Foli copies have sent to Barpeta for verification and after verification, the said Foli copies were found fake.

23. It appears that the learned trial court took cognizance against the present petitioner and charge was framed under Section 420/406 IPC. Considering the totality of the facts and circumstances of the case, this Court is of the opinion that at this stage, no case is made out warranting interference in the order passed by the learned trial court vide order dated 29.05.2019. Accordingly, the criminal petition is hereby dismissed and disposed of accordingly.

JUDGE

Comparing Assistant