

GAHC010033192021



THE GAUHATI HIGH COURT

(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

Case No: **Crl.Rev.P. 63/2021**

Mrs. Mira Begum

W/O Md. Lal Hussain,

R/O Vill and P.O.-Dadara, P.S.-Hajo,
Dist-Kamrup, Assam, Pin-781104

.....petitioner

VERSUS

Md. Lal Hussain

S/O Md. Nuruddin Ali,
R/O Vill and P.O.-Dadara, P.S.-Hajo,
Dist-Kamrup, Assam, Pin-781104

.....respondent

:: BEFORE ::

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

For the Petitioner : Mr. B.K. Bhagawati

For the Respondent : Mr. D. Baishya

Date of Hearing : **15.11.2022**

Date of delivery of
Judgment and Order : **28.02.2023**

JUDGMENT (CAV)

1. Heard Mr. B.K. Bhagawati, learned counsel for the petitioner as well as Mr. D. Baishya, learned counsel for the State respondent.
2. The petitioner has filed an application under Section 397/401 read with Section 482 of the Code of Criminal Procedure Code, 1973, (Cr.P.C) with prayer to set aside and quash the order dated 22.12.2020 in case no. 117^m/2020 passed by the Executive Magistrate, Kamrup (R) at Amingaon.
3. The impugned order is reproduced herein below verbatim:-

“ Both parties are present and have filed hazira.

Heard both the parties and 2nd party/opp. Party have executed a Bond U/S 107, Cr.P.C.

It appears that 1st party/petitioner has been running a Gas Agency in the name and style of M/S. L.N.P. Bharat Gas Gramin Vitarak (hereinafter called Bharat Gas Agency) at Dadara, Kamrup District as per Deed of Partnership dated 29th August, 2014 but due to some

personal animosity and vendetta, the 2nd party/opp. Party have debarred the 1st party/petitioner from entering into his Bharat Gas Agency and that cause of action arose on 12.09.2020 and again on 13.10.2020 with complete disregard to the terms & conditions enshrined in the said Deed of Partnership. Further, it has been alleged that the 2nd party/opp. Party has been operating a separate Bank account for the business which contrary to the aforesaid agreement between the parties. Furthermore, it appears that the said Bharat Gas Agency has been sealed by the authority on the basis of public complaint.

Under such facts & circumstances, this Court is of the opinion that 1st party/petitioner should be allowed to retain his legitimate 50% share in the Bharat Gas Agency and all the terms & conditions enshrined in the Deed of Partnership dated 29th August, 2014 should be strictly followed by both the parties while 2nd party/opp. Party should strictly maintain peace & tranquillity and cooperate in the smooth running of the Agency in the interest of public good. Moreover, Tafazul Hussain is not fit for running the business as he was not a party to the Partnership Deed dated 29th August, 2014.”

4. The aforesaid order was issued against the petitioner by the Executive Magistrate in connection with case no. 117^m/2020, under Section 107 Cr.P.C on the basis of a non FIR case initiated by the respondent against his wife. The petitioner is the respondent's wife. A brief description of the case is that on 16.10.2020, the respondent through a written application informed the Deputy Commissioner that his first wife i.e. the petitioner and her son tried to assault him and forcefully entered into the Gas Agency on 23.10.2020. Both the respondent and the petitioner are partners of M/S LNP Bharat Gas Gramin Vitarak at Dadara, Kamrup, Assam and the partnership agreement was executed on 30.08.2014 before the Sub-Registrar

at Amingaon. This Gas agency was closed by the officials of the Deputy Commissioner on 20.09.2012, on the basis of a public complaint. During investigation, it was ascertained that the Additional Deputy Commissioner, Amingaon granted a licence being licence No. ATA(L&C)/Kam/2015/Retail/6 in the name of the respondent. On 19.10.2019, the Gas agency licence was renewed and extended up to 30.09.2021. The Gas agency is situated over a plot of land measuring 3 Kathas 13 Lechas pertaining to Dag no. 733 and Patta no. 238 -Pub-Bongshar, at Village- Paschim Dadara and the land is registered in the name of the petitioner. The respondent was running the business from its inception. It is also averred that the respondent during the life time of his first wife married another lady named 'X'. The respondent has also informed that recently he got married to another lady named 'Y', who is his third wife and he is running the business with her. He wanted to enter into the agency with his second and third wife, which resulted in the dispute. On the basis of this non FIR case, a proceeding was drawn up under Section 107 Cr.P.C. by the Executive Magistrate apprehending breach of public peace and tranquillity and both the parties were directed to execute a bond not worth less than of Rs. 1,000/- for a period of less than one year for maintaining peace of tranquillity.

5. It is submitted on behalf of the petitioner that this case has become infructuous as an order under Section 107 Cr.P.C. extends only for a year. The order was erroneously passed because the second party was not heard and was not given an opportunity to file written objection. The dispute is predominately private in nature and no question of breach of public peace and tranquillity arises. The petitioner is the licensee and it was the respondent who tried to disturb the peace by bringing his second and third wife along with him. The second and third wives of the respondent are third parties, and they are not parties to the

proceedings. It was falsely claimed by the respondent before the Executive Magistrate that he has been running the agency from inception. The Trade Licence of the petitioner is appended as Annexure-6. The Annexure-5 is the jamabandi copy, which clearly depicts at no. 12 that the petitioner is recorded pattadar of a plot of land measuring 3 kathas 13 lechas pertaining to the Dag no. 733 of patta no. 238 of Paschim Dadara village. The Gas agency is situated on this plot of land. The Annexure-5 also depicts that the petitioner is the licensee of the Bharat Gas Agency.

6. I have considered the submissions at the Bar.

7. It is submitted that at present, there has been no instances of breach of public peace and tranquillity. The order under Section 107 Cr.P.C. was valid for only a year. It is averred that an Executive Magistrate cannot pass order determining the share of a licensee in such a proceeding. After considering the submissions at the Bar, the observation of the Magistrate that "the respondent should be allowed to retain his 50% legitimate share" is set aside.

JUDGE

Comparing Assistant