

GAHC010037632019



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

Case No. : Crl.Pet./191/2019

SUCHANDRA DAS AND 2 ORS.
D/O LATE SUKHAMOY DAS, R/O NABAGOPAL SHARMA ROAD,
(LAXMISAHAR), DIST. HAILAKANDI, ASSAM, PIN788152

2: SUKAMAL DAS @ RAJU
S/O LATE SUKHAMOY DAS
R/O NABAGOPAL SHARMA ROAD
(LAXMISAHAR)
DIST. HAILAKANDI
ASSAM
PIN788152

3: SHABU DAS
S/O LATE SUKHAMOY DAS
R/O NABAGOPAL SHARMA ROAD
(LAXMISAHAR)
DIST. HAILAKANDI
ASSAM
PIN78815

VERSUS

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

2:SATYAJIT KAR PURKAYASTA
S/O LATE SUMESH KAR PURKAYASTA
R/O RAMKRISHNA SARANI
PS SILCHAR
DIST. CACHAR
ASSAM
PIN-78800

Advocate for the Petitioner : MR. I H LASKAR

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 07.06.2023

Heard Mr. P.K. Deka, learned counsel for the petitioners. Also heard Mr. P. Barthakur, learned Additional Public Prosecutor for the State/respondent No.1 and Mr. S. Das, learned counsel for the respondent No. 2.

2. The petitioners being accused in compliant case No. 405c/2017 pending in the court of JMFC, Cachar, Silchar, filed an application under Section 482 Cr.P.C., 1973 for quashing of the impugned criminal proceeding in C.R. Case No. 405c/2017 vide order dated 03.07.2018 passed by the learned JMFC, Cachar, Silchar initiating criminal proceeding against the petitioners.

3. The case of the petitioners is that the respondent No. 2 filed a complaint petition before the court of JMFC, Cachar, Silchar alleging inter alia that while the complainant was gossiping with two office friends in front of Gauri Watch Shop located in Silchar Central Road, the accused/petitioner No. 1 had threatened the complainant regarding the case filed by the complainant pending in the court of Silchar and also enquired about the name and address of his sister and brother-in-law. In refusing to give the said information, the accused/petitioners assaulted the complainant by slapping. While the complainant had raised hue and cry, the friends of the complainant came to the place and saved him. Accordingly, the complainant had lodged the case in the court of Cachar, Silchar which was registered as a complaint case vide C.R. No. 405c/2017 under Section 341/323/352/506 IPC.

4. It has been submitted by the learned counsel for the petitioners that

learned JMFC, Cachar took cognizance on 03.07.2018 in the matter after recording the statements of the complainant and other two witnesses under Section 202 Cr.P.C. It is also stated that the allegation made against the petitioners are totally false and concocted.

5. According to the petitioners, the petitioner No. 1 who is the wife of the respondent No. 2 had earlier lodged an FIR before Silchar Police Station against the complainant alleging that the complainant had severely assaulted the petitioner No. 1 and the petitioner No. 1 was taken forcefully by the respondent No. 2 in an unknown place and tactfully made an accident. Thereafter, the complainant had threatened the accused/petitioner No. 1 not to disclose the assault received by her, rather she was asked to tell that she had received the injuries in an accident. After returning home, the accused/petitioner No.1 informed about the incident to her brothers and she was taken to Silchar Medical College and Hospital for treatment.

6. The petitioners also alleged that the complainant/respondent No. 2 is a alcoholic and used to assault the accused/petitioner No.1 by demanding dowry articles. To that effect, the petitioner No. 1 had lodged an FIR vide Silchar Police Station Case No. 2221/2015 under Section 498A/325/506 IPC.

7. The accused/petitioners also stated that the accused/petitioner No.1 had left her matrimonial home on a genuine ground as the complainant used to assault her by demanding dowry article as well as forced her to terminate pregnancy. Finding no other alternative, the complainant/respondent No.2 had approached before the Principal Judge, Family Court, Cachar at Silchar by filing a petition for restitution of conjugal rights. The said Family Court case was disposed of ex-parte directing the petitioner No. 1 to resume her conjugal life with the complainant/respondent No. 2. Thereafter, as the petitioner No. 1 did not resume her conjugal life with the complainant/respondent No.2, this false

complaint case has been instituted before the court of Magistrate, Cachar.

8. The petitioners also stated that the accused/petitioner No.1 filed a maintenance case being M.R. Case No. 36/2017 under Section 125 Cr.P.C. and a complaint case being C.R. Case No. 217/2017 before the CJM, Hailakandi and the cognizance was taken against the complainant/respondent No.2 which are pending before the court. Subsequently, the complainant/respondent No.2 has again approached before the Principal Judge, Family Court, Cachar by filing a divorce petition which is also pending for adjudication. Thereafter, the petitioner No.1 filed another divorce case before the District Judge, Hailakandi.

9. Learned counsel for the petitioner has submitted that the criminal proceeding being C.R. Case No. 405c/2017 pending before the court of JMFC, is not maintainable in law and continuance of the same amounts to abuse of the process of court.

10. It is also submitted that the said complaint case was filed on 12.10.2017 and the execution Case No.01/2017 in the suit for restitution of conjugal rights was filed on 05.12.2017, i.e. after filing of the complaint case. Therefore, it can be easily presumed that the allegations made in the complaint case is totally false and concocted.

11. Learned counsel for the petitioner also submitted that the alleged incident occurred on 01.10.2017 and the complaint case was filed on 12.10.2017 and as such, there is a delay in filing the said case which goes to show that the contents of the complaint case are after-thought which is liable to be quashed.

12. It is also the submission of the learned counsel for the petitioner that the complainant/respondent No.2 in his divorce petition filed on 27.08.2018 being F.C.(Civil) Case No. 312/2018 before the Principal Judge, Family Court, Cachar at Silchar has not made a single whisper about the complaint case filed by him

on 12.10.2017 being C.R. Case No. 405c/2017 which is a false and fabricated case as such, the impugned proceeding is liable to be quashed.

13. In support of his submissions learned counsel for the petitioners has placed reliance on the following case law –

(i) 1992 Supp (1) SCC 335 (State of Haryana & Ors. vs Bhajanlal & Ors.)

14. On the other hand, the learned counsel for complainant/respondent No. 2 has filed a written objection, wherein it is stated that the marriage between the petitioner No.1 and the complainant/respondent No.2 was solemnized on 26.01.2015. On 28.03.2015, the petitioner No. 1 of her own went to her parental house and in spite of repeated attempts to bring her back, she without any reasonable cause, has not returned to her matrimonial house and lived separately from her husband. On 17.08.2015, the petitioner No. 1 lodged a false FIR against the complainant/respondent No.2 alleging that the complainant has caused accident of the car in which she was travelling on 13.08.2015 and told her not to disclose the alleged injuries sustained by her. In spite of all this, the complainant made several attempts to bring her back to her matrimonial home. When all attempts failed he filed a petition for restitution of conjugal right before the Principal Judge, Family Court, Cachar which was decreed in favour of the complainant. Though the execution case was filed to execute said decree but the petitioner No.1 has not returned back to her matrimonial home. Thereafter, he filed a divorce suit before the Principal Judge, Family Court, Silchar. Although, after getting summons of the divorce suit, the petitioner No. 1 appeared and took time for filling written statement but she did not contest the suit and suit was decreed ex-parte on 07.06.2019 and the marriage between the parties was dissolved.

15. It is submitted by the learned counsel for the respondent No. 2 that the petitioner No. 1 and respondent No.2 are husband and wife and so many cases

are pending between them. The JMFC, Cachar, took cognizance against the petitioners after recording the statement of the complainant and two other witnesses and in the instant case, there is every likelihood of conviction of the petitioners as such, it is a fit case where this Court may be pleased to dismiss the criminal petition and vacate the stay order.

16. In support of his submissions, learned counsel for the respondent No.2 has relied on the following case law –

(i) (2013) 7 SCC 789 (Mohit @ Sonu & Anr. v. State of Uttar Pradesh & Anr.)

17. I have heard the submissions made by the learned counsel for the parties.

18. Under Section 482, Cr.P.C, the Court has been given innate powers to check the abuse of the process of Court where it finds that by quashing the proceedings the ends of justice are better served. In such cases, proceedings may be quashed as the end of realising justice is greater than the end of adhering to legal sanction and provisions. It provides that "Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

19. In the case of State of **Haryana and Ors. v. Ch. Bhajan Lal and Ors, AIR 1992 SC 604**, the Hon'ble Supreme Court has observed as follows –

"105. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration

wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the 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.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific

provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

106. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice."

20. In the case of **Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque**, reported in **2004(3) ACR 3063(SC)**, the Hon'ble Supreme Court has observed as follows –

"The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. 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. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. 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 the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. In the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that even there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings."

21. To hold that a Criminal Complaint can be quashed only if it does not disclose any offence or is frivolous, vexatious or oppressive, the Hon'ble Apex Court in ***State of Madhya Pradesh v. Awadh Kishore Gupta, (2004) 1 SCC 691***, ruled as under:-

"...The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its

decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. 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, proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. 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 the inherent powers under Section 482 of the Code..."

22. Enumerating the principles governing invocation of the provisions of Section 482, CrPC, Hon'ble the Supreme Court in ***Indian Oil Corpn. v. NEPC India Ltd.,(2006) 6 SCC 736***, ruled as under:

"12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash

complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few-- Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, State of Haryana v. Bhajan Lal, Rupan Deol Bajal v. Kanwar Pal Singh Gill, Central Bureau of Investigation v. Duncans Agro Industries Ltd., State of Bihar v. Rajendra Agrawalla, Rajesh Bajaj v. State NCT of Delhi, Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., Hridaya Ranjan Prasad Verma v. State of Bihar, M. Krishnan v. Vijay Singh and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque.. The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in the 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 the case alleged against the accused. For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

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

(v) 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. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

23. It is furthermore well known that no hard and fast rule can be laid down. Each case has to be considered on its own merits. The Court, while exercising its inherent jurisdiction, although would not interfere with a genuine complaint keeping in view the purport and object for which the provisions of Sections 482 and 483 of the Code of Criminal Procedure had been introduced by Parliament but would not hesitate to exercise its jurisdiction in appropriate cases. 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.

24. In the case in hand, from the complaint petition as well as the objection filed by the complainant/respondent No.2, it appears that several cases are pending between the parties. The allegation against the petitioners is that they called the complainant/respondent No.2 in front of Gauri Watch Shop located in Silchar Central Road and asked him to disclose the name and address of his sister and brother-in-law and on refusing the said information, the accused/petitioners assaulted him with fists and blows but from the statement of the complainant and his witnesses, it cannot be ascertained on which part of the body the complainant had sustained injuries. Though the cognizance was taken under Sections 341/323/352/506 IPC but the complainant or his witnesses were silent whether the petitioners had restrained the way of the complainant. No injury report of the complainant is available in the record.

25. From the allegation made in the complaint petition as well as the statement recorded by the learned trial court, it clearly established that the complaint does not disclose the commission of any offence caused by the petitioners, it, rather reminds of the adage that some people take the Court as a playground and use different tactics to achieve the desired results. Admittedly, the petitioner No.1 and the complainant/respondent No.2 were husband and wife. The petitioner No.1 as well as complainant/respondent No. 2 filed several cases against each other including the case under restitution of conjugal rights and subsequently divorce case which was proceeded ex-parte against the petitioner No.1 and the marriage between the parties was dissolved.

26. Under such backdrop, allowing the complaint to continue, as regards the petitioners, would amount to allow the complainant to abuse the process of the Court to persecute the petitioners. The complaint appears to be vexatious, oppressive and frivolous.

27. In the result, the petition succeeds and is allowed and the order dated

03.07.2018 and the entire proceeding in connection with C.R. Case No. 405c/2017 pending in the court of JMFC, Cachar, Silchar, is hereby quashed.

28. With the above observation, the petition is disposed of accordingly.

JUDGE

Comparing Assistant