

GAHC010041102023



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

Case No. : Crl.Pet./195/2023

MONIR UDDIN AND 3 ORS
S/O LATE ABDUL JAILIL @ KUTI MIA
R/O DAKHIN MOHANPUR PART-VIII,
P.O. SONAI
DIST. CACHAR, ASSAM
2: AMIR UDDIN
S/O LATE ABDUL JAILIL @ KUTI MIA
R/O DAKHIN MOHANPUR PART-VIII
P.O. SONAI
DIST. CACHAR
ASSAM
3: JASIM UDDIN
S/O LATE ABDUL JAILIL @ KUTI MIA
R/O DAKHIN MOHANPUR PART-VIII
P.O. SONAI
DIST. CACHAR
ASSAM
4: LAL MONI
S/O LATE ABDUL JAILIL @ KUTI MIA
R/O DAKHIN MOHANPUR PART-VIII
P.O. SONAI
DIST. CACHAR
ASSA

VERSUS

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

2:JAMIR UDDIN CHOUDHURY
S/O LATE HAZI TAYAB ALI CHOUDHURY
R/O DAKHIN MOHANPUR PART-III
P.S. SONAI

DIST. CACHAR
ASSAM

PIN-78811

Advocate for the Petitioner : MR. JUNM LASKAR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 15.11. 2023

Heard Mr. JUNM Laskar, learned counsel for the petitioners and Mr. MP Goswami, learned Addl. Public Prosecutor for the State respondent No. 1. Also heard Mr. L.R. Mazumdar, learned counsel for the respondent No. 2.

2. The petitioners have filed this application under Section 482 Cr.P.C. for setting aside and quashing the impugned order dated 22.01.2021, passed by the learned Addl. District Magistrate (ADM), Cachar, Silchar in Case No. 96^M/2014 under Section 145 Cr.P.C. and the subsequent judgment and order dated 08.04.2022, passed by the learned Sessions Judge, Cachar, Silchar in CrI. Revision No. 36/2021 upholding the order of the learned ADM, Cachar, Silchar passed in connection with Case No. 96^M/2014.

3. The brief facts of the case is that the respondent No. 2 filed a petition under Sections 145/ 146(ii) Cr.P.C. before the learned Addl. District Magistrate, Cachar, Silchar with a prayer to draw up a proceeding under Section 145 Cr.P.C. and also for attachment of the scheduled land measuring 3 Bighas, 12 Kathas, 12 Chataks covered by Dag Nos. 259, 260, 269 of 2nd R.S. Patta No. 104 of

Mouza–Dakshin Mohanpur Part-VIII, Pargana- Bornaj, in the district of Cachar, Assam which the petitioners have been peacefully possessing by constructing houses thereon. It is alleged in the said case that the petitioners were illegally trying to dispossess the respondent No. 2 from the disputed land. The said case was registered as Case No. 96^M/2014 under Section 145 Cr.P.C.

4. The petitioners contested the said case by filing the written statement denying the contention of the first party/ respondent No. 2. As the petitioners and respondent No. 2 failed to appear on the subsequent dates, the said Case No. 96^M/2014 was filed on the ground that both the parties were absent on several dates and they were not interested to proceed with the said proceedings. Subsequently, the respondent No. 2/ first party filed a petition before the learned ADM, Cachar, Silchar for re-opening the said proceeding which was allowed by the learned Magistrate vide impugned order dated 22.01.2021. Against the said order, the petitioners have filed a revision petition under Sections 397/399 Cr.P.C. before the learned Sessions Judge, Cachar, Silchar vide Crl. Revision No. 36/2021 but the learned Sessions Judge vide order dated 08.04.2022 has dismissed the revision petition filed by the petitioners upholding the order of the learned ADM, Cachar, Silchar dated 22.01.2021. Hence, this Criminal Petition filed under Section 482 Cr.P.C before this Court.

5. The learned counsel for the petitioners has submitted that the learned Sessions Judge, Cachar, Silchar has failed to appreciate the provisions of law and had arrived at an erroneous findings by upholding the order of the learned ADM, Cachar, Silchar as there is no provision in Cr.P.C. empowering a Magistrate

to review or recall the order passed by him. It is also submitted that in the instant case, proceeding under Section 145 Cr.P.C. was dropped/ filed on the ground that both the parties remained absent for several dates and they were not interested to proceed with the proceedings and as such the said proceedings cannot be reopened or restored to its original file by the Magistrate and only a second complaint is permissible in law if it would be brought within the period of limitation. As both the impugned judgment and order are illegal and bad in law, the same are liable to be set aside and quashed.

6. In support of his submission, the learned counsel for the petitioners has placed reliance on a case law- ***1996 CRI.L.J. 3890 (Hakam Singh and Anr. Vs. State of Punjab and Ors.)***.

7. In response to the argument of the learned counsel for the petitioners, the learned counsel for the respondent No. 2 has pointed out that the order passed by the learned ADM, Cachar, Silchar shows that due to absence of the parties, the case was "filed". It transpires that the case is not finally disposed of. Leaned ADM, Cachar, Silchar has rightly passed the order to re-open the proceedings in Case No. 96^M/2014.

8. I have considered the submissions of the learned counsel for the parties. I have perused the order and judgment of the learned trial court as well as the revisional court.

9. Admittedly, the learned ADM, Cachar, Silchar has passed the order dated

24.12.2020 by stating that both the parties were absent without taking any steps. From the case record, it appears that both the parties were found absent on several dates which transpires that they were not interested to proceed with the instant proceedings. Hence, the case was "filed". Subsequently, on 22.01.2021, the respondent No. 2 as first party has filed a petition before the trial Court to reopen the instant proceedings vide case No. 96^M/2014 and the prayer of the respondent No. 2 was allowed and both the parties were directed to appear before the court to proceed with the case.

10. Against the said order, a revision was preferred by the present petitioners before the learned Sessions Judge, Cachar, Silchar and after hearing both sides, the learned Sessions Judge passed the impugned judgment and order dated 08.04.2022 affirming the order of the trial Court by stating that the revision petition is not sustainable in law as the impugned order dated 22.01.2021 is an interlocutory order and as per Section 397(2) of the Cr.P.C., no revision lies against an interlocutory order. Hence, in view of the clear position of the law, the revision petition is not maintainable. Against the said judgment and order, the petitioners filed this Crl. petition under Section 482 Cr.P.C.

11. The admitted position is that as per the order of the learned ADM, Cachar, Silchar dated 22.01.2021, the case was not finally disposed of. As the parties were not present for a couple of dates, the case was "filed" meaning thereby there is likelihood of reopening of the same.

12. The citation submitted by the learned counsel for the petitioners is not

applicable in this case as it appears that it was held by the Hon'ble Supreme Court which reads as follows-

“.....it cannot be disputed that once the Sub-Divisional Magistrate had dropped the proceeding/ complaint filed under Section 145 of the Code, for whatever reasons it may be, the same cannot be restored or revived by him. It is correct that a fresh complaint under Section 145 of the Code could have been filed if there was a fresh apprehension of breach of peace felt by the police”.

13. On a bare look at the judgment of the Hon'ble Supreme Court, it reveals that in the said case, proceedings under Section 145 Cr.P.C. was dropped which implies that the matter has been finally disposed of. In such a case, the Magistrate has no power to restore or revive the proceedings. In the instant case, the position is something different, the case was “filed”, not finally disposed of. Hence, the Magistrate is empowered to re-open the same.

14. In the result, Criminal Petition is dismissed. There is no order as to cost. However, both the parties are directed to appear before the Trial Court seeking further instruction to proceed with the case.

15. Criminal Petition stands disposed of.

JUDGE

Comparing Assistant