

GAHC010041822017



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

Case No. : WP(C)/5948/2017

SAMPA KUNDUDUTTA AND 2 ORS
D/O KRISHNA LAL KUNDU

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE COMMISSIONER and SECY. TO THE GOVT. OF
ASSAM, HOME DEPTT.

For the Petitioners : Mr. P.K. Roy Choudhury, Advocate.
For the Respondents : Mr. S. C. Biswas, Advocate (R-2).
Ms. S. Sarma, Advocate, Health Deptt.

Date of Hearing & Judgment : **11.08.2023**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
JUDGMENT AND ORDER(ORAL)

The instant writ petition has been filed for quashing of the Complaint Case bearing C.R. Case No. 1963^C/2016 registered in respect of which cognizance was taken under Section 417/34 of the

Indian Penal Code vide an order dated 03.06.2017 passed by the Court of the Judicial Magistrate 1st Class, Kamrup(Metro) at Guwahati.

2. The Complaint Petition being C.R. Case No. 1963^C/2016 has been enclosed as Annexure-4 to the writ petition. In the said Complaint Petition, it has been alleged that the Complainant married the accused No. 1. Prior to the marriage there was no disclosure by the accused Nos. 3 and 4 that the accused No. 1 did not have her menstruation in her lifetime. It was further alleged that the age of the accused No. 1 to be 29 years was also not disclosed to the complainant. Thereupon the marriage took place on 20.05.2015. It further alleged that the accused No. 1 did not permit the complainant to cohabit with her. It further reveals that the complainant thereupon taking into account that the accused No. 1 did not have her menstruation in her lifetime wanted to take the accused No. 1 to the doctor which she refused and all of a sudden she left to her parental home. It was alleged that the accused No. 1 was 36 years old and this aspect of the matter was not informed to the complainant. It is under such circumstances that the instant complaint was filed before the Court of the Chief Judicial Magistrate, Kamrup(Metro) at Guwahati for issuing process against the accused persons and thereupon to punish them upon being held guilty.

3. This Court finds it relevant to take note of from the complaint

petition that it is an admitted fact that on 20.5.2015 the marriage was solemnized. The said complaint petition was filed in the year 2016 and in the affidavit filed by the complainant on 28.6.2016, the age of the complainant was mentioned as 47 years. This Court further finds it relevant to take note of the order passed by this Court on 13.12.2021 whereby the Principal cum Chief Superintendent of Gauhati Medical College and Hospital was directed to constitute a Medical Board comprising of appropriate medical expert so as to examine the accused No.1 i.e the Petitioner No. 1 herein and submit a report regarding the determination of the gender of the Petitioner No. 1. It further reveals from the records that on 14.10.2022, the Director of Medical Education had submitted an investigation report. From the said medical report, it is seen that after carrying out the clinical examinations, sonography of the whole abdomen, hormone reports and chromosomal/cytogenetic report, it was opined that the Petitioner No. 1/ the accused No. 1 was a normal female of premenopausal age group.

4. This Court also finds it relevant to take note of that the learned Judicial Magistrate 1st Class, Kamrup(Metro) at Guwahati vide an order dated 03.06.2017 after considering the statements of the witnesses and the report so submitted under Section 202 of the Code of Criminal Procedure, 1973(for short 'the Code') from the Dispur Police Station found sufficient grounds for proceeding against the

Petitioners herein who are the Accused Nos. 1, 2, 3 & 4 in the complaint proceedings under Sections 417/34 of the Indian Penal Code and accordingly issued summons.

5. This Court had duly taken note of the respective submissions of the learned counsels as well as also perused the materials on records. Before analyzing the complaint as to whether a case is made out for quashing thereby exercising the inherent jurisdiction, this Court finds it relevant to refer to a judgment of the Supreme Court in the **State of Andhra Pradesh Vs. Golconda Linga Swamy & Anr.** reported in **(2004) 6 SCC 522** and more particularly to Paragraphs 5, 6 and 7 which are quoted hereinbelow :-

“5. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely : (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid aliunde concedit,

conceditur et id sine quo res ipsa esse non potest (when the law gives a person anything, it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

6. In *R.P. Kapur v. State of Punjab*¹ this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings : (AIR p. 869, para 6)

- (i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;
- (ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;
- (iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the

accusations. When 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. Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognisable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal. A note of caution was, [] however, added that the power should be exercised sparingly and that too in the rarest of rare cases. The illustrative categories indicated by this Court are as follows : (SCC pp. 378-79, para 102)

“102. (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 FIR do not disclose a cognisable 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 FIR do not constitute a cognisable offence but constitute only a non-cognisable 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 Act concerned (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 Act concerned, 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.”

6. From the above quoted Paragraphs and more particularly, the reference so made by the Supreme Court to the case of **R.P. Kapur Vs. State of Punjab** reported in **AIR 1960 SC 866**, it was observed that where the allegations in the First Information Report or the complaint taken in its face value and accepted in its entirety do not constitute an offence, this Court under Article 226 of the Constitution or under Section 482 of the Code can quash the proceedings. This Court further finds it relevant to take note of that in **R.P. Kapur (supra)**, it was also observed that where the allegations though constitute an offence but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge, it may be a case where this Court can exercise the jurisdiction under Article 226 of the Constitution/Section 482 of the Code for quashing of

the complaint.

7. The Supreme Court in the case of **Golconda Linga_Swamy (supra)** observed that it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made and a case where there is legal evidence which, on appreciation, may or may not support the accusations. It was observed that the High Court in such circumstances while exercising the jurisdiction under Section 482 of the Code would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of the evidence, the accusation would not be sustained. It was observed that the said jurisdiction lies with the Trial Judge. It was also observed that the judicial process no doubt should not be an instrument of oppression or needless harassment and the Court should be circumspect and judicious in exercising the discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly.

8. This Court further finds it relevant to take note of another judgment of the Supreme Court in the case of **Mahmood Ali and Ors. Vs. The State of U.P. and Ors.** reported in **2023 SCC Online SC 950** wherein the Supreme Court observed at Paragraph No. 13

that the Court while exercising its jurisdiction under Section 482 of the Code or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in course of the investigation. It is very pertinent to take note of the observations of the Supreme Court in the said judgment wherein it was observed that when a complainant decide to proceed against the accused with an ulterior motive to wreck personal vengeance etc. then the complainant would ensure that the averments made in the FIR/Complaint are such that they disclose the necessary ingredients to constitute the alleged offence. It was observed by the Supreme Court that in such circumstances, the High Court in exercise of the powers under Article 226 of the Constitution or Section 482 of the Code owes duty to look into many other attending circumstances emerging from the record of the case over and above the averments made and if need be, with due care and circumspection try to read in between the lines. Paragraph No. 13 of the said judgment being relevant is quoted hereinbelow :-

“13. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to

proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged."

9. In the backdrop of the above law as mentioned hereinabove and taking into account the complaint so filed, it is the opinion of this Court that the allegations so made on the face of it may be a case for seeking nullity of the marriage in terms of the provisions of the Hindu Marriage Act, 1955. However, there is no ingredients of the provisions of Section 417 of the Indian Penal Code which aspect of the matter is also clear from the medical report submitted by the Medical Board. It is also the opinion of this Court that the allegations so made in the complaint, cannot be substantiated by any evidence to constitute offence of Section 417 of the IPC in view of the medical report. Accordingly, this Court therefore quashes the Complaint Case bearing

No. 1963^C/2016 as well as sets aside the order dated 03.06.2017 passed by the Court of the Judicial Magistrate 1st Class, Kamrup(Metro) at Guwahati.

10. In view of the above observations and directions, the instant petition stands disposed.

11. It is made clear that the observations made hereinabove are limited only as to whether any offence is made out against the Petitioners herein in the complaint. The observations made hereinabove shall not in any manner affect the proceedings initiated by the Respondent in F.C. (Civil) Case No. 8382016 pending before the Principal Judge, Family Court, Kamrup(M), Guwahati.

12. Before parting, this Court duly takes note of the submissions of Ms. S. Sarma, the learned counsel appearing on behalf of the Health Department, Government of Assam who undertakes to file a complete set of the report alongwith its enclosures before the Registry of this Court within 10 days. The said documents so filed shall form a part of the instant proceedings.

JUDGE

Comparing Assistant