

GAHC010045882018



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

Case No. : Crl.Pet./185/2018

RITAMONI DEVI
W/O- SRI SIBA SARMA, D/O- SRI ANIL SARMA, VILL- PHULBARI
(GASBARI), P.O AND P.S- MORIGAON, DIST- MORIGAON, ASSAM, PIN-
782105

VERSUS

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

2:SIBA SARMA
S/O LATE BAKUL CH. SARMA
VILL- NIZ GERUA
P.O- NIZ GERUA
P.S- BHURAGAON
DIST- MORIGAON
ASSAM
PIN- 78210

Advocates for the petitioner : Mr. A. Lal, Id.Adv.

Advocates for the respondents : Mr. K. K. Parasar, Addl.P.P.

Mr. S. Banik, R-2

....RESPONDENTS

:::BEFORE:::

HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 15.02.2023

Date of Judgment & Order : 15.05.2023

JUDGMENT & ORDER (CAV)

Heard Mr. A. Lal, learned counsel for the petitioner. Also heard Mr. K. K. Parasar, learned Additional Public Prosecutor representing the State respondent and Mr. S. Banik, learned counsel for the respondent No.2.

2. This petition is filed under Section 482 *read with* Sections 397, 399, 401 of the code of Criminal Procedure, 1973, praying for quashing of the C.R. case No.104/17, which is pending before the Court of learned Judicial Magistrate First Class, Morigaon, Assam as well as order dated 15.12.2017, passed in the aforesaid C.R. Case No.104/17.

3. The brief facts leading to the filing of the present petition is that;

3.1. The respondent No.2 and the petitioner are husband and wife, and their marriage was solemnized on 12.12.2014, as per Hindu rites and rituals. On 13.09.2015, a girl child was born out of the wedlock and at present the daughter is residing with the petitioner.

3.2. The respondent No.2 filed a criminal complaint against the petitioner for alleged commission of offence under Sections 466/468/469 of the IPC, before

the Court of learned Chief Judicial Magistrate, Morigaon, Assam and the same was registered as C.R. Case No.104/2007. It was alleged, in the said case, that the birth certificate of the daughter of the complainant was forged. In connection with the same offence a criminal complaint being C.R. No.880/16 was filed, where, the learned Judicial Magistrate First Class, Morigaon after examining the complaint, was pleased to direct the Officer-in-charge, Morigaon Police Station to register a police case and investigate the matter accordingly.

3.3. Based on the averments made in C.R. case No.104/2017, the learned Trial Magistrate directed the Officer-in-charge, Morigaon, police station to submit a report as to whether any police case in pursuance to CR. Case No.880/16 was registered. Accordingly, the Officer-in-charge informed on 14.07.2017 that the above noted C.R. Case No.880/16 had not received at the police station and as such, no case was registered.

3.4. After receipt of the said report from the police station, the learned Trial Magistrate proceeded with the case of C.R.No.104/17, and fixed the next date for initial deposition. On 29.07.2017, the complainant was examined under Section 200 Cr.P.C. by the learned Trial Magistrate and directed the respondent to bring the witnesses.

3.5. On 10.11.16, the respondent brought the witness, who was accordingly examined under Section 202 of the Cr.P.C. Again, on 15.12.17, the Court of learned Judicial Magistrate, 1st Class, Morigaon was pleased to take cognizance of offence under Section 466 IPC and also issued notice upon the present petitioner.

3.6. The petitioner had received only the complaint petition without any annexures or documents along with the summons. As such, the petitioner applied for the certified copy of the "Xerox copy" of the birth certificate filed before the learned Trial Court. But, the "Xerox" copy of the birth certificate was not provided to the petitioner, on the ground that it was "Xerox" and as such the petitioner was unable to annex the same before this Court.

3.7. The Joint Director of Health Service, Morigaon, Assam, vide letter dated 03.08.17 submitted a reply against the RTI application made by Shri Mintu Sarma, who is the brother of the respondent No.2. A bare perusal of the said letter demonstrate that the birth certificate No.645 was issued based on the information provided by Ms. Junu Das, who is an ASHA worker.

3.8. That mere perusal of the complaint petition demonstrates that based on same facts and between the same parties, another criminal petition bearing C.R. Case No.880/16 was pending before the learned Trial Court.

3.9. In paragraph 6 & 7 of the complaint petition mentioned that the petitioner with the help of Shri Tulen Ch. Deka manipulated the birth certificate by giving false information and address of the respondent. The respondent further alleged that in the birth certificate the birth was shown to be normal whereas the actual birth was through Cesarean and this act of the petitioner lowered down the respondent's reputation in the society and injured him mentally.

3.10. In the complaint petition, the respondent has nowhere disclosed as to which document was actually forged by the petitioner. It is submitted that to being home an offence under Section 466 IPC, the complainant must prima disclose and thereafter, prove all the ingredients necessary to establish an offence punishable under Section 466 IPC. The conjoint reading of the complaint petition and the initial of the complainant under Section 200 Cr.P.C. and his witnesses under Section 202 Cr.P.C., it is nowhere mentioned that the petitioner had forged a document. The only allegation brought against the petitioner was that she had given the false information to the Registrar of Birth. The Joint Director of health Services in the RTI reply that the information of birth was received from one ASHA worker Ms. Junu Das and on this basis the birth certificate was issued. Hence, the learned Judicial Magistrate, 1st Class, Morigaon, erred in taking cognizance and issuance of process against the present petitioner vide order dated 15.12.2017 in C.R. No.104/17.

3.11. In the meantime, the learned Judicial Magistrate, 1st Class, Morigaon ought not to have proceeded with C.R.104/17, in view of the pendency of C.R. No.880/16, which was filed based on same set of facts and between the same parties.

3.12. On perusal of the complain petition No.104/17 and initial depositions therein do not prima facie disclose even remotely any act of omission or commission by the petitioner to attract the provision of 466 IPC. Accordingly, the present complaint C.R. No.104/17 is not maintainable based on facts as well on law. As such, the proceeding of C.R.No.104/17 is not legally

tenable and ought to be quashed.

4. Being highly aggrieved of the order dated 15.12.2017, where, the learned Judicial Magistrate First Class, Morigaon, took cognizance of the alleged offences in the complaint case, the present petitioner has filed this petition on the following grounds;

4.1. There are no relevant materials on record submitted by the complainant to prove the contention of the informant.

4.2. The facts disclosed in the complaint petition do not prima facie make out a case against the petitioner of alleged commission of offence under Section 466 IPC. The ingredients of the offence of forgery of a record of a Court justice or of a register of births etc. kept by public servant under Section 466 IPC are wholly absent in the facts disclosed in C.R. No.104/17 and in the initial deposition of the witnesses . Hence, the learned Judicial Magistrate First Class committed grave error of fact and law in taking cognizance of the same.

4.3. The learned Trial Court had erred in issuing summons to the petitioner, in as much as that the complaint petition and deposition nowhere discloses that the alleged act of commission of making birth certificate with false information by the petitioner benefitted in any manner whatsoever nor did it cause any loss in any sense to the respondent and/or other person.

4.4. The impugned order dated 15.12.2017, passed by the Court of learned Judicial Magistrate First Class, Morigaon took cognizance of offences under

Section 466 IPC, which is illegal. The facts disclosed in the complaint petition and the initial deposition that there was not a sufficient ground for proceeding and as such the learned Trial Court had committed a serious error of jurisdiction by taking cognizance of the same.

5. Thus, with the above-mentioned facts, the learned counsel for the petitioner has prayed for setting aside and quashing of the proceeding in C.R.No.104/17, pending before the Judicial Magistrate First Class, Morigaon, along with the order dated 15.12.2017.

6. The petitioner has furnished another additional affidavit with some corrected and translated copy of the statement of the complainant. Apart from that, the petitioner also submitted the statement of the witnesses along with the report of the Officer-in-charge, Morigaon Police station as well as reply of the Joint Director of the Health Services, which are annexed in the petition.

7. The learned counsel for the petitioner further submitted that the allegation brought against the present petitioner is that, she obtained the birth certificate by giving some false information. But, the fact is that the birth certificate was issued with the information obtained from one Asha Worker, Ms. Junu Das.

8. In this context, the learned counsel for the petitioner also relied on the decision of the Hon'ble Apex Court in the case of ***Sheila Sebastian vs. R. Jawaharaj & Anr.***, reported in 2018 SCC OnLine SC 522 [Criminal Appeal Nos.359-360/2010, dated 11.05.2018] wherein, in para 25 of the said judgment it has been held that;

"Para 25....Keeping in view the strict interpretation of penal statute i.e., referring to rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to Section 464 further clarifies that, for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery."

9. It is also seen that there is nowhere mentioned in the petition as well as in the statement of the complainant and the witnesses, as to how the present petitioner had caused any wrongful gain or loss to any other person or the petitioner. *The word "fraudulently" is defined under Section 25 of the Indian Penal Code, where, it states that, "A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise."*

10. In addition to, the learned counsel for the petitioner has submitted that the information obtained from the office of the Director of Health Services, Morigaon, the birth certificate was issued on the basis of the application submitted by the Asha worker, Ms. Junu das. As the petitioner has not applied for the same by dishonestly and fraudulently or for some personal gain or with ill intention. And as such there is no prima facie case as disclosed against the present petitioner for taking cognizance under section 466 of the IPC. He also relied on the decision of the Hon'ble Apex Court in the case of ***Jibrial Diwan***

Vs. State of Maharashtra, reported in (1997) 6 SCC 499, wherein, in para 3 of the said judgment it has been held that;

*“Para 3..... It bears repetition that the appellant was not the forger of those documents. [Section 471](#) enjoins that whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document. [Section 465](#) provides that whoever commits forgery,, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. **Now the words 'dishonestly' has been defined to mean that whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing 'dishonestly'. The word 'fraudulently' has been defined to mean that a person is said to d a thing fraudulently if he does that thing with intent to defraud but not otherwise. This court in Dr. S. Dutt state of U.P AIR 1966 SC 523 has explained the words intent to defraud' as being not synonymous with words `intent to deceive'. It requires some action resulting in a disadvantage which but for the deception the person defrauded would have avoided. here by the delivery of forged letters, there is neither any wrongful gain to anyone nor any wrongful loss to another. The act of the appellant could not thus be termed to have been done dishonestly. Likewise the appellant cannot be said to have any intention to defraud because his action resulted in no disadvantage to any one which but for the deception the person defrauded would have acted otherwise. The basic ingredients of the act done `dishonestly' or `fraudulently' being missing, the charge under [Section 471](#) read with 465 [IPC](#) was totally misplaced and the High Court fell into an error in convicting the appellant on those charges.”***

11. In this regard, the learned counsel for the respondent No.2 has submitted that the main allegation brought in the said complaint case is that the birth

certificate is forged with respect to "place of birth and permanent resident of the parents are incorrect. In the same time, in the birth certificate, the delivery of a child was shown as normal whereas the actual was by cesarean. He also submitted that there is a litigation pending between the parties.

12. He further submitted that the respondent No. 2, who is the husband of the present petitioner has submitted that as per the complaint petition and on the basis of the statement of the witnesses, the learned JMFC, Morigaon took cognizance of the order under Section 466 of the IPC against the present petitioner.

13. Mr. S. K. Banik, learned counsel for the respondent No.2 has further submitted that the petitioner has prayed for quashing of the criminal proceeding, but it is not a stage of furnishing the statement of the witnesses as well as other document through additional affidavit. He also submitted that it is not a fit case to invoke Section 482 of the Cr.P.C. at this stage. Accordingly, the learned counsel for the respondent No.2 has prayed for dismissal of the present petition.

14. In regard to his submission, the respondent No.2 relied on the decision of the Hon'ble Apex Court in the case of in the case of ***State of Orissa Vs. Debendra Nath Padhi***, reported in 2005 (1) SCC 568, wherein, it is held that;

“A. Criminal Procedure Code, 1973-Ss.227 & 228, 239 & 240, 91 and 482-Framing of charge-Trial Court whether can consider any material filed by the accused-Held, at the said stage it can consider only the material

produced by the prosecution-No provision in Cr.P.C. grants to the accused any right to file any material or documents at the said stage-That right is granted only at the stage of Trial –Satish Mehra case, (1996) 9 SCC 766 taking a contrary view, held, not correctly decided-Contention made about production of documents relying upon S.91 Cr.P.C., rejected-Scheme and object of new Cr.P.C. of 1973 which incorporated Ss. 227 and 209 and omitted Ss. 207 and 207-A existing in old Cr.P.C. of 1898, taken note of – Submission that the above interpretation of Ss. 227 and 239 would run the risk of those provisions being declared ultra vires Arts.14 and 21 of the Constitution as it would compel the accused to face Trial despite being in a position to produce unimpeachable and unassailable material to show his innocence at the stage of framing of charge, held not acceptable –Constitution of India, Arts. 226, 14 and 21.

B. Criminal Procedure Code, 1973-Ss. 91, 227, 228, 239 and 240 -Summons to produce documents or other thing-Accused cannot at the stage of framing of charge invoke S. 91 to seek production of any documents to prove his innocence.

C. Criminal Procedure Code, 1973-Ss. 227 and 209- Expression "the record of the case" as used in S.227-Meaning of- held, the record of the case and documents submitted therewith as postulated in S. 227 relate to the case and the documents referred to in S.209.

D. Criminal Procedure Code, 1973- S. 227-Expression "hearing the submissions of the accused" as used therein-Meaning of –Held, means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith-It cannot mean opportunity to file material to be granted to the accused. "

15. He further submitted that the quashing of the criminal 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. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If, it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere [[Sonu Gupta v. Deepak Gupta and Ors.](#) 2015 (3) SCC 424].

16. Accordingly, the interference of this Court is not at all necessary or it is not a fit case for quashing of the said criminal proceeding against the present petitioner in the instant case.

17. After hearing the submissions made by the learned Advocates of both sides, as well as perusing the case record and annexures filed along with the petition, it is seen that the allegation made against the present petitioner is that, "*she had obtained forged birth certificate of her daughter and the same was obtained from the concerned office by giving false information.*", But, there is no mention as to how the present petitioner is trying to cause any damage or injury to the present respondent No.2 by obtaining the forged birth certificate by providing false information to the concerned office.

18. More so, from the RTI reply made by the Director of Health services, Morigaon, it is seen that the birth certificate was issued only on the information provided by one "ASHA" worker Ms. Junu Das to the office concerned. Thus, it is also cannot be said that the present petitioner has provided any false information to the concerned office for obtaining the same in the name of her daughter. Further, it is not disputed, that the petitioner and the respondent are parents of one female child. But, it is seen, that the respondent No.2 failed to make out the prima facie case under Section 466 of the IPC against the present petitioner to take cognizance.

19. The Hon'ble Supreme Court in the case of **State of Haryana & Ors. Vs. Bhajan Lal & Ors.**, reported in **1992 Supp (1) SCC 335**, has held as under:

"102. 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 extraordinary 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 channelized 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 FIR 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 FIR 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.”*

20. In the instant case also, as stated above, the statement made in the complaint petition and by the witnesses, it is seen that no *prima facie* case is established against the present petitioner. Rather, it is seen that the dispute arose between the parties only on the ground of forged birth certificate of their daughter. But, the respondent has nowhere disclosed as to which document was actually forged by the petitioner. The only allegation was that the petitioner had given the false information to the Registrar of Birth. More so, from the RTI information, it is seen that the information was provided by one Asha worker Ms. Junu Das before the concerned authority, while applying for the Birth Certificate.

21. Under the above facts and circumstances of this case and also considering the view of the Hon'ble Apex Court in **Bhajan Lal (supra)**, I am of the considered opinion that this is a fit case where the extra-ordinary power under Section 482 Cr.P.C. can be invoked to quash the criminal proceeding.

22. Accordingly, the proceedings of the C.R. case No.104/17, which is pending before the Court of learned Judicial Magistrate First Class, Morigaon, Assam as well as order dated 15.12.2017, passed in the aforesaid C.R. Case No.104/17, stand set aside and quashed.

23. In terms of above, this criminal petition stands disposed of.

JUDGE

Comparing Assistant