

GAHC010080142019



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

Case No. : Crl.Pet./406/2019

GIRISH CH. DAS
S/O LATE JOGESH DAS, R/O VILL-KARIA, P.O.-KARIA, P.S.-NALBARI, DIST-
NALBARI (ASSAM)

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:BIPIN DAS
S/OLATE CHABIN DAS
VILL-ULABARI
P.S.-NALBARI
DIST-NALBARI
ASSA

Advocate for the Petitioner : MR. R GOSWAMI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

09.05.2023

Heard Mr. R. Goswami, learned counsel for the petitioner and Mr. B. Kumar, learned counsel for the respondent No. 2. Also heard Ms. S.H. Borah, learned

Addl. PP for the State.

2. This criminal petition is filed by the petitioner, namely, Sri Girish Ch. Das, prayed for quashing of the charge-sheet No. 214/2017 dated 29.06.2018 arising out of Nalbari P.S. Case No. 357/2017 which was filed before the Court of CJM, Nalbari.

3. The learned counsel for the petitioner submits that by an FIR dated 28.05.2017, it was alleged by the informant that an amount of Rs. 3,000/- in cash was given to the wife of the accused-petitioner about three years back while she was working as a District Transport Officer, Nalbari for making a driving licence for the brother of the informant. Since, the licence could not be made, the amount was asked to be returned by the informant. Eventually, when the mother of informant went to collect the money from the wife of the accused petitioner, she was assaulted and physical harm and was sought to be inflicted on her and the accused petitioner has spread pesticides on her face and accordingly, she sustained injuries on her eyes and her mouth. After completion of the investigation, the charge-sheet was submitted before the Court of CJM, Nalbari.

4. Mr. R. Goswami, learned counsel for the petitioner submits that the entire allegations were false and the same is reflected from the medical report which is procured and which is enclosed to the criminal petition. Referring to the medical report, the learned counsel for the petitioner submits that no injuries were sustained and her vision was found to be normal. Nevertheless, the investigating officer had proceeded with the investigation and submitted the charge-sheet against the petitioner. Being aggrieved, the present criminal petition has been filed. The charge-sheet was filed under Section 328 of the IPC against the petitioner showing him as an accused.

5. Mr. B. Kumar, learned counsel for the respondent No. 2 has filed an affidavit dated 04.05.2023 whereby it is submitted that the matter has been amicably settled outside the Court and therefore, he does not have any objection to the said prayer made by the petitioner in the criminal petition.

6. The learned counsel for the parties have been heard. This Court by earlier order had called for the LCR. Pleadings on records have been carefully perused. The LCR has also been carefully perused. It is seen that vide affidavit dated 04.05.2023 filed by the respondent No. 2, it is stated that the matter has been amicably settled outside Court in connection with Nalbari P.S. Case No. 357/2017. The said affidavit has been filed by the respondent No. 2 is extracted below:

“1. That, a copy of the Criminal Petition No. 406/2019 filed by the petitioner has been served upon me and after going through the same, I have understood the contents therein.

2. That, I am the respondent No. 2. in the instant Criminal Petition being No. 406/2019 and as such I am acquainted with the facts and circumstances of the same.

3. That I lodged an ejahar on 28-05-2017 before the Officer - In-Charge , Kamarkuchi out post against the petitioner Sri Girish Ch. Das, S/O Late Jogesh Das, R/O Vill.: Karia, Dist.: Nalbari, Assam, which is registered as Nalbari PS Case No. 357/2017, U/S 325/328 IPC.

4. That through this affidavit I hereby declared that I have no any objection if the Hon'ble Court grants any relief to the accused petitioner by allowing this application filed by the petitioner U/s 482 Cr.P.C. which is arising in connection with Nalbari PS Case No 357/2017, U/S 325/328 IPC since we have already settled the matter amicable outside the Hon'ble Court”.

7. Section 328 of the IPC prescribes punishment for causing by means of

administering poison or stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt. The punishment prescribed is for a term which may extend to ten years and shall also be liable to fine.

8. From the LCR which contains the medical report, no injuries are seen to have been sustained by the victim who is the mother of the informant. Her eye sight is also found to be normal in the medical report. The ingredients for Section 328 of the IPC to be applicable is that any poison, any stupefying or intoxicating or unwholesome drug or other thing is to be administered by any person with the intent to cause hurt or with the intent to commit or facilitate commission of an offence knowing that it is likely to cause hurt to that person. Prima facie, from the records of the trial Court available along with the reports, the ingredients necessary for applying the provisions of Section 328 does not appear to be present. That apart, the informant has filed an affidavit stating that the matter has been amicably settled outside Court. The issue arose out of monetary transaction between the informant and the petitioner.

9. Upon perusal of the affidavit and upon hearing the counsels for the parties, this Court is of the view that since the matter has already been settled amicably, no useful purpose will be served by keeping the matter pending before the competent Court before whom the charge-sheet has been filed. This Court vide order dated 12.04.2019 while issuing notice has stayed the proceedings before the Court of CJM, Nalbari in connection with the said case till the next date fixed and the said interim order was extended from time to time.

10. Having heard the submissions of the counsels for the parties and upon due perusal of the pleadings on records, this Court has given its anxious thought to

the submissions and the averments made in the pleadings. Considering the facts that both the parties have agreed that the matter is settled amicably outside the Court, no useful purpose will be served by continuing the proceedings against the petitioner by the Court below.

11. Accordingly, this Court is of the view that the prayers made in the criminal petition can be allowed. Therefore, the criminal proceedings pending before the Court of CJM, Nalbari stands set aside and quashed in view of the discussions made above.

12. Accordingly, the petition is allowed and disposed of in terms of the above.

13. A copy of this order be communicated to the competent court for information.

14. Return the LCR.

JUDGE

Comparing Assistant