

GAHC010091752009



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

Case No. : Crl.Rev.P./132/2009

SHRI PRANAB KUMAR SHARMA
S/O LT. KABINDRA NATH SHARMA R/O PALMS ENCLAVE, BASISTHA
ROAD, BELTOLA, P.S. DISPUR, GHY-28.

VERSUS

THE STATE OF ASSAM
Represented By PP, Assam

2:MRS JABEEN ZEENAT AHMED
R/O PALMS ENCLAVE
BASISTHA ROAD
BELTOLA
PS DISPUR
GUWAHATI 78102

Advocate for the Petitioner : MR.J SHARMA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

JUDGEMENT AND ORDER

Date : 28-06-2023

Heard Mr. J. Sharma, learned counsel for the petitioner. Also
heard Ms. C Subba, learned counsel appears on behalf of Mr. G. Jalan,

learned counsel for the respondent No. 2 and Mr. P. Borthakur, learned Additional Public Prosecutor for the State/respondent No. 1.

2. The petitioner has preferred an application under Section 397/401 Cr.P.C., 1973 against the judgment and order dated 03.01.2009 passed by the learned CJM, Kamrup, Guwahati in G.R. Case No. 1156/2006 framing charge against the petitioner/accused under Section 384/352 IPC.

3. The case of the petitioner is that he is the President of Assam Real Estate and Infrastructure Developers Association (AREIDA) which is an association of the builders of the State. Considering the petitioner's knowledge and standing in this sphere of activity, the Government of Assam has appointed him as the Chairman of the Building and other Construction Workers Welfare Board which is a statutory body. At the relevant time, the accused/petitioner was holding the post of President of the 'Palms Enclave Housing Society' which is a society of the apartment owners of the apartment building known as 'Palms Enclave' where the petitioner resides.

4. The respondent No. 2 had lodged an FIR before the Officer-in-Charge of All Women Police Station, Panbazar, Guwahati, stating *inter alia* that she being the wife of Dr. Omar Farooque Ahmed, resident of Palm Enclave, Beltola staying with her husband and two daughters since August, 2003. Mr. P.K. Sharma who is also staying along with his wife and children in the same apartment. It is alleged that Mr. P.K. Sharma had been torturing her family members physically and mentally as because she was staying along with her two daughters.

Her husband is a doctor by profession and serving in Assam Tea Company at Nagoan.

5. It is alleged in the FIR that at the time of incident, the accused/petitioner dragged her and her daughters out of the house in intoxicated state of mind and forced them to go for long drive with him to an undisclosed destination. He often knocked the door of their house when fully drunk and if they resist his entry in their place, he assaulted her family friends and relatives who used to come to meet them at their place.

6. It is further alleged that the petitioner took her and her daughters at gun point to his office on 22.12.2005 at night and told them to sign a statement and apology letter drafted by him that she and her two daughters were involved in immoral trafficking. It is also alleged that they were confined in his office with their cell phone switched off and they were forced to sign the letter as because they could call any one for rescue. It is further stated in the FIR that Mrs. P.K. Sharma and most of the people living in their society were aware of the facts.

7. On receipt of the FIR, a case was registered vide All Women Police Station Case No. 04/2006 registered under Sections 352/354/384/506 IPC. After completion of investigation, final report was submitted as no case was found against the accused/petitioner But the court issued notice to the complainant and on her appearance, she made objection against submission of final report with a prayer to proceed with the trial. Thereafter, final report was not accepted by the

court and summons were issued to the accused/petitioner. On receipt of the summons, the accused/petitioner appeared before the court of learned CJM, Kamrup and on his appearance, he was allowed to go on bail and charge was framed under Sections 384/352 IPC against the present petitioner to which he pleaded not guilty. Subsequently, this petition has been preferred by the petitioners for quashing of proceedings on framing of charge.

8. The learned counsel for the petitioner has submitted that on receipt of the FIR, though a case was registered, but after completion of investigation, as the investigating officer did not find any case, final report was submitted. It is further submitted that the allegation made in the FIR and statements of the witnesses recorded during investigation are contradictory to each other and there was huge delay in lodging of the FIR which prompted the investigating agency to submit the final report. Under such backdrop, subsequent issuance of process and framing of charge by the learned trial court is bad in law and liable to be set aside.

9. It is also the submission of the learned counsel for the petitioner that the entire case of the informant is based on falsehood. There is not even an iota of truth in the allegations made by the complainant against the petitioner. The Ejahar lodged on 07.03.2006 is clearly an afterthought. It is further submitted that the informant to cover up her misdeeds and to harass the petitioner lodged the said FIR after a period of two months at the alleged incident. The materials on record do not make out a prima facie case against the petitioner under

Section 384/352 IPC. Therefore, the police was fully justified in submitting the final report.

10. In support of his submissions, the learned counsel for the accused/petitioner has relied on a case law- 2020(4) GauLR 5(Giridhar Hira & Ors. v State of Assam & Ors.)

11. In response, the learned Additional Public Prosecutor for the State has submitted that there are materials available to proceed further with trial of the case against the petitioner as such, there is no question of quashing the proceeding at this stage.

12. I have considered the submissions made by the learned counsel for the parties and I have also perused the case record of G.R. No. 1156/2006.

13. The principles with regard to quash the proceedings is very much settled by the Apex Court in the case of ***Umesh Kumar vs State of Andhra Pradesh and Anr.*** reported in ***(2013) 10 SCC 591***, the Hon'ble Supreme Court has held as follows-

“The scope of Section 482 Cr.P.C. is well defined and inherent powers could be exercised by the High Court to give effect to an order under the Cr.P.C.; to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised ex debito justitiae. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its prima facie satisfaction

about the existence of sufficient ground for proceedings against the accused and the court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed along with the petition labelled as evidence without being tested and proved, cannot be examined. Law does not prohibit entertaining the petition under Section 482 Cr.P.C. for quashing the charge sheet even before the charges are framed or before the application of discharge is filed or even during its pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused to undergo the agony of a criminal trial.”

14. In the case of ***Rajiv Thapar v Madan Lal Kapoor***, reported in ***2013(3) SCC 330***, the Hon’ble Supreme Court while dealing with the issue held as follows:

“ Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Code of Criminal Procedure:

1. Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of

sterling and impeccable quality?

2. Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

3. Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

4. Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?"

15. In another case, ***State of Bihar v. P.P. Sharma & Anr.*** reported in ***AIR 1991 SC 1260*** , the Hon'ble Supreme Court dealt with an issue of whether an application under Section 482 Cr.P.C. for quashing the charge sheet should be entertained before cognizance is taken by a criminal court and held as under:-

“Quashing the charge-sheet even before cognizance is taken by a criminal Court amounts to killing a still born child. Till the criminal Court takes cognizance of the offence there is no criminal proceedings pending. I am not allowing the appeals on

the ground alternative remedies provided by the Code as a bar. It may be relevant in an appropriate case. My view is that entertaining the writ petitions against charge-sheet and considering the matter on merit on the guise of prima facie evidence to stand on accused for trial amounts to pre-trial of a criminal trial. It is not to suggest that under no circumstances a writ petition should be entertained. The charge- sheet and the evidence placed in support thereof form the base to take or refuse to take cognizance by the competent Court. It is not the case that no offence has been made out in the chargesheets and the First Information Report."

16. In the case of State of **A.P. v. Goloconda Linga Swamy & Anr.** reported in **AIR 2004 SC 3967**, it was held as under:-

"It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of malafides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceeding."

17. In view of the aforesaid legal propositions, it becomes evident that in case there is some substance in the allegations and material exists to substantiate the complicity of the applicant, the case is to be examined in its full conspectus and the proceedings should not be quashed only on the ground that the same had been initiated with mala fides to wreak vengeance or to achieve an ulterior goal. It is clear from the allegations made in the final report and statement of

the witnesses that there are grounds for presuming that the accused/petitioner had committed the offence as alleged against him by the informant.

18. Considering the totality of facts and circumstances, this Court does not find any infirmity in the order dated 03.01.2009 passed by the learned CJM, Kamrup, Guwahati in G.R. Case No. 1156/2006.

19. It is pertinent to say here that though from the order sheet dated 03.01.2009, it is reflected that charge was framed under Section 384/352 IPC, but charge form was filed up by showing Section 384/506 IPC. The learned Magistrate is directed to take up the matter with proper clarification and fill up the charge form accordingly.

20. With the above direction, the criminal revision petition stands dismissed and disposed of accordingly.

JUDGE

Comparing Assistant