

GAHC010094722021



**IN THE GAUHATI HIGH COURT
(The High Court of Assam: Nagaland: Mizoram &
Arunachal Pradesh)**

Crl. Pet. No. 371/2021

Saju Thachethukudy Kuriakose And Anr
S/O T.P. Kurian @ T.P. Kuriakose
R/O St. Josephs School, Sontola Barkuchi Chowk, Near Indian
Overseas Bank
Dist. Kamrup, Metro, Assam
Pin-7881125
2: Jimmy Gabrial Ainekal
S/O Antony Sebastian
R/O St. Josephs School
Sontola Barkuchi Chowk
Near Indian Overseas Bank
Dist. Kamrup
Metro
Assam
Pin-788112

..... Petitioners

Versus

The State of Assam And Anr
Rep. by The Public Prosecutor, Assam
2:Selvan C Johan
S/O Lt. C.P. Johan
R/O Bharalipra Of Azara
P.S. Azara
In The Dist. Of Kamrup (M)
78101

..... Respondents

BEFORE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Advocate for the Petitioners : Mr. G. Uddin
Advocate for the Respondents : Mr. K.K. Das (learned Addl. P.P. res No. 1.)
Date of Hearing : **09.05.2023**
Date of Judgment : **07.08.2023.**

Judgment and ORDER (CAV)

1. Heard Mr. G. Uddin, learned counsel for the petitioners. Also heard Mr. K.K. Das, learned Addl. P.P. for respondent no. 1.
2. The petitioners, namely, Saju Thachethukudy Kuriakose and Jimmy Gabrial Ainekal have filed this application under Section 482 of the Code of Criminal Procedure (Cr.P.C. for short) for quashing the proceeding arising out of FIR vide Palashbari P.S. Case No. 191/2021, (GR Case No. 643(K)/2021), registered under Sections 420/468/406/294(a)/506/34 of Indian Penal Code (IPC for short).
3. The petitioner no. 2 is the Principal of St. Joseph School, situated at Borkuchi, Mirza and the petitioner no. 1, is an employee of school. On 26.03.2021, the respondent no. 2 (hereinafter the informant) namely, Selvan C Johan lodged an FIR contending inter-alia that on 23.03.2021, the petitioners, using abusive language threatened the respondent no. 2 and demanded that the respondent no. 2 leaves the school, where, he was working. The

respondent no. 2 claims to be the absolute the owner of St. Joseph School, at Borkuchi Chowk and the petitioner no. 1 was the financial in-charge while the petitioner no. 2 was the Principal of St. Joseph School, at the time of the incident. While the respondent no. 2 was busy with some other projects, both the petitioners had managed the school and they had hatched up a conspiracy to evict the respondent no. 2 from the school and pleaders notice was served upon the respondent no. 2. The petitioners are also alleged to have misappropriated funds from the school amounting to crores of rupees. The respondent no. 2 learnt that the petitioner no. 1 by misappropriating funds purchased land at Sontola. When the respondent no. 2 demanded the school account details to be submitted, the petitioners threatened the respondent no. 2 with dire consequences and verbally abused him in presence of his wife who was also the Vice-Principal of the school at the time of the incident. This FIR was registered as Palashbari P.S. Case No. 191/2021 dated 26.03.2021, under Sections 420/468/406/294(a)/506/34 IPC.

4. It is averred that the allegations in the FIR are false and concocted. Prior to this FIR, the respondent no. 2 lodged another FIR in the year, 2019 with similar allegations and extorted money from the petitioners. A legal notice was also issued with malafide on 12.03.2021 with some unsolicited demand and when such demand was not fulfilled, a false case was initiated against the petitioners. The respondent no. 2 is not the absolute owner of the school, which is registered under a trust and is thus a trust property. The respondent no. 2 for wrongful advantage claims to be the owner of the school by projecting that he had purchased the school in the name of the trust and the respondent no. 2 appointed Ravindra Jayraj as the principal and his wife as the Vice-Principal and the petitioner no. 2, as the clerk who was elevated to the status of the principal of the school.

5. It is averred that in an illegal manner, the respondent no. 2 has been managing the school on his own without consulting the trustees. It is submitted that the St. Joseph School was earlier under the trust, namely, Mannah Group of Institutions and the petitioners along with the informant were trustees. The informant/respondent no. 2 was working as administrator and his wife as Assistant teacher of the school. The respondent no. 2 did not work for the interest of the school and he was willing to resign from the trust. On 30.06.2019, a meeting was held by the Board of trustees and by a resolution adopted the respondent no. 2 tendered his resignation, which was accepted by the other trustees.

6. It is averred that no case under Sections 420/468/406/294(a)/506/34 IPC exists against the petitioner, as this case is pre-dominantly private in nature and the proper remedy lies in a Civil Court. It is submitted that as per the decision of the Hon'ble Supreme Court in ***State of Haryana Vs. Bhajan Lal [1992 Supp (1) SCC 335***, any proceeding initiated with malafide and in order to wreak vengeance has to be quashed. As this case was initiated with ulterior motive, it is liable to be quashed and set aside.

7. An additional affidavit was filed by the petitioner to bring to the notice of the Court, that charge-sheet has been laid against them. A Civil Suit registered as Money Suit No. 93/2021 for realization of Rs. 30,50,000/- has also been initiated against the petitioners by the respondent no. 2. A copy of the Money Suit No. 93/2021 is marked as Annexure-4. It is submitted on behalf of the petitioners that this is a case of civil nature, which has been given a criminal colour. Section 420 IPC cannot be decided conjointly with Section 406 IPC.

8. Per Contra, the learned Public Prosecutor laid stress in his argument that the allegation of misappropriation cannot be ruled out at this stage. This case is pending at the stage of

appearance. Charge is yet to be framed. The validity of proceeding against the petitioners under Section 420 IPC conjointly with Section 406 IPC cannot be decided at this juncture, when charge has not been framed by the learned trial Court. While considering a petition under Section 482 Cr.P.C., it has only to be ascertained whether a prima facie case exists against the petitioners. A roving enquiry is not required at this stage.

9. I have considered the submissions at the Bar with circumspection. It is true that a civil suit has been initiated against the petitioner by the respondent no. 2.

10. I have also scrutinized the scanned copies of the LCR. The allegation against the petitioners is that they have misappropriated funds of the school. The allegation is that the petitioners have misappropriated funds of the school or funds of the trust. Charge-sheet has been laid against them, after a proper investigation. There appears to be a prima facie case against the petitioners. At this juncture, I am not inclined to invoke the inherent jurisdiction under Section 482 Cr.P.C. The petitioners can raise their averments at the time of framing of charge also.

11. In view of my foregoing discussions, petition stands dismissed. No order as to costs.

JUDGE

Comparing Assistant