

GAHC010095332019



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

Case No. : I.A.(Crl.)/329/2019

RAVI AGARWAL
S/O LATE MAMRAJ AGARWAL, R/O MASJID PATTY, TINSUKIA, P.O., P.S.
AND DIST. TINSUKIA, ASSAM.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PP, ASSAM.

2:BRAHAM PRAKASH BANSAL
S/O LATE GOPIRAM BANSAL
R/O DHOLIA BAZAR
P.O. SAIKHOWAGHAT
P.S. DHOLLA DIST. TINSUKIA ASSA

Advocate for the Petitioner : MR. A K GUPTA

Advocate for the Respondent : PP, ASSAM

Linked Case : Bail Appln./712/2019

BIKASH AGARWAL
S/O. LT. SHRAVAN KR. AGARWAL
R/O. DR. HANDIQUE ROAD
PARBOTIA
TINSUKIA TOWN
P.O. P.S. AND DIST. TINSUKIA
ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY PP ASSAM.

Advocate for : MR. A K GUPTA
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

Date : 15.05.2023

Heard Mr. A.K. Gupta, learned counsel appearing for the applicant. Also heard Mr. B. Sarma, learned Addl. P.P., Assam appearing for the State respondent No. 1 and Mr. K. Borthakur, learned counsel for the respondent No. 2.

This interlocutory application under Section 340 of Cr.P.C., has been filed for taking cognizance of commission of offences as described u/s 195(1)(b) of Cr.P.C for making false statement and producing fabricated documents before this Court in Bail Appln. No. 712/2019.

The applicant's case, precisely, is that the opposite party No. 2 filed one bail objection on 04.04.2019, stating amongst others, that the deceased died due to the alleged torture inflicted upon her and along with the said objection, one Medico-Legal Report, issued by the Deputy Superintendent, Chapakhowa FRU in connection with Tinsukia P.S. Case No. 1137/2018 has also been issued. Further, the said medical report revealed that Kiran Bansal was treated on 12.04.2017 at 11 AM, but most surprisingly, the said report also contained the cause of death of Kiran Bansal @ Kiran Bhaguka in hand-written column, whereas the victim died on 05.01.2018. Hence, the instant application is filed with the prayer, as stated above.

In view of the above, this Court by order, dated 21.07.2022, called for a report from the Joint Director of Health Services, Tinsukia asking the authenticity of the

purported Medico-Legal report of Kiran Bansal (since deceased) issued in connection with Tinsukia Sadar P.S. Case No.1137/2018 by way of preliminary enquiry. In this regard, the Joint Director of Health Services, Tinsukia has submitted a report which reads as hereunder extracted:-

*“GOVERNMENT OF ASSAM
OFFICE OF THE JOINT DIRECTOR OF HEALTH SERVICES
TINSUKIA*

No.JT.DHS/TSK/4208

Dated Tinsukia the 05/08/2022

*To,
The Assistant Registrar i/c (CrI.Apl.)
Guwahati High Court,
Guwahati*

Sub :- Regarding authenticity of the medico-legal report of Smt. Kiran Bansal in connection with Tinsukia Sadar P.S. GDE No. 1137/2018.

Ref:- Memo No. HC.XXIV.590/BA

Sir/Madam,

With reference to the subject cited above, I have the honour to inform you the medico-legal report of Smt. Kiran Bansal in connection with Tinsukia Sadar GDE No. 1137/2018 was issued by the Deputy Superintendent, Chapakhowa FRU, Dist-Tinsukia is authentic.

Therefore, the said medico-legal report of Smt. Kiran Bansal is genuine and was prepared by Dr. Robin Dolley, Deputy Superintendent, Chapakhowa FRU, Dist-Tinsukia on requisition made by the police in connection with Tinsukia P.S. GDE No. 1137/2018.

This is for your kind information.

Sd/ Illegible

*Joint Director of Health Services
Tinsukia ”*

It may be pointed out that Section 340 Cr.P.C. confers an inherent power in the Court to make a complaint in respect of an offence committed in, or in relation to a proceeding in that Court, if that Court is of the opinion that it is expedient in the interest of justice that an inquiry should be made into an offence referred to Section 195(1)(b) Cr.P.C. The aforesaid provision authorizes the Court to hold a preliminary inquiry and then to make a complaint.

On appreciation of the above quoted report, it is apparently established that the Medico-Legal report of Kiran Bansal (since deceased), which was relied on by the informant/respondent No.2 as Annexure-II in objection petition in B.A. No. 712/2019, was issued by the competent authority and, as such, the same is not a false and fabricated one. Therefore, the applicant's contention aforementioned is held to have no foundation or merit requiring an inquiry under Section 195(1)(b) Cr.P.C. as prayed. The question of authenticity of the contents/particulars of the aforesaid report, being question of facts, the same cannot be considered within the sweep of the instant application filed under Section 340 Cr.P.C.

For the above stated reason, the interlocutory application stands dismissed.

Send back the L.C.R.

The I.A. stands disposed off.

JUDGE

Comparing Assistant