

GAHC010108312023



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

Case No. : Crl.Pet./479/2023

MANIK ALI
S/O CHANDU MIAH, R/O KADONG, P.O.-KADONG, P.S.-KOLGACHIA, DIST-
BARPETA, ASSAM, PIN-781314

VERSUS

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

2:MOHIT KUMAR SAXENA
S/O S.H. V.B. SAXENA
C/O 138 BN
BSF
COOCHBEHAR
WEST BENGAL

Advocate for the Petitioner : MR F HAQUE

Advocate for the Respondent : PP, ASSAM

BEFORE
THE HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY
ORDER

25.08.2023

1. Heard Mr. F. Haque, learned counsel for the petitioner. Also heard Mr. P.

Borthakur, learned Additional Public Prosecutor for the State of Assam.

2. This application is filed under Section 482 of the Cr.P.C. praying for quashing of the F.I.R. dated 06.05.2023 being Gouripur P.S. case No. 201/2023 corresponding to G.R. Case No. 875/2023 under Section 420/419/417 of IPC.
3. The principles of exercise of power under section 482Cr.P.C. to quash FIR and charge sheet on the basis of different pronouncement of the hon'ble apex court can be summarized in the following manner.
 - I. When the allegations made in the FIR or in a complaint is taken at their face value and accepted, it does not prima facie constitute any offence or do not make out a case against the accused. The court is to see that if the complaint/FIR is taken at their face value, no cognizable offence is made out.
 - II. Such power can also be exercised when the facts narrated are absurd and inherently improbable, or manifestly attended with malafide or with an ulterior motive.
 - III. However, while exercising its power the court is not embark upon an enquiry as to the reliability or genuineness of the allegation made in the FIR/complaint.
 - IV. It is also well settled that such power is to be sparingly exercised and in exceptional cases, so as to avoid miscarriage of justice and also in a situation where there is abuse of process of the court.

V. The power under section 482 Cr.P.C being wide that while exercising such extra ordinary power the court must be cautious and need to be very diligent.

4. Now let this court consider the factum of the present challenge based on the principles of the aforesaid law. For proper appreciation of the issue in hand the FIR is quoted herein below:

“Sub: Lodging of F.I.R. regarding impersonation case.

It is submitted that PST & PET of Constable (GD) in CAPFs, SSF and Rifleman (GD) in Assam Rifles and Sepoy in Narcotics Control Bureau (NCB) Examination -2022 is scheduled w.e.f. 01.05.2023 to 10.05.2023 on dated 06.05.2023, namely Mr. Manic Ali S/O Chandu Miah, Vill- Kadong, Post- Kadong, Police Station – Kalgachia, Dist- Barpeta, State – Assam, PIN – 781314 (DOB – 01.01.1998) reported a recruitment center Alamganj (Suparighat), P.O.- Alamganj (Part-IX), Dist- Dhubri (Assam) – 783339 for appearing in PST & PET of above recruitment. During matching of Bio Matric & Photographs of said individual, both did not match in biometric machine. Therefore, it is a case of impersonation”.

5. The learned counsel for the petitioner while urging for quashing the FIR, argues that the investigation is going on and the petitioner has not committed the offence and investigation will reveal that he has not used any wrong biometrics, photographs and he has not impersonated in the recruitment process.

6. Whether the petitioner has actually committed the offence as alleged is the subject matter of investigation as the learned counsel has rightly

submitted.

7. From the allegations made in the FIR in the considered opinion of this court, even are taken at their face value and accepted in entirety, make out a prima facie case to constitute an offence under section 420/419/417 of IPC.
8. In the present case in hand, reading the F.I.R. as a whole, it cannot be said that no case is made out. Therefore, in view of the settled proposition of law, this Court cannot exercise its jurisdiction under Section 482 of the Cr.P.C. to quash an FIR.
9. At the same time, the argument advanced by the learned counsel for the petitioner is a subject matter of investigation. If the fact narrated by the petitioner is correct and the investigation is concluded in that line, invariably the investigating officer will have to file the Closure Report. Therefore, at this stage, this Court on the disputed fact that the petitioner has not impersonated himself cannot quash the F.I.R., and stall the investigation.
10. In view of the aforesaid, this criminal petition stands dismissed.

JUDGE

Comparing Assistant