

GAHC010117142023



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

Case No. : Crl.Pet./521/2023

SAHEB KHAN @ SAHEB KHA
S/O LATE ENGRAJ KHAN @ LATE ENGRAJ KHA,
R/O VILL AND P.O. PALHAJI, UNDER BARPETA POLICE STATION IN THE
DIST. BARPETA, ASSAM
PIN-781309

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:ELOWARA AHMED
W/O LT. SURPAN ALI
R/O VILL- GAREMARI GAON
P.S. AND DIST. BARPETA
ASSAM
PIN-78130

Advocate for the Petitioner : MR. M HUSSAIN
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

11.10.2023

Heard Mr. A.Z. Ahmed, learned counsel for the petitioner; Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent No. 1; and Mr. S.N. Adhyapak, learned counsel for the respondent No. 2.

2. In this petition, under Section 482 of the Cr.P.C., the petitioner namely, Saheb Khan @ Saheb Kha has prayed for quashing the charge sheet No. 1043, dated 12.10.2022, arising out of Barpeta PS Case No. 2191/2021, under Sections 120[B]/ 147/ 148/ 447/ 325/ 379/ 302 of the IPC, corresponding to PRC Case No. 1371/2022, pending before the learned CJM, Barpeta.

3. It is to be noted here that the aforementioned case has been registered on the basis of one FIR lodged by one Elowara Ahmed, on 10.10.2021. The essence of allegations made in the FIR is that on 09.10.2021, at about 7:30 am, some accused namely, Taher Ali; Sahar Ali; Yeasin Ali; Tajen Ali; Mamud Ali; Jahangir Ali; Habel Uddin; Sahidul Islam; Pandit Ali; Surat Ali; Nurmohammad Ali; Sabia Khatun; Hikmot Ali; Jalal Uddin; Jahidul Islam; Rupchan Ali; Lalchan Mia; Dudu Mia; Somej Uddin; Roham Ali; Jafar Ali; Aminul Hoque; Saiful Islam; Nazirul Islam; Sajahan Ali; Abdul Awal; Aminul Islam; Awal; Jahangir; Sattar Ali @ Atowar Rahman; Ruhul Amin; Saheb Khan, being armed with arms, entered into the compound of the informant and caused mischief of her house and also assaulted her husband with bamboo stick and axe, over his head and as a result, her husband Surpan Ali and also assaulted her brother-in-law Abdul Jalil, who also died on the spot.

4. It is to be noted here that upon the aforementioned FIR the Officer In-Charge of Barpeta Police Station has registered a case being Barpeta PS Case No. 2191/2021, under Sections 120[B]/ 147/ 148/ 447/ 325/ 379/ 302 of the IPC and carried out investigation and after completion of the investigation, the IO had laid charge sheet, being charge sheet No. 1043, dated 12.10.2022, against the accused persons including the present petitioner. It is also to be noted here that upon the said charge sheet, the learned court below has taken cognizance of the offence under Sections 120[B]/ 147/ 148/ 447/ 325/ 379/ 302

of the IPC and issued process to the accused persons.

5. Mr. Ahmed, learned counsel for the petitioner submits that though the name of the petitioner finds mention in the FIR, yet, no overt act is attributed in the FIR against the petition and there is no whisper of any allegation in the charge sheet and none of the witnesses have implicated the petitioner with the offence alleged and that the petitioner is innocent and no way involved with the offence alleged in the FIR and therefore, it is contended to allow the petition, by quashing the charge sheet No. 1043, dated 12.10.2022.

6. On the other hand, Mr. Borthakur, learned Addl. P.P., by referring to the statement of the witnesses, recorded under Section 161 Cr.P.C., as well as the statement of the co-accused, submits that there are sufficient incriminating materials against the accused and that the case was registered under Sections 120[B]/ 147/ 148/ 447/ 325/ 379/ 302 of the IPC and that this is not a fit case to exercise the extraordinary power under Section 482 of the Cr.P.C. and therefore, it is contended to dismiss the petition.

7. Whereas, Mr. Adhyapak, learned counsel for the respondent No. 2 also submits that the petitioner has been implicated by the witnesses examined by the IO, with the offences alleged in the FIR and that he is the main culprit of the case and therefore, it is contended to dismiss the petition.

8. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record and also perused the scanned copy of the record received from the learned court below.

9. It is to be noted here that, in the case of **Gian Singh vs. State of Punjab**, reported in **[2012] 10 SCC 303**, the Hon'ble Supreme Court has held as under :-

“61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under [Section 320](#) of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim’s family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like [Prevention of Corruption Act](#) or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

10. It is also to be noted here that the same view is reiterated in the case of **Narinder Singh vs. State of Punjab**, reported in **[2014] 6 SCC 466** and also in the case of **Neeharika Infrastructure Pvt. Ltd. vs. State of**

Maharashtra and Ors., reported in **[2021] SCC Online SC 315**.

11. Thus, it is clear from the ratio laid down in the cases mentioned herein above that the extraordinary power under Section 482 of the Cr.P.C. cannot be exercised to quash the criminal cases which are heinous and serious involving mental depravity or offences like murder, rape, dacoity etc. even though the victim or victim family and the offender have settled the disputes.

12. Here in this case there is no settlement between the victim or victim's family with the petitioner. Moreover, the present petitioner is charge sheeted under Sections 120[B]/ 147/ 148/ 447/ 325/ 379/ 302 of the IPC and the offence under Section 302 of the IPC is heinous and serious in nature, where punishment is prescribed is either death or imprisonment for life. Further, from the scanned copy of the record received from the learned court below and also from the statement of the witnesses examined by the IO, during the course of investigation, it appears that there are sufficient materials to show the complicity of the present petitioner with the offence alleged in the FIR.

13. In view of above and also in view of the ratio laid down in the cases of **Gian Singh** [Supra]; **Narinder Singh** [Supra]; and **Neeharika Infrastructure Pvt. Ltd.** [Supra], this Court is of the considered opinion that this is not a fit case, where the power under Section 482 of the Cr.P.C. can be exercised to quash the charge sheet laid against the petitioner.

14. Accordingly, the petition stands dismissed.

JUDGE

Comparing Assistant