

GAHC010192252017



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

Crl.Pet./886/2016

MONINDRA NATH ROY and ANR.
S/O LT. HARAKANTA ROY

2: SMT. MONORAMA MONDAL ROY
W/O SRI MONINDRA NATH ROY BOTH RESIDENTS OF QR. NO. I/A1
MAIN CAMPUS
COLLEGE OF VETERINARY SCIENCE
KHANAPARA
DIST. KAMRUP
ASSAM.
VERSUS

THE STATE OF ASSAM and ANR.

2:SMTI. KUSUM NATH
W/O SRI PABINDRA NATH SAUKUSHI
NEAR GODREJ FACTORY KAMRUP M
GUWAHATI.

Advocate for : MR.N NATH

Advocate for : PP

ASSAM appearing for THE STATE OF ASSAM and ANR.

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

JUDGMENT

Date : 15-03-2023

1. Heard Mr. B. Das, learned counsel for the petitioners and Mr. K.K. Das, learned Addl.

P.P. for respondent No. 1.

2. The petitioners X and Y have filed an application under Section 482 of the Code of Criminal Procedure, 1973 (Cr.PC for short) for quashing the FIR registered as Basistha P.S. Case No. 990/2015 dated 24.08.2015 lodged by the respondent No. 2. The petitioners have also prayed to quash the charge-sheet dated 31.01.2016.

3. The FIR unfolds that the petitioners assaulted the informant 'X' and hurled abuses at her. They smashed her mobile phone. The petitioner No. 1 also made advances towards the informant 'X', to which she did not respond and the petitioner had also disconnected her electricity and water supply on 23.08.2015. The Basistha P.S. Case No. 990/2015 was registered and investigation commenced, and finally Charge Sheet No. 17/16 dated 31.01.2016 was laid against both the petitioners after completion of investigation. Cognizance was taken vide Order dated 19.07.2016 and the petitioner has also prayed for quashing the order of cognizance.

4. It is submitted on behalf of the petitioners that the petitioner No. 1 is presently serving as Professor in the Department of Extension Education, Department of Veterinary Science, Govt. of Assam whereas the petitioner No. 2 is working as a Subject Matter Specialist on contractual basis under Agricultural Technology Management Agency, Department of Agriculture and she is posted at Mangaldoi in the district of Darrang.

5. The petitioner No. 1 has purchased a plot of land along with an Assam Type house standing thereon. The informant's husband acted as a middleman in the transaction. Even

before execution of the formal Sale Deed evidencing in transfer of the plot of land in favour of the petitioner, possession of land was handed over to petitioner No. 1 in the month of November, 2014 on payment of substantial amount of the sale consideration. On delivery of such possession, the informant's husband requested the petitioners to let out the Assam Type house on rent for a couple of months till finalization of an alternative suitable rented accommodation. The petitioners agreed to let their house on a monthly rent of Rs. 3,000/- to informant's husband, and he was residing in the afore-mentioned premises with his family since December, 2014. It is submitted that this house was let out on rent so that the informant's family could tide over the sudden crisis of finding a suitable accommodation. However, even after lapsation of the period as agreed upon by both the parties, the informant's family did not vacate the accommodation that was taken rent. The repeated requests of the petitioners to vacate the premises fell into deaf ears. On 23.08.2015 a verbal altercation erupted between the informant's husband and the petitioners which fuelled the informant to lodge the FIR on 24.08.2015. The FIR has been falsely lodged with malafide with false accusation. The informant is arrayed as respondent No. 2 in this case.

6. It is alleged that the trial Court in a mechanical manner issued processes to the petitioners vide order dated 19.07.2016 by taking cognizance. The petitioners entered appearance on 22.09.2016 and a next date was fixed for consideration of charge. On the next date i.e. on 01.10.2016 non-bailable warrant was issued as the petitioners remained unrepresented due to error in noting down the next date. When the inadvertent error was noticed by the petitioners they appeared before the trial Court on 18.10.2016 with prayer to recall the NBWA which was recalled by the learned trial Court. It is submitted that the learned Chief Judicial Magistrate misconceived and misconstrued the entire matter. The allegations

made in the FIR and the evidence garnered by the Investigating Agency does not make out a case against the petitioners. Section 294 IPC is not attracted as the incident did not occur in a public place. There is no whisper in the FIR as well as in the charge-sheet to infer that hurt was caused to the informant for extortion of any property to bring the petitioners under the fold of Section 327 IPC. The ingredients of Section 427 IPC are ex-facie lacking. The charge-sheet was prepared in gross infraction of provision enshrined under Section 173(2) of the Cr.PC and it was not in conformity of the provision. The charge-sheet was filed by a subordinate officer which is bad in law.

7. A perusal of the copy of the charge-sheet reveals that the charge-sheet was forwarded by the Officer-in-charge. The learned Addl. P.P. has drawn attention towards the charge-sheet which was submitted by the Investigating Officer and endorsed by the Officer-in-charge. It is true that this case is also a dispute of a civil nature which has been given a criminal colour. The learned counsel for the petitioner was silent on the allegations regarding Section 354A IPC against the petitioner No. 1.

8. It is true that the allegation of hurling abuse in a public place was not made out, but at the same time it cannot be said that no case under Sections 327 and 354A IPC exists against the petitioner. This is not a case where possibility of conviction appears to be remote and bleak. It is true that no reasons were assigned while cognizance was taken but as per Section 460 Cr.PC this irregularity does not vitiate the proceeding. Section 460(e) Cr.PC envisages that taking cognizance of an offence under Clause-a or Clause-b of sub-section 1 of Section 190 Cr.PC does not vitiate a proceeding. In this case the respondent No. 2 is aggrieved by the conduct of the petitioners. At this juncture it is not discernable if the parties had settled their dispute. It is also not discernable if this case will entail acquittal. In view of my foregoing

discussions, at this juncture, the provisions of Section 482 Cr.PC is hereby not invoked.

Petition is rejected at this stage.

Send back the LCR.

JUDGE

Comparing Assistant