

GAHC010144332021



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

Case No. : Crl.Pet./509/2021

ABDUL SUKUR
S/O LATE FAIZUL HAQUE
R/O VILL- OKSEK GAON
P.O. BARBALI
P.S. MURAJHAR
DIST. HOJAI, ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE PP, ASSAM

2:THE INVESTIGATING OFFICER
MURAJHAR P.S.
DIST. HOJAI
ASSAM
PIN-782445

3:NAZMA BEGUM
W/OLT. ABDUL BASIT
R/O OKSEK GAON
P.S. MURAJHAR
DIST. HOJAI
ASSAM
PIN-78244

Advocate for the Petitioner : MR F K R AHMED

Advocate for the Respondent : MR. B SHARMA(ADDL.PP, ASSAM)

**BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

JUDGMENT

Date : 10-05-2023

1. Heard Mr. F.K.R. Ahmed, learned counsel for the petitioner. Also heard Mr. B. Sharma, learned Addl. P.P. for the respondent Nos. 1 and 2 (State) and Mr. S.Y. Ahmed, learned counsel for respondent No. 3.

2. The petitioner Abdul Sukur has filed an application under Section 482 of the Code of Criminal Procedure, 1973 (Cr.PC for short) read with Section 397 Cr.PC for quashing the impugned order dated 11.08.2021 passed in Case No. PRC 1109(H)/2021 arising out of Murajhar P.S. Case No. 223/2021 passed by the learned Chief Judicial Magistrate (CJM for short) Sankardev Nagar, Hojai and for quashing and setting aside the Charge Sheet No. 238(A)/2021 dated 18.08.2021 forwarding seven (7) accused under Sections 147/302/325 of the Indian Penal Code (IPC for short).

3. The FIR unfolds that Saifuddin and Kala Miya indulged in eve teasing and the victim was 'X'. The informant 'Y' was the aunt of the victim. When the victim informed the informant of being harassed by Saifuddin and Kala Miya, the informant's husband took the victim 'X' to the house of Saifuddin and Kala Miya and there was a discussion between the guardians but the youths Saifuddin and Kala Miya denied of having harassed the victim 'X'. A fight broke out between both the sides and Abdul Wahid, Abdul Sohid and Mustafa Ahmed who were also a part of the group assaulted the informant's husband with a wooden plank. Thereafter the other accused named in the FIR joined in. The informant's young child and nephew tried to save her husband but unfortunately her husband succumbed to his injuries. The victim's

husband who died in the incident was Abdul Basit.

4. It is submitted on behalf of the petitioner that he is an indigenous person Below the Poverty Line (BPL). He was not involved in the incident. He was a passerby but unfortunately his name was mentioned in the FIR. When charge-sheet was laid, he was exonerated of the charges but vide the order dated 11.08.2001, the CJM of Hojai, Sankardev Nagar by exercising his power beyond jurisdiction, compelled the Investigating Officer (IO for short) to file additional charge-sheet involving the petitioner. Vide charge-sheet No. 238/2021 dated 31.07.2021, the petitioner was exonerated of all the charges as the IO could not garner any incriminating materials against the petitioner. The additional charge-sheet is Charge Sheet No. 238(A)/2021 drawn on 18.08.2021 by the IO under compelling circumstances. It is submitted that the order dated 11.08.2021 is not sustainable in law, as it was passed by inflagrant transgression of sub-section (8) of Section 173 Cr.PC.

5. It is also submitted that the respondent No. 2 who conducted the investigation submitted the former charge-sheet No. 238/2021 sending the accused for trial, but seven (7) accused which also includes the petitioner were not sent up for trial as they have not been implicated by the eye-witnesses whose statements were recorded under Sections 161/164 Cr.PC. The respondent No. 3 through the Additional Public Prosecutor filed a petition being petition No. 1527/2021 on 05.08.2021 under Sections 173(8) of the Cr.PC seeking further investigation of the case on the ground that some material eye-witnesses were not cited as witnesses when the formal charge-sheet was submitted. A photocopy of the petition is marked as Annexure-D. Vide order dated 09.08.2021, the CJM directed the Superintendent of Police (SP), Hojai to furnish a report with regard to the case and posted the petition for hearing and order on 11.08.2021. Pursuant to the order dated 09.08.2021, the respondent

No. 2 prepared a report relating to Murajhar P.S. Case No. 223/2021 and submitted the same through the SP, Hojai before the court of the learned CJM. A photocopy of the report is appended along with the petition and is marked as Annexure-F. It is submitted that the three (3) witnesses namely, Musstt. Hasina Begum, Md. Burhanuddin, Md. Kutubuddin have mentioned the names of nine (9) accused persons who were sent up for trial but they have not at all incriminated the petitioner. Despite such report by the IO, the learned courts without considering the report, passed the impugned order dated 11.08.2021. It is submitted that the respondent No. 2 i.e. the IO was compelled to file a petition on 11.08.2021 before the Court seeking further investigation. It is submitted that after filing the said petition under compelling circumstances by respondent No. 2, the learned Court below passed the impugned order dated 11.08.2021 granting leave to respondent No. 2 for further investigation of the case and directed him to submit additional charge-sheet within a week on or before 18.08.2021.

6. This compelled the respondent No. 2 to submit the Additional Charge Sheet No. 238(A)/2021 dated 18.08.2021, forwarding the seven (7) accused including the petitioner, who were earlier exonerated from all charges.

7. Vide orders dated 18.08.2021 and 19.08.2021 non-bailable warrant was issued against the petitioner and the other accused.

8. Per contra the learned Addl. P.P. for respondent Nos. 1 and 2 and the learned counsel for respondent No. 3 have submitted that there is no bar for further investigation under Section 173(8) of the Cr.PC. The petitioner was named in the FIR and charge-sheet has been laid against him in connection with a serious offence where a human being was eliminated.

Here the petitioner was not forwarded for trial. The informant filed an application as she was aggrieved by the earlier charge-sheet No. 238/2021 dated 31.07.2021.

9. I have carefully perused the scanned copy of the LCR and the documents annexed with the petition. Annexure-D is the petition dated 09.08.2021 filed by the informant. The informant was aggrieved as the petitioner along with seven (7) accused were being exonerated by the IO and the informant through her petition has prayed for further investigation as the present petitioner was not sent up for trial. Vide order dated 09.08.2021, the learned CJM fixed a date for hearing the petition No. 1527/2021 (Annexure-D). Annexure-F is the factual report which clearly reveals that the witnesses Musstt. Hasina Begum, Md. Burhanuddin, Md. Kutubuddin have not mentioned the names of the petitioner and other seven (7) accused who were not sent up for trial and so charge-sheet No. 238/2021 dated 31.07.2021 was submitted against nine (9) accused-persons who are enlisted in the charge-sheet. On the same date the IO has filed an application dated 11.08.2021 marked as Annexure-G with prayer for further investigation as subsequent to filing of the earlier charge-sheet No. 238 dated 31.07.2021, some material facts relevant to the instant case has emerged necessitating further investigation. Vide order dated 11.08.2021 the petition No. 1527/2021 filed by the informant through the learned Addl. P.P. was allowed. The order of the learned CJM is reproduced herein below verbatim:-

“Heard both the sides in respect to the petition No. 1527/2021 filed by learned Additional P.P.

It is submitted by the IO of the case that, subsequent to the filing of chargesheet, some material fact relating to the case has indeed come up which necessitate further investigation and filing of additional chargesheet and accordingly prayed for according a leave to further investigate into the case and submit additional chargesheet.

Perused the case record.

Considering the matter in entirety, the prayer of I/O is allowed with a direction to complete the investigation and submit report within one week from today.

Fix: 18.08.2021 for report."

10. Thereafter the charge-sheet refuted by the petitioner was laid. It is averred by the petitioner that it is well settled that when a power under sub-section (8) of Section 173 Cr.PC is exercised the Court ordinarily should not interfere with the statutory powers of the Investigating Agencies. The Court cannot issue direction to investigate the case from a particular angle. The report submitted by the respondent No. 2 that the eye-witnesses have not incriminated the petitioner was ignored by the Court. The Court also compelled the respondent No. 2 to file application for seeking further investigation which resulted in the subsequent and supplementary charge-sheet.

11. On the contrary, the learned counsel for the respondents have laid stress in their argument that it is presumed by the petitioner that the respondent No. 2 was compelled to file the petition, marked as Annexure-G with prayer for further investigation. The petition was moved by the IO on his own volition without pressure from any quarter.

12. The Section 173(8) reads as follows:

"Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."

13. In the instant case the order dated 11.08.2021 was passed by the learned CJM when the IO submitted the application marked as Annexure-G. The order clearly reflects that the IO of the case has submitted that subsequent to the filing of charge-sheet, some material facts relating to the case has emerged necessitating further investigation and filing of additional charge-sheet and thereafter the prayer of the IO was allowed. Leave was accorded to the IO for further investigation of the case and submission of additional charge-sheet. The petition No. 1527/2021 was heard but the order does not reflect that this petition filed by the informant was allowed. The order clearly reflects that the prayer of the IO was allowed and the IO was given a direction to complete an investigation and submit a report within 1 week from 11.08.2021. Thus it cannot be held that the investigation was directed by the learned CJM from a particular angle. It is thereby held that the Magistrate had not transgressed and acted beyond jurisdiction. The orders were passed within the realm of Section 173 (8) Cr.PC and the charge-sheet was also laid as per law. Moreover the accused was named in the FIR and he is alleged of having lynched a man to death.

14. It has been held by the Hon'ble Supreme Court in *State Through Central Bureau of Investigation v. Hemendhra Reddy and Another*, 2023 SCC Online SC 515 that –

“We may summarise our final conclusion as under:

(i) Even after the final report is laid before the Magistrate and is accepted, it is permissible for the investigating agency to carry out further investigation in the case. In other words, there is no bar against conducting further investigation under Section 173(8) of the Cr.PC after the final report submitted under Section 173(2) of the Cr.PC has been accepted.

(ii) Prior to carrying out further investigation under Section 173 (8) of the Cr.PC it is not necessary that the order accepting the final report should be reviewed, recalled or quashed.

(iii) Further investigation is merely a continuation of the earlier investigation, hence it cannot be said that the accused are being subjected to investigation twice over. Moreover, investigation cannot be put at par with prosecution and punishment so as to fall within the ambit of Clause (2) of Article 20 of the Constitution. The principle of double jeopardy would,

therefore, not be applicable for further investigation .

(iv) There is nothing in the Cr.PC to suggest that the court is obliged to hear the accused while considering an application for further investigation under Section 173(8) of the Cr.PC."

15. I have scrutinized the scanned copies of the LCR of this case at hand. The statements of witnesses under Section 161 Cr.P.C. are not brought to the fore. This is a case of serious nature. Charge-sheet has been laid against the petitioner under Sections 147/302/325 IPC. At this preliminary stage, the charge-sheet cannot be questioned. Charge-sheet was laid against the petitioner after a thorough investigation. The petitioner is also named in the FIR. The inherent power under Section 482 Cr.PC has to be used in rarest of rare cases and in such cases where the FIRs appear to be so absurd or inherently improbable. No malafide is discernable in the impugned order. The informant has lost her husband and she has indeed named the petitioner in the FIR. I am hesitant to quash the order dated 11.08.2021 and the charge-sheet No. 238(A)/2021 dated 18.08.2021.

16. Petition is rejected.

17. No order as to costs.

JUDGE

Comparing Assistant