

GAHC010148792022



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

Case No. : Crl.Rev.P./390/2022

AZIAR RAHMAN
S/OLT. SHARIF UDDIN
VILL- DAMPUR PART-II
P.O. ALOMGANJ
P.S. KAZIGAON
DIST. KOKRAJHAR (BTR), ASSAM

VERSUS

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

2:ABUBOKKAR SIDDIQUE
H/C
S/O LT. MOZIBAR RAHMAN
VILL- ALOMGANJ PT.I
P.S. GAURIPUR
DIST. DHUBRI
ASSAM

3:AZIAR RAHMAN
S/O SARPAT ALI
VILL- DAMPUR PT.I
P.O. ALOMGANJ
P.S. KAZIGAON
DIST. KOKRAJHAR (BTR)
ASSA

Advocate for the Petitioner : MR. J AHMED

Advocate for the Respondent : PP, ASSAM

:::BEFORE:::
HON'BLE MRS. JUSTICE MITALI THAKURIA

ORDER (ORAL)

19.07.2023

Heard Mr. J. Ahmed, learned counsel for the petitioner. Also heard Mr. S. Nawaz, learned counsel for the respondent No. 3 and Mr. P. S. Lahkar, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 397 *read with* Section 401 of the Code of Criminal Procedure for quashing the impugned order dated 05.07.2022, passed by the learned Additional Chief Judicial Magistrate, Kokrajhar, in PRC No. 569/2021 (G.R. No. 787/2021).

3. It is submitted by the learned counsel for the petitioner, Mr. J. Ahmed, that the petitioner is an inhabitant of Village Dampur Part-II, P.O. Alomganj, P.S. Kazigaon, District Kokrajhar (BTR), Assam, and he is the Assistant Teacher and presently discharging his duty in Silairpar LP School. The name of the father of the petitioner is Lt. Sharif Uddin and in all his educational documents, Pan Card and Adhar Card, his father's name is specifically mentioned as Sharif Uddin. But, suddenly, the petitioner received a summon from the Court of learned Additional Chief Judicial Magistrate, Kokrajhar, in connection with PRC No. 569/2021 (G.R. No. 787/2021), under Sections 420/468/369/270/271 of the Indian Penal Code, asking him to appear before the Court on 30.05.2022. After receiving the

summon, the petitioner got shocked and surprised to learn that he is not the accused in connection with the aforesaid case. However, after receiving the summon, he appeared before the Court and he was, accordingly, allowed to go on bail. Thereafter, an enquiry was made and it has come to the knowledge of the petitioner that one Abubokkar Siddique lodge and F.I.R. on 28.06.2021 alleging that some buses were illegally carrying labours from Dhubri side towards Guwahati along with other allegations. Accordingly, he came to know that the police submitted the Charge-Sheet against some other accused persons also including one Aziar Rahman, S/o Sarpat Ali. He then filed a petition before the learned Additional Chief Judicial Magistrate, Kokrajhar, but the same was rejected vide order dated 05.07.2022 and hence, the present petition has been filed by the petitioner.

4. Mr. S. Nawaz, learned counsel for the respondent No. 3, has submitted that after receiving the notice in connection with PRC No. 569/2021 (G.R. No. 787/2021), the respondent No. 3- Aziar Rahman, S/o Sarpat Ali, Village Dampur Part-I, P.O. Alomganj & P.S. Kazigaon, District Kokrajhar (BTR), Assam, appeared before the Court and accordingly filed an affidavit admitting that he is the accused in connection with the aforesaid case, however it is stated that he is innocent. Further it is submitted that the I.O. has wrongly mentioned the name of the village as Dampur Part-II instead of Dampur Part-I.

5. After hearing the submissions of learned counsels of both sides and also considering the entire circumstances of the case, it is seen that there was a mistake on the part of the I.O. while submitting the Charge-Sheet and as the name of both the present petitioner and the respondent No. 3 are same, the

present petitioner was wrongly summoned in this case and accordingly appeared before the learned Additional Chief Judicial Magistrate, Kokrajhar, with a petition for his release.

6. In view of above and also in view of the submission made by the learned counsel for the respondent No. 3, Mr. S. Nawaz, I find it justified to release the present petitioner from the PRC No. 569/2021 (G.R. No. 787/2021), pending before the Court of learned Additional Chief Judicial Magistrate. Accordingly, the impugned order dated 05.07.2022, passed by the learned Additional Chief Judicial Magistrate, Kokrajhar, in PRC No. 569/2021 (G.R. No. 787/2021), is hereby set aside and quashed in respect of the rejection of prayer for releasing the present petitioner from the said PRC No. 569/2021 (G.R. No. 787/2021). Further, the respondent No. 3- Azia Rahman, S/o Sarpat Ali, Village Dampur Part-I, P.O. Alomganj & P.S. Kazigaon, District Kokrajhar (BTR), Assam, is hereby directed to appear before the learned Additional Chief Judicial Magistrate, Kokrajhar, within 15 (fifteen) days from the date of this order. The learned Additional Chief Judicial Magistrate will accordingly pass the release order of the present petitioner.

7. In terms of above, this criminal revision petition stands disposed of.

JUDGE

Comparing Assistant