

GAHC010150922021



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

Case No. : Crl.Pet./519/2021

BINDITA SEN
W/O LATE DOLON SEN
R/O NATUNPARA, WARD NO. 10,
P.S. BASUGAON
DIST. BONGAIGAON, ASSAM
PIN- 783382

VERSUS

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

2:NOBIN CHANDRA SEN @ BULU
S/O LATE NAKUL CHANDRA SEN
R/O SUBHASH NAGAR
WARD NO. 1

P.S. BASUGAON

DIST. CHIRANG
ASSAM
PIN-78339

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : PP, ASSAM

:: PRESENT ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Petitioner : Mr. R.C. Das,
Advocate.

For the Respondents : Mr. S. Ahmed,
Advocate.

Date of Hearing : 09.05.2023.

Date of Judgment : 11.05.203.

JUDGMENT AND ORDER (CAV)

Heard Mr. R.C. Das, the learned counsel appearing for the petitioner. Also heard Mr. S. Ahmed, the learned counsel representing the respondents.

2. This is an application under Section 482 of the CrPC praying for quashing the *charge sheet* dated 29.05.2021 (arising out of Basugaon Police Station Case No.28/2021 under Sections 448/294/352 and 387 of the IPC).

3. On 05.05.2021, the petitioner Smti. Bindita Sen had lodged an FIR before police alleging the following facts-

Late Dolan Sen, the deceased husband of Smti. Bindita Sen was running a shop called "Maa Sarada Dashakarma" at Basugaon. Late Dolan Sen died in a motor accident. After his death, his elder brother Shri Nabin Sen promised Smti. Bindita Sen that she would run that shop on her behalf. It is alleged that Nabin Sen subsequently refused to vacate the shop, though in the meantime, Bindita Sen had got that shop officially

transferred to her name.

4. On 06.05.2021, Nabin Sen lodged an FIR before police alleging that on 05.05.2021 at about 1 P.M., Smti. Bindita Sen along with some other women had forcefully entered into his shop “Maa Sarada Dashakarma” and ransacked the shop. It is alleged that the group of women also took away cash amount from the shop.

5. The FIR lodged by Smti. Bindita Sen ended up in filing of the Final Report, whereas the FIR lodged by Shri Nabin Sen ended up in filing of the *charge sheet*. Smti. Bindita Sen has filed this application to quash the said *charge sheet*.

6. I have considered the submissions made by the learned counsels of both sides.

7. The guidelines for exercising the power under Section 482 of the CrPC has been laid down by the Supreme Court in *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335: AIR 1992 SC 604. Paragraph 102 of this judgment is quoted as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

8. The power under Section 482 of the CrPC is the inherent power of the High Court for preventing the abuse of the process of the court. There is no doubt that the FIR dated 06.05.2021 is a counter blast of the occurrence dated 05.05.2021. In the FIR dated 06.05.2021, it is alleged that the group of women had taken away cash amount from his shop. But the quantity of cash amount taken away by the group of the women has not been mentioned. Even then, the charge sheet has been filed under Section 387 of the Indian Penal Code. I am of the considered opinion that there is no possibility of conviction in this case. So, allowing the criminal proceeding to continue in a trial court, would be nothing but an abuse of the process of the court. Therefore, the criminal petition is allowed.

9. The *charge sheet* dated 29.05.2021 (arising out of Basugaon Police Station Case No.28/2021 under Sections 448/294/352 and 387 of the IPC) is quashed.

10. The criminal petition is disposed of accordingly.

The case diary shall be returned.

JUDGE

Comparing Assistant