

GAHC010154742022



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

Case No. : Crl.Pet./763/2022

MEHBUB RAHMAN BARBHUIYA @ BAPPI BARBHUIYA
S/O LATE SAFIQR RAHMAN BARBHUIYA
R/O SUNABARIGHAT PART-I,
P.S. SILCHAR, DIST. CACHAR, ASSAM

VERSUS

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

2:DALIM HUSSAIN MAJUMDAR
S/O LATE NUR UDDIN MAJUMDAR
R/O SONABARIGHAT PART-I

P.S. SILCHAR
PIN-788013
DIST. CACHAR
ASSA

Advocates for the petitioner : Mr. Z. Kamar, Sr. Cl.

Mr. N. H. Laskar

Advocates for the respondents : Mr. K. K. Parasar, Addl. P.P., Assam

Mr. D. Chakraborty, R- 2

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

Date of hearing : 24.01.2023

Date of Judgment & Order : 13.03.2023

JUDGMENT & ORDER (CAV)

Heard Mr. Z. Kamar, learned Senior counsel assisted by Mr. N. H. Laskar, learned counsel for the petitioner. Also heard Mr. K. K. Parasar, learned Addl. PP for the State of Assam and Mr. D. Chakraborty, learned counsel for the respondent No. 2/informant.

2. This is an application under Section 482 Cr.P.C. for quashing of the FIR of Silchar P.S. Case No. 3238/2021 registered under Sections 147/302/427 IPC (corresponding to G. R. Case No.5319/2021).

3. The brief facts of the case is that on 25.09.2021, one Dalim Hussain Majumdar, informant of this case, lodged one F.I.R. before the Officer-in-Charge of Silchar P.S. alleging *inter alia* that his elder brother- Jasim Uddin Majumdar @ Bulbul Majumdar (deceased), who was having a shop-room at Sonabarighat Bazar, the accused along with other 20/25 persons came to his said shop-room and started demolishing the shop-room and the Mobile tower, situated attached to the shop, at around 5.30 am. When the deceased rushed to the place of occurrence, whereupon the accused persons assaulted him severely. On receipt of the information, the informant, along with some others, went to the place of

occurrence and found his brother (deceased) in injured condition and somehow they recovered the brother (deceased) from the clutches of the accused and on being asked, he stated that the accused No. 1, i.e. the present petitioner, assaulted him on his chest. As his physical condition was very critical, he was immediately taken to Silchar Medical College and Hospital (SMCH) but the Doctor of SMCH declared him dead and accordingly, the FIR was lodged against the accused persons.

4. The petitioner made an enquiry in the SMCH regarding the cause of the death of deceased- Jashim Uddin Mazumder @ Bulbul Mazumder and accordingly found that the type of patient was registered as NON MLC, which infers that there was no cause of injury or ailment which requires the investigation by law enforcing agencies. After treatment at SMCH, he was brought back to his own house and after some time he died in his own house out of diarrhea, diabetes and chronic disease. There was no registration in the Ghungur Police out post which is adjacent to SMCH when the injured was brought to the Hospital for treatment. Thus, the F.I.R. is lodged against the accused persons with some false and concocted story only to harass the petitioner, though the death of the deceased was due to diarrhea and other diseases. Further, the mother of the petitioner filed an R.T.I. Application on 27.12.2021 before the Public Information Officer of SMCH seeking the report for cause of death of the deceased, wherefrom it reveals that the victim was declared dead from the Doctor of SMCH on 25.09.2021. It was also revealed from the report that there was no entry in the MLC Register Book nor there was any entry in the NON MLC of the concerned Department of SMCH. When any injured patient is admitted in any Medical College, it is genuinely informed in the Police Station for G.D. Entry etc. But, here in this case, the brother of the

informant (deceased) was admitted in the hospital as NON MLC patient. However, as per the statement made in the F.I.R., the accused No. 1/ the petitioner assaulted the deceased on his chest and he sustained grievous injury and he was declared dead by the Hospital Authority of SMCH. But the Death Certificate was issued by Sonabarighat Subsidiary Health Centre, and when the deceased was declared dead at SMCH, then whether the Sonbarighat (S.H.C.) has any authority to issue Death Certificate of the said person. Thus, entire F.I.R. is projecting a false and manipulated F.I.R. which needs to be set aside and quashed.

5. Further, it is stated in the F.I.R. that there were about 20/25 members of person who demolished the Mobile Tower on the day of the alleged incident, i.e. on 25.09.2021, but no such F.I.R. was lodged by the authority of the Mobile Tower Company and except the petitioner, no other persons are named in the F.I.R., nor any one was arrested by the Police till date. Thus, the allegation made in the F.I.R. is totally false and fabricated and manufactured one.

6. The death of the informant's brother was normal and natural death as the deceased was suffering from various illness before his death. On 25.09.2021, the health condition of the deceased was not well and for which the informant took him to SMCH and also took a token as OPD Token No. 55 which was otherwise termed as NON MLC patient. After his treatment, the deceased was released from the Hospital and was brought back to his home and thereafter he died due to his ailment he was suffering from. The F.I.R. has been lodged in a planned manner against the present petitioner and the informant is the master mind of the said planning only with a *mala fide* intention to grab the disputed land of the mother of the petitioner, who is the absolute owner of the land

measuring about 3 ½ Khatas vide 2nd R.S. Patta No.1, Dag No.74/75 of Mouza-Sonabarighat, Porgona-Sonapur, in Cachar District. In this context, T.S. No.51/2009 & T.S. No. 119/2009 are also pending between the informant and the mother of the petitioner.

7. The informant and his brother want to grab the land of the petitioner's mother putting him behind the bar, though the civil case is still pending before the learned Civil Judge as well as learned Munsiff at Cachar, Silchar. The impugned F.I.R. is lodged with false and concocted story after the death of Jashim Uddin Mazumder so that they can easily grab the land of the petitioner's mother. If the criminal proceeding is allowed to be continued, it would be a futile exercise and mere wastage of precious time of the Court. The death of the brother of the informant was a natural death where they gave a colour of murder and the false case is lodged against the petitioner.

8. Accordingly, it is prayed to set aside and quash the F.I.R., which is registered as P.S. Case No. 3238/2021, under Sections 147/302/427 of the Indian Penal Code, corresponding to G.R. Case No. 5319/2021.

9. In this context, the learned Additional Public Prosecutor, Mr. K. K. Parasar, has submitted that the investigation is still in progress and there is sufficient evidence collected by the I.O. to proceed the case against the present petitioner. Further, the post-mortem report is very specifically mentioned that the deceased died due to coma resulting from the injury sustained in the head and all the injuries were anti-mortem in nature and caused by blunt trauma and the approximate time of death was also mentioned as 06-12 hours. More so, as per all the eye witnesses, the present accused/petitioner- Mehbub Rahman

Barbhuiya @ Bappi Barbhuiya assaulted and caused grievous hurt to the deceased, specially on his head. Apart from the witnesses, recorded by the I.O., there is also extra judicial confession available in the Case Diary and considering all these materials in the Case Diary, this is not a fit case where the F.I.R. against the present petitioner can be quashed by invoking the inherent power under Section 482 of the Code of Criminal Procedure and accordingly, the learned Additional Public Prosecutor prayed for dismissal of the same.

10. Mr. D. Chakraborty, learned counsel appearing on behalf of the informant/respondent No. 2, also raised objection and submitted that this is not a fit case for quashing the proceeding under Section 482 of the Code of Criminal Procedure, wherein, the anticipatory bail prayer of the present petitioner was earlier rejected by this Court in 2 (two) occasions considering the incriminating materials in the Case Diary against the present petitioner. More so, from the post-mortem report, it is very much evident that the death was caused due to coma as a result of head injury and all the injuries sustained in the head is also reported to be anti-mortem in nature. Merely on the basis of an R.T.I. Application, it cannot be held that the death was caused due to other illness of the present petitioner. The R.T.I. Report has also not yet been verified and it is a fact that when the injured was brought in the hospital, he was declared death. So, there may not be any registration of this case in the hospital, but the post-mortem report is very specific and cause of death is also specifically mentioned, which is homicidal in nature.

11. In support of his submission, the learned counsel for the respondent No. 2/informant has relied on a decision of the Hon'ble Supreme Court in **Saranya Vs. Bharathi & Anr.**, reported in **(2021) 8 SCC 583**, wherein, in paragraph

No. 13 of the judgment, it has been held as under:

"13. It also appears that The High Court has entered into the appreciation of the evidence and considered whether on the basis of the evidence, the accused is likely to be convicted or not, which as such is not permissible at all at this stage while considering the application under [Section 482](#) Cr.P.C. The High Court was not as such conducting the trial and/or was not exercising the jurisdiction as an appellate court against the order of conviction or acquittal. Therefore, in the facts and circumstances of the case, the High Court ought not to have quashed the chargesheet qua respondent 1 herein – original Accused 2."

12. Further, the learned counsel for the respondent No. 2/informant also cited another decision of Hon'ble Supreme Court in **Rajiv Thapar & Ors. Vs. Madan Lal Kapoor**, reported in **(2013) 3 SCC 330**, and emphasized on paragraph Nos. 30.1 to 30.5, which reads as under:

"30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under [Section 482](#) of the Cr.P.C.:

30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

30.2. Step two: whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three: whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under [Section 482](#) of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused."

13. Accordingly, it is submitted by the learned counsel for the respondent No. 2/informant that from the guideline of the Hon'ble Supreme Court and also from the materials available in the Case Diary as well as the post-mortem report of the deceased and further from the evidence of the eye witness, it is not a fit case where the provision under Section 482 of the Code of Criminal Procedure can be invoked to quash the criminal proceeding.

14. After considering the submissions advanced by the learned counsels appearing for the parties, I have perused the Case Diary, the post-mortem report and other documents available in the record.

15. After considering the materials available in the Case Diary, the gravity of the offence as well as the progress of the investigation and the materials so far collected by the I.O., I find that there are sufficient incriminating materials against the accused/petitioner and it is also seen that considering the incriminating materials, the earlier anticipatory bail applications were also rejected by this Court. More so, from the statement of the eye witness and from the other materials available in the Case Diary, I am of the opinion that this is not a fit case where the inherent power of this Court under Section 482 of the Cr.P.C. can be exercised to quashed the criminal proceeding in G.R. Case No. 5319/2021, arising out of F.I.R. of Silchar P.S. Case No. 3238/2021, under

Sections 147/302/427 of the Indian Penal Code.

16. In the result, I find no merit in this petition, and accordingly, the same stands dismissed. The parties have to bear their own cost(s).

17. Case Diary be returned.

JUDGE

Comparing Assistant