

GAHC010154822022



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

Case No. : Crl.Pet./784/2022

BIPUL MECH AND ANR.
S/O LT. BRITISH MECH
R/O SOUTH KHALIHAMARI
P.O. KADAMONI P.S. DIBRUGARH
DIST. DIBRUGARH, ASSAM,
PIN-786001, PH. NO. 9101468881 (M)

2: SMT. RUSNA BARUAH MECH @ RUSNA BARUAH
W/O SRI BIPUL MECH
R/O SOUTH KHALIHAMARI
P.O. KADAMONI
P.S. DIBRUGARH
DIST. DIBRUGARH
ASSAM
PIN- 78600

VERSUS

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

2:SMT. RAMBHA SHA @ RAMBHAR SHA
W/O SRI ASHOK SHA
SOUTH KHALIHAMARI (BISHNU NAGAR)
P.O. KADAMONI
P.S. DIBRUGARH
DIST. DIBRUGARH
ASSAM
PIN-78600

Advocate for the Petitioner : MR. S R GOGOI

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 17.02.2023

Heard Mr. S.R. Gogoi, learned counsel for the petitioners. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State/respondent No. 1 as well as Mr. D. Baruah, learned counsel for the respondent No.2.

The present application has been filed under Section 482 Cr.P.C, praying for quashing of the proceedings of G.R. Case No. 455/2020(PRC No.848/2020) pending before the learned Judicial Magistrate 1st Class, Dibrugarh.

It has been submitted by the learned counsel for the petitioners that the petitioner No. 1 was serving as Subject Teacher of B.N.P. Higher Secondary School, Dibrugarh and he is suffering from hypertension, diabetes and paralysis of left limbs and due to his illness, he applied for voluntary retirement. It is further submitted that the petitioner No. 2 is the wife of the petitioner No. 1 and she is serving as Assistant Teach at Government Boys H.S. School, Dibrugarh and she is also suffering from various illness. It is also stated that one Smti. Rambhar Sha @ Rambha Sha lodged an FIR before the In-charge of Gabharu Pathar Police Outpost on 01.02.2020 with an allegation that her son aged about 8 years was engaged to do household works and subject to physical torture. After receipt of the FIR, one G.D. Entry was made bearing No. 17 dated 01.02.2020 and accordingly charge-sheet was submitted

against the petitioners under Section 342/506/374/34 IPC r/w Section 75 of J.J. Act 2015. After taking cognizance, the learned JMFC, Dibrugarh issued summons against the petitioners asking them appear before the court. The petitioners are denied all the allegations which are levelled against them and they have not committed such offence as alleged in the FIR. From the charge-sheet, it reveals that there is no incriminating materials against the petitioner No. 1 though the petitioner No.1 is also charge-sheeted in connection with this case. As such, the present application is being filed.

In this context, the learned counsel for the respondent No. 2 has submitted that on perusal of the scanned copy of the record as well as case diary, it is admitted that there is no incriminating material against the petitioner No. 1 and accordingly, he has no objection if the proceeding against the petitioner No. 1 is quashed. However, it is also submitted that there is sufficient incriminating material against the petitioner No. 2 and to proceed the case under said section of law. He has raised strong objection if the proceeding against the petitioner No. 2 is quashed. The learned counsel for the respondent No. 2 has placed reliance a case law reported in [1992 Supp (1) SCC 335 State of Haryana and Ors. vs Bhajan Lal and Ors.], it was held that the *following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482 Cr.P.C. can be exercised by the High Court 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 channelized and inflexible guidelines or rigid*

formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

(a) 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;

(b) where the allegations in the first information report and other materials, if any, accompanying the F.I.R. 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;

(c) 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;

(d) 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;

(e) 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;

(f) 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;

(g) 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.

After hearing the learned counsel for the parties, this Court is of the opinion that the further proceedings in respect of the petitioner No. 1 in connection with G.R. Case No. 455/2020 is not necessary and it will be abuse of the process of Court and accordingly I find it proper to quash the proceeding against the petitioner No. 1 namely, Bipul Mech exercising the jurisdiction of inherent power under Section 482 Cr.P.C. However, it is not a fit case to exercise the power under Section 482 Cr.P.C. in respect of the respondent No. 2. Accordingly, let the matter be remanded to the learned trial court and proceed the case against the petitioner No. 2 in accordance with law.

With the above observation, the present petition is partly allowed and stands disposed of accordingly.

JUDGE

Comparing Assistant