

GAHC010161732022



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

Case No. : Crl.Pet./810/2022

NUR ISLAM AND 4 ORS
S/O ABDUR REZZAK @ RIJJAK SHEIKH
R/O VIL- BORBILA, P.O. DHANUA, P.S. MANKACHAR,
DIST. SOUTH SALMARA, MANKACHAR, ASSAM
PIN -783135

2: ABDUR REZZAK @ RIJJAK SHEIKH
S/O RAHMOT ALI @ LT. RAHAMAT ALI
R/O VIL- BORBILA
P.O. DHANUA
P.S. MANKACHAR

DIST. SOUTH SALMARA
MANKACHAR
ASSAM
PIN -783135

3: INTAZ ALI @ ENTAJ ALI
S/O RAHMOT ALI @ LT. RAHAMAT ALI
R/O VIL- BORBILA
P.O. DHANUA
P.S. MANKACHAR

DIST. SOUTH SALMARA
MANKACHAR
ASSAM
PIN -783135

4: MUKKU SK.@ MOKSED ALI
S/O RAHMOT ALI @ LT. RAHAMAT ALI
R/O VIL- BORBILA
P.O. DHANUA
P.S. MANKACHAR

DIST. SOUTH SALMARA
MANKACHAR
ASSAM
PIN -783135

5: ISMOT ALI @ ISMOT ALI SHEIKH
S/O RAHMOT ALI @ LT. RAHAMAT ALI
R/O VIL- BORBILA
P.O. DHANUA
P.S. MANKACHAR

DIST. SOUTH SALMARA
MANKACHAR
ASSAM
PIN -78313

VERSUS

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

2:NURUL HOQUE
(INFORMANT)
S/O LATE KHOWAS UDDIN @ LATE KHOWAS SUDDIN MIAH
R/O VILL- BALIABIL
P.O. KALAPANI
P.S. MANKACHAR
DIST. SOUTH SALMARA
MANKACHAR
ASSAM
PIN-78313

Advocate for the Petitioner : MR. A K AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 17-05-2023

1. Heard Mr. A.K. Ahmed, learned counsel for the petitioners, *1. Nur Islam, 2. Abdur Rezzak @ Rijjak Sheikh, 3. Intaz Ali @ Entaj Ali, 4. Mukku Sk. @ Moksed Ali, 5. Ismot Ali @ Ismot Ali Sheikh.*

2. The petitioners have filed an application under section 482 read with section 401/397 Cr.P.C, for quashing the FIR dated 03.02.2019 lodged by the respondent No.2 (Nurul Hoque) with Kalapani out post which was registered as Mankachar PS Case No.74/2019 under sections 120(B)/147/148/325/307 IPC against the petitioners.
3. It is submitted that the contents of the FIR is similar to the FIR dated 02.07.2015 lodged by the informant Foteza Bewa which was registered as Mankachar PS Case No.412/2018 under sections 120(B)/365/325/326/307/34 IPC.
4. Heard Mr. P.S Lahkar, learned Addl. PP, appearing for the respondent No.1 and Mr. A.M. Khan, learned counsel for the respondent No.2, who has also submitted that the subsequent FIR can be treated as statement under section 161 Cr.P.C.
5. The first FIR is reproduced herein below verbatim:

“Sir,

With due respect I beg to inform you that about 2 years ago from today my son (Nurul Hoque) had been cultivating fish under scheme in a place behind the residence of the accused persons and during such cultivation the aforesaid accused persons prevented from the said scheme. On last 29.06.2018 at about 10 PM while my son was guarding the scheme all the accused persons on the order of the accused No.5 and in order to kill my son and took my son forcefully from the said scheme and had thrown out on the road near residence of the accused No.3 and assaulted my son by iron rod and dau for which my son sustained injuries on head and other parts of body. Thereafter when one Khoibor Ali son of Lt. Manik Ali of village

Borbila and his wife Mustt. Sahar Bhanu proceeded to the place of occurrence they were also assaulted by iron rod and dau by the accused persons. Resultantly, they sustained injuries on their heads and other parts of the bodies for which though they were admitted into Panbari Civil Hospital but later on they were refer to Guwahati for better medical treatment. It is late to lodge the FIR due to business in medical treatment. Therefore, I request you to kindly enquire into the incident and take appropriate action and thus obliged.

*Thumb impression of the informant
Sd/- Foteza Bewa*

6. The subsequent FIR is reproduced herein below verbatim:

“Sir,

With due respect I beg to inform you that about 2 years ago from today I and Nurul Hoque had been cultivating fish under scheme in a place behind the residence of the accused persons and during such cultivation the aforesaid accused persons prevented from the said scheme. On last 29.06.2018 at about 10 PM while I was guarding the scheme all the accused persons on the order of the accused No.5 and in order to kill me took me forcefully from the said scheme and had thrown on the road near residence of the accused No.3 and assaulted me by iron rod and dau for which I sustained injuries on my head and other parts of my body. Thereafter when one Khoibor Ali son of Lt. Manik Ali of village Borbila and my wife Mustt. Sahar Bhanu proceeded to the place of

occurrence they were also assaulted by iron rod and dau by the accused persons. Resultantly, they sustained injuries on their heads and other parts of the bodies for which though they were admitted into Panbari Civil Hospital but later on they were refer to Guwahati for better medical treatment. It is late to lodge the FIR due to business in medical treatment. Therefore, I request you to kindly enquire into the incident and take appropriate action and thus obliged.

Thumb impression of the informant

Sd/- Nurul Hoque

M/No.7896660978

7. The scrutiny of both the FIR's clearly reveals that both the FIR's are similar. The subsequent FIR was lodged by the victim himself and the other FIR was lodged by the mother of the victim. It is alleged that even the punctuation marks are similar. The date and time of incident is similar.

8. The learned counsel for the petitioner has relied upon the decision of the Hon'ble Supreme Court in **Anju Chaudhury Vs. State of U.P & Anr**, reported in **2013 AIR (SCW) 245**, wherein it has been observed that:

On the plain construction of the language and scheme of [Sections 154, 156 and 190](#) of the Code, it cannot be construed or suggested that there can be more than one FIR about an occurrence. However, the opening words of [Section 154](#) suggest that every information relating to commission of a cognizable offence shall be reduced to writing by the officer

in-charge of a Police Station. This implies that there has to be the first information report about an incident which constitutes a cognizable offence. The purpose of registering an FIR is to set the machinery of criminal investigation into motion, which culminates with filing of the police report in terms of [Section 173\(2\)](#) of the Code. It will, thus, be appropriate to follow the settled principle that there cannot be two FIRs registered for the same offence. However, where the incident is separate; offences are similar or different, or even where the subsequent crime is of such magnitude that it does not fall within the ambit and scope of the FIR recorded first, then a second FIR could be registered. The most important aspect is to examine the inbuilt safeguards provided by the legislature in the very language of [Section 154](#) of the Code. These safeguards can be safely deduced from the principle akin to double jeopardy, rule of fair investigation and further to prevent abuse of power by the investigating authority of the police. Therefore, second FIR for the same incident cannot be registered.

9. I have considered the submissions at the bar with circumspection.

10. Both the FIR's indeed relate to the same cause of action. It is mentioned that the incident occurred about 2 (two) years ago when Nurul Hoque was assaulted relating to a dispute arising for a scheme of pisciculture.

11. It is apparent that both the FIR's relate to an incident which occurred on 29.06.2018 at about 10.00 pm and Nurul Hoque was

assaulted and earlier Mankachar PS Case No.412/2018 under sections 120(B)/365/325/326/307/34 IPC was registered and subsequently, on the basis of an FIR lodged by Nurul Hoque relating to the same incident dated 29.06.2018 at about 10.00 pm Mankachar PS Case No.74/2019 under sections 120(B)/147/148/325/307 IPC was registered.

12. Both the cases if proceeded paralelly will indeed be an abuse of the process of the Court as allegedly both the cases arise out of same cause of action.

13. In view of the clear proposition of law, the very registration of second FIR and the entire investigation carried out on its basis culminated into a blatant illegality and lacks sanctity of law. There is sufficient force in the submission of the learned counsel for the petitioner.

14. The entire proceeding pertaining to the second FIR is a nullity and requires to be interfered with by invoking the provisions under section 482 Cr.P.C. Resultantly the entire proceeding arising out of Mankachar PS Case No.74/2019 under sections 120(B)/147/148/325/307 IPC corresponding to GR Case No.107/2019 is hereby quashed and set aside.

15. In terms of the above, the instant petition stands disposed of.

JUDGE

Comparing Assistant