

GAHC010166652023



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

Case No. : Crl.Pet./769/2023

HRISHIKESH DAS
S/O SRI LABANYA PRASAD DAS, R/O VILL- GANDHI NAGAR, P.O. AND P.S.-
SILAPATHAR, DIST- DHEMAJI, ASSAM, PIN-787059

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:HEMANTA KUMAR DAS
S/O LT. BHABENDRA NATH DAS
R/O VILL- GOLIA
P.S.-BARPETA
DIST- BAJALI
ASSAM
PIN-78132

Advocate for the Petitioner : MR M A ISLAM

Advocate for the Respondent : MR. D DAS(ADDL.PP, ASSAM)

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioners :Mr. MA Islam

For the Respondents : Mr. D Das, Additional PP, Assam

Date of Hearing : 28.11.2023

Date of Judgement : 07.12.2023

JUDGEMENT & ORDER (CAV)

Heard Mr. MA Islam, learned counsel for the petitioner. Also heard Mr. D Das, learned Additional PP, Assam.

2. The present application is filed under Section 482 of the Cr.P.C. praying for setting aside impugned FIR dated 02.07.2022 being Barpeta PS case No. 656/2022 under Section 120(B)/166/325/506 IPC read with Section 29 of Police Act, 1861.
3. The further challenge is that charge-sheet No. 665/2022 dated 31.07.2022 filed by the Investigating Authority in the aforesaid police station case. The another challenge is impugned order dated 26.05.2023 passed by the learned Chief Judicial Magistrate in PRC case No. 132/2023 whereby cognizance of the offences under Section 120(B)/166/323/506 IPC read with Section 29 of Police Act were taken and summons were issued to the petitioner.
4. This court under its order dated 02.08.2023 called for the scanned copy of the case diary of the aforesaid police station case from the learned court of Chief Judicial Magistrate, Bajali and the same is received.
5. The basic argument advanced by the learned counsel for the petitioner is that the offence alleged to have been committed while discharging official duty and therefore the previous sanction under Section 197 (1) of the Code of Criminal Procedure, 1974 is a sine qua non and in absence of such sanction, the entire proceeding is liable to be set aside.

6. Per contra, Mr. D Das, learned Additional PP submits that the basic allegation against the petitioner is beating innocent people and that being the position, it cannot be treated that the petitioner has acted in discharge of his official duty at the time of the commission of alleged offence and therefore such sanction was not at all necessary in the given fact of the present case. Mr. Das further contends that even if this court holds that sanction under Section 197 (1) Cr.P.C. was required in the given fact of the case, absence of such sanction will not vitiate the entire proceeding and the employer shall be still at liberty to consider for grant of such sanction.
7. This court has given anxious consideration to the submissions advanced by the learned counsel for the parties. Also perused the scanned copy of the case diary as well as the material available on record.
8. The material available on record reveals that the Employee's Association, Galia Toll Plaza lodged the FIR, inter-alia, alleging that on 01.07.2022 at about 1 a.m. midnight, the present petitioner, who came to the toll gate introduced himself to be DSP and beaten up two employees, namely, Mridul Kalita and Jitu Kalita with stick carried by the police officer and asked the aforesaid persons, why they were collecting illegal tax and threatened that they will be killed.
9. On the basis of such fact, a GD Entry being GD Entry No. 48 dated 02.07.2022 at 3.30 p.m. was registered and subsequently Barpeta PS case No. 656/2022 was registered. After conclusion of the investigation, charge-sheet being C.S. No. 665/2022 under Section 120(B)/166/323/325/506 IPC read with Section 29 of the Police Act dated 31.07.2022 was filed before the jurisdictional Magistrate arraying the present petitioner as accused. Subsequently, by the order dated

26.05.2023, the learned jurisdictional Magistrate i.e. CJM, Bajali took cognizance of the offences under the Sections of law as aforesaid.

10. The material so far collected also reveals that prior to the lodging of the FIR and the registration of same on 02.07.2022, on 01.07.2022 at 11 p.m., a GD Entry being GD No. 18 was entered. Said GD Entry reflects that at around 11 p.m. the Central Patrolling In-charge, one Samaresh Baruah directed the petitioner, who was holding the post of Sub-inspector of Police at that point of time to help him in the central night patrolling as there was law and order situation at Galia Toll Plaza. Accordingly, the said officer i.e. the petitioner reached Galia Toll Gate wherein the alleged incident of beating the employees of Galia Toll Plaza was made.
11. Thus, the petitioner reached the place of occurrence pursuant to the direction of his Senior Officer as reflected in the GD Entry No. 18 and therefore he was acting in discharge of his official duty. The GD Entry further reflects that there was law and order situation in the Toll Gate and the allegation is that the petitioner has threatened the employees that they have been collecting illegal tax.
12. Thus, in the considered opinion of this court, there is a reasonable connection between the act of the petitioner and the discharge of his official duty and that the manner he has acted was in the course of the performance of his duty. It is another matter whether he has exceeded his performance of duty and gone beyond by beating the employees of the Toll Plaza inasmuch as the Hon'ble Apex Court in the case of ***Sankaran Moitra vs Sadhna Das and Another*** reported in ***(2006) 4 SCC 584*** while dealing with similar situation where a police officer used excessive force in performance of a duty, held that when such action was done in

performance of duty or purported performance of duty, the Section 197 (1) of the Code cannot be bypassed by reasoning that killing a man could never be done in an official capacity and consequently it was also held that Section 197(1) of the Code shall be attracted in such a case.

13. In view of the aforesaid determination made in the given fact of the case and the settled proposition of law, this court is of the view that in the given fact of the present case sanction under Section 197(1) shall be required to proceed against the petitioner.
14. Accordingly, the impugned order of cognizance dated 26.05.2023 is hereby set aside.
15. The Investigating Authority shall be at liberty to proceed afresh seeking sanction to prosecute the petitioner from the competent authority, if so advised.
16. With the aforesaid terms, the present petition stands disposed of.

JUDGE

Comparing Assistant