

GAHC010200952023



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

Case No. : Crl.Pet./955/2023

SUKINATH BHOWMIK AND ANR
S/O SURENDRA NATH BHOWMIK
VILL- CHOWRAGURI
P.O. GORAIMARI
P.S. AND DIST. BONGAIGAON, ASSAM

2: MOZIBAR RAHMAN
S/O LATE AHEZ UDDIN
VILL- BANAYAMARI PART-IV
P.O. MUKRIJHARA
P.S. GAURIPUR
DIST. DHUBRI
ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, GOVT.OF ASSAM

Advocate for the Petitioner : MS. R CHOUDHURY

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

JUDGMENT

09.10.2023

Heard Ms. R. Choudhury, learned counsel for the petitioners and Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent.

2. This joint petition, under Section 482 of the Cr.P.C., is preferred by the petitioners namely, Sukinath Bhowmik [petitioner No. 1] and Mozibar Rahman [petitioner No. 2] for quashing the FIR dated 02.07.2022, in connection with Bongaigaon PS Case No. 305/2022, under Sections 384/511 of the IPC.

3. The background facts leading to filing of the present petition, is adumbrated herein below :-

“One Sukinath Bhowmik of Chowraguri under Bongaigaon P.S., lodged a complaint on 29.06.2022, with the Superintendent of Police, Bongaigaon alleging inter-alia amongst others that one of his relatives namely, Daniram Sarkar of Chowraguri, suffered demise in thunderstorm on 02.07.2020. With a view to claim the death benefit of one LIC Policy, standing in the name of deceased Daniram Sarkar, the family members of Daniram Sarkar required to file the copy of FIR and police report, regarding the death of Daniram Sarkar and accordingly, on 23.06.2022, the informant - Sukinath Bhowmik and Smti. Phulmala Sarkar the wife of Late Daniram Sarkar, went to the Bongaigaon Sadar Police Station to collect the aforesaid documents.

And when the requirement of the FIR and the Final Report was reported at the Police Station, one Police Personnel namely, Mozibur Rahman (UBC) had demanded a sum of Rs. 10,000/- as bribe and on that day the documents were not provided to them, as they could not manage money and they have returned back. Thereafter, on 27.06.2022, he along with one Rajkumar Sarkar of the same village, again went to the Bongaigaon Police Station and requested the said Police Personnel on behalf of the poor family to provide the aforesaid documents, but the said Police Personnel again refused to provide the documents without money. Thereafter, Sukinath Bhowmik had lodged one complaint with the Superintendent of Police, Bongaigaon, who, in turn, forwarded the same to the Officer in Charge of Bongaigaon P.S., 02.07.2022, for necessary action. Thereafter, the Officer In-Charge of Bongaigaon Police Station endorsed SI Sukesh Ghosh of New Bongaigaon P.P. to ascertain the correctness of the allegation made in the aforesaid complaint and on preliminary enquiry the said S.I. had found the same to be true. Then the Officer In-Charge of Bongaigaon Police Station, registered a case, being Bongaigaon P.S. Case No. 305/2022, under Sections 384/511 of the IPC and arrested the petitioner No. 2 and forwarded him to the court, and thereafter carried out investigation, which is still going on. In the meantime, the petitioner No. 2 had effected a compromise came into a compromise with the petitioner No. 1 and thereafter both of them have approach this Court by filing the present petition for quashing the Bongaigaon PS Case No. 305/2022, under Sections 384/511 of the IPC.”

4. Ms. Choudhury, learned counsel for the petitioner submits that this petition is jointly preferred by the informant and the accused and the matter has already been settled amicably between the parties and it was lodged due to misunderstanding between the parties and therefore, it is contended to allow the petition, by quashing the FIR of Bongaigaon PS Case No. 305/2022, under Sections 384/511 of the IPC. Ms. Chaudhury has also referred to a decision of Hon'ble Supreme Court in the case of **State of Haryana vs. Bhajan Lal**, reported in **1990 SCR Supl. (3) 259**, to contend that the ration laid down in the said case squarely covered the case of the petitioners.

5. On the other hand, Mr. P. Borthakur, learned Addl. P.P. has produced the case diary before this Court and submits that at the relevant time the petitioner No. 2 was serving at Bongaigaon Police Station and he has demanded a sum of Rs. 10,000/- from the petitioner No. 1 for providing FIR and Final Report, in respect of demise of one Daniram Sarkar in thunderstorm on 02.07.2020, which was required for the family members to claim the death benefit of LIC Policy. Mr. Borthakur further submits that this is not a fit case for quashing the FIR, and that the IO had collected sufficient incriminating materials against the petitioner No. 2, in support of the allegations made in the FIR and therefore, it is contended to dismiss the petition.

6. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record and also perused the case diary, produced before this Court, with the assistance of learned Addl. P.P.

7. It is not in dispute that the Bongaigaon PS Case No. 305/2022, under Sections 384/511 of the IPC, has been registered on the basis of an FIR lodged by Sukinath Bhowmik [petitioner No.1]. It is also not in dispute that the petitioner No. 1 and the wife of Late Daniram Sarkar went to the Bongaigaon Police Station to obtain copy of the FIR and the Police Final Report, in respect of death of Daniram Sarkar. It is also not in dispute that the petitioner No. 2, at the relevant time, was serving as Police Personnel (UBC) in Bongaigaon Police Station and in that capacity he has demanded a sum of Rs. 10,000/- from the family members of Late Daniram Sarkar.

8. Now, the question is whether the power under Section 482 of the Cr.P.C. can be exercised for quash an FIR, where allegation relates to demanding of bribe by the Police Personnel, on account of furnishing copy of FIR and Police Final Report, in respect of a death of a person, which was a requirement for filing a claim in LIC Policy.

9. To ascertain this question, I have carefully gone through the materials placed on record and also perused the case diary, and I find sufficient force in the submission of learned Addl. P.P. for the State respondent. It appears that the I.O. had collected sufficient incriminating materials in support of the allegations made in the FIR.

10. It is to be noted here that while dealing with the issue of quashing of FIR on the basis of the compromise between the parties, a three Judge Bench of Hon'ble Supreme Court in the case of **Gian Singh vs. The State of Punjab**, reported in **[2012] 10 SCC 303**, has held as under :-

“61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under [Section 320](#) of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim’s family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like [Prevention of Corruption Act](#) or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the

offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

11. The same ratio is reiterated by Hon’ble Supreme Court in subsequent decisions in **Narinder Singh vs. State of Punjab reported in (2014) 6 SCC 466** and also in **State of Madhya Pradesh vs. Laxmi Narayan & Others** reported in **(2019) 5 SCC 688** and in the case of **Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Ors.**, reported in **2021 SCC Online SC 315**.

12. It appears from the decision of Hon’ble Supreme Court of India in the case of **Gian Singh [Supra]** that inherent power under Section 482 of the Cr.P.C. can be exercised in accord with the guidelines drafted in such powers i.e. [i] to secure the ends of justice and [ii] to prevent abuse of the process of the Court. Further, it appears that in what the cases the power under Section 482 of the Cr.P.C. to quash the criminal proceeding or the complaint or FIR may be exercised where the offender the victim settled their dispute would depend on

the facts and circumstances of each case and category can be prescribed. Further it appears that Hon'ble Supreme Court in the said case held that before exercise of such power the High Court must have due regards to the nature and gravity of the offence. Heinous and serious offences of mental depravity of offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or the victim's family of the offender settled the dispute. Such offences are not private in nature it creates serious impact upon the society. It is also held in the aforesaid case that similarly compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences.

13. Now, advertent to the facts and circumstances in the case in hand we find that the petitioner No. 2 and the petitioner No. 1 have effected a compromise. The case was registered under Sections 384/511 of the IPC and the investigation of the same is still going on and the said offences are not compoundable offence under Section 320 of the IPC. Also I find that the petitioner No.2 was serving as UBC at the relevant time in Bongaigaon Police Station and in his capacity as public servant, he had committed the offence by demanding a sum of Rs. 10,000/- to provide copy of the FIR and the Police Final Report, in respect of death of Late Daniram Sarkar in the thunderstorm on 02.07.2020. And as such, in view of the ratio laid down in the case laws, as discussed herein above, the present offence, being related to demanding of bribe by public servant in such capacity, the proceeding cannot be quashed.

14. Though Ms. Choudhury, learned counsel for the petitioners submits

that the case was filed due to misunderstanding between the parties and the ratio laid down in the case of **State of Haryana vs. Bhajan Lal**, reported in **1990 SCR Supl. (3) 259**, squarely covers the case of the petitioners, yet, this Court is of the considered opinion that none of the parameters laid down in the of **Bhajan Lal [Supra]** are applicable in the case in hand. Notably, it has been held in the said case as under:-

8.1. In the exercise of the extra-ordinary power under [Article 226](#) or the inherent powers under [Section 482](#) of the Code of Criminal Procedure, the following categories of cases are given 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 guide- in 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.**

This being the position, this Court is unable to accept the submissions, so advanced by Ms. Choudhury, learned counsel for the petitioners.

15. Having regards to above and also to the nature and gravity of the offence and also having regards to the fact that the offence was committed by the petitioner No. 2 while he was serving as public servant i.e. Police Personnel, this Court is of the considered opinion that inherent power under Section 482 Cr.P.C. cannot be invoked to quash the FIR of Bongaigaon PS Case No. 305/2022, under Sections 384/511 of the IPC, even though the accused and the informant comes together and approach this Court by filing the present petition.

16. In the result I find no merit in this petition and the same stands dismissed. Interim order, if any, passed earlier stands vacated. The parties have to bear their own costs.

JUDGE

Comparing Assistant