

GAHC010203032022



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

Case No. : Crl.Pet./1057/2022

AMRITLAL PRAJAPATI
S/O- HIRALAL PRAJAPATI,
R/O- CCI COLONY, TYPE-III, OTR NO.1, BOKAJAN, KARBI ANGLONG,
P.O- BOKAJAN CFSO, P.S- BOKAJAN,
DIST- KARBI ANGLONG, ASSAM, PIN-782490

VERSUS

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

2:MAYAMATI KOHAR
W/O- DEBILAL PRAJAPATI

D/O- SRIPUJAN KOHAR

R/O- VILLAGE FANAIRBOND

P.O-FANAIRBOND
P.S-RATABARI
DIST- KARIMGANJ
ASSAM
PIN-78873

Advocate for the Petitioner : MR. J C GOGOI

Advocate for the Respondent : PP, ASSAM

BEFORE
THE HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY
ORDER

03.08.2023

1. Heard Ms. S. Roy, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State of Assam representing the respondent No. 1 and Mr. B. Acharya, learned counsel for the respondent No. 2.
2. The present application is filed under Section 482 of the Code of Criminal Procedure, 1973 praying for quashing the order dated 27.07.2022, passed by the learned Additional Chief Judicial Magistrate, Karimganj, taking cognizance against the petitioner in C.R. Case No. 1261/2021 under Sections 498(A)/34 of IPC.
3. The background facts of the case are that the informant/complainant married one Debilal Prajapati, the brother of the present petitioner. Alleging torture, demand of dowry etc., a prosecution was launched by filing a complaint before the learned Chief Judicial Magistrate, Karimganj, which was registered as C.R. Case No. 1261/2021.
4. The informant was examined by the learned Court below under the provision of Section 200 of Cr.P.C. and thereafter, the impugned order was passed by taking cognizance as discussed hereinabove. The learned Court below also took cognizance against the husband of the complainant i.e.

brother of the present petitioner.

5. The aforesaid order is assailed on the ground that no prima facie case is made out either from the complaint or from the deposition of the complainant under Section 200 of the Cr.P.C., and therefore, the learned Court below could not have taken cognizance by way of the impugned order against the present petitioner.
6. The learned counsel for the respondent/complainant objected such petition by arguing that there are statement which shows that the present petitioner was also involved in torturing and committing offence under Section 498A of the IPC. Therefore, the learned Court below has not committed any error and this Court in exercise of power under Section 482 of the Cr.P.C. should not interfere with such cognizance.
7. Perused the materials available on record including complaint and the statement recorded under Section 200 of the Cr.P.C.
8. There are two statements which can be related to the present petitioner. An omnibus statement was made that the accused persons tortured the respondent and another statement made was that the present petitioner addressed the informant as "Mangalik". Except this two statements, this Court donot find any other statement to make out a prima facie case under Section 498 A of IPC.
9. From the perusal of the materials available on record, this Court is also of the considered opinion that though the contents of the complainant made out a prima facie case against the husband of the informant, however, the aforesaid statement and reading as a whole of the complain

petition as well as the statement recorded, this Court is of the view that no ingredients under Section 498A of the IPC so far relating to the present petitioner are made out.

10. In view of the aforesaid and in view of the settled proposition of law as annunciated by the ***Hon'ble Apex Court in the case of Rajesh Sharma and Others –Vs- State of Uttar Pradesh and Another*** reported in ***(2018) 10 SCC 472***, this Court is of the considered opinion that the petitioner has been able to make out a case for quashing of the proceeding initiated against him.
11. Accordingly, the proceeding being C.R. Case No. 1261/2021 under Sections 498(A)/34 of IPC pending before the learned Additional Chief Judicial Magistrate, Karimganj, is quashed so far the same relates to the present petitioner.
12. In view of the aforesaid terms, this criminal petition stands allowed.

JUDGE

Comparing Assistant