

GAHC010209002021



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

Case No. : WP(C)/6937/2021

KHURSHED GUL KHAN AND ANR
S/O LT KHAISTA GUL KHAN, R/O 7TH HEAVEN APARTMENT, SAWKUCHI
NEAR SARUSAJAI STADIUM, PO BASISTHA, GUWAHATI

2: SHARIFOON NISHA
W/O KHURSHED GUL KHAN
R/O 7TH HEAVEN APARTMENT
SAWKUCHI NEAR SARUSAJAI STADIUM
PO BASISTHA
GUWAHAT

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP BY THE PRINCIPAL SECRETARY TO GOVT OF ASSAM, HOME AND
POLITICAL DEPARTMENT, DISPUR, GUWAHATI-781006

2:DIRECTOR GENERAL OF POLICE
ASSAM
ASSAM POLICE HEADQUARTERS
ULUBARI
GUWAHATI-781007

3:COMMISSIONER OF POLICE
GUWAHATI CITY
GUWAHATI
781001

4:DEPUTY COMMISSIONER OF POLICE
CENTRAL POLICE DISTRICT
GUWAHATI CITY
GUWAHATI-781007

5:JAYANTA KUMAR DAS

IN CHARGE
FANCY BAZAR POLICE OUT POST UNDER PANBAZAR POLICE STATION
GUWAHATI-781001

6:MD. ZAHIR HUSSAIN
S/O LT MIR HUSSAIN
R/O APURBA SINHA PATH
R.G BARUAH ROAD
GUWAHATI-78100

Advocate for the Petitioner : MR. DITUL DAS

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA

ORDER

Date : 04/01/2023
Suman Shyam, J

Heard Mr. D. Das, learned counsel appearing for the writ petitioners. We have also heard Mr. R. Mazumdar, learned counsel appearing for the respondent no. 5 and Mr. S. Das, learned counsel for the respondent no. 6. None has appeared for the remaining respondents.

The petitioners have approached this Court by filing the instant writ petition alleging arbitrary and high-handed action on the part of the respondent no. 5, who was then posted as Sub-Inspector of Police at the Fency Bazar Police Out Post, coming under the Panbazar Police Station.

According to the petitioners, the respondent no. 5 had illegally taken and confined the petitioner no.1 in the Police lock-up. Thereafter, both the petitioners were compelled to sign an agreement with the respondent no. 6 at the Police Station for payment of substantial amount of money to the said respondent.

The above allegation has, however, been strongly refuted by the respondent nos. 1, 2, 3 and 4 by filing joint affidavit. The respondent no. 5 has also denied the allegation by filing a separate affidavit. According to the respondents, the averments made in the writ petition are not true. Whatever action has been taken in the matter was in accordance with law and in connection with the investigation conducted in relation to Panbazar PS Case No. 108/2012, registered on the basis of an

FIR lodged by the respondent no. 6.

Mr. Mazumdar, learned counsel for the respondent no. 5 has argued that the petitioner no. 1 was neither confined in the lock-up, as has been alleged, nor was there any high-handed action on the part of his client. Rather, it is the petitioners who have distorted the facts stated in the writ petition only to get an order from the Court.

Similar is the submission of Mr. Das, learned counsel for the respondent no. 6, who submits that there are several disputed question of facts involved in this petition, which cannot be adjudicated in a writ petition.

Mr. D. Das, learned counsel for the petitioners, on the other hand, has argued that his clients are apprehending further high-handed action from the Police and, therefore, an order of protection be passed by this Court.

After hearing the submission of learned counsel for all the parties and upon going through the materials available on record, we find that the issues raised in this writ petition basically lie in two different spheres. The first is pertaining to the agreement allegedly signed by the petitioners with the respondent no. 6 for recovery of money under pressure from the respondent no. 5. The second issue is pertaining to arbitrary and high handed action of the respondent no. 5 at the instance of the respondent no. 6.

It appears that the respondent no. 6 had lodged an ejahar based on which Panbazar PS case No. 108/2012 has been registered. If the Police is conducting investigation in connection with the said case, we do not find any good ground to interfere in the matter in exercise of powers conferred under Article 226 of the Constitution of India. Likewise, if the petitioners have been made to sign any agreement under threat and coercion, there are appropriate forums available under the law permitting them to agitate the issue.

In so far as the allegation of arbitrary, high-handed and illegal action on the part of the respondent no. 5 is concerned, in the absence of any FIR/complaint made before the competent authority, this is also a matter which cannot be adjudicated in a writ petition. If the petitioners have any grievance in the matter, it would always be open for them to take recourse of law under the Code of Criminal Procedure, if so desired.

Therefore, granting liberty to the petitioners to take recourse of law for Redressal of their grievance, if so advised, we close the writ petition by providing that if the petitioners remain aggrieved even thereafter, it would be open for them to approach this Court again by filing fresh writ

petition, by making out a proper case on facts.

With the above observation, the writ petition stands disposed of.

JUDGE

JUDGE

sukhamay

Comparing Assistant