

GAHC010209432021



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

Case No. : Crl.Pet./734/2021

DIBYA JYOTI HAZARIKA @ JYOTI ADVOCATE AND ANR
S/O SRI REBOTI HAZARIKA
VILL- UJARACHUK
P.O. NANDIKESWAR
P.S. JAMUGURI
DIST. SONITPUR, ASSAM

2: SRI AMARJYOTI RAJKHOWA
S/O LATE RASHO KANTA RAJKHOWA
VILL- KARCHANTOLA
P.S. JAMUGURI
DIST. SONITPUR
ASSA

VERSUS

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

2:SMTI. USHA MAHESWARI
W/O LATE SITARAM MAHESWARI
R/O VILL- JAMUGURI
P.O. AND P.S. JAMUGURI
DIST. SONITPUR
ASSAM

Advocates for the appellant : Mr. R. Baruah

Advocates for the respondent : Mr. B. Sharma, Addl. P.P., Assam,
Mr. A. K. Maheswari, for R-2

:::BEFORE:::

HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 15.09.2023

Date of judgment & order : 11.10.2023

JUDGMENT & ORDER (CAV)

Heard Mr. R. Baruah, learned counsel for the petitioner. Also heard Mr. B. Sharma, learned Additional Public Prosecutor for the State respondent No. 1 and Mr. A. K. Maheswari, learned counsel appearing on behalf of respondent No. 2.

2. This is an application under Sections 482/401 of the Code of Criminal Procedure, 1973, praying for quashing of the F.I.R. dated 20.09.2016, lodged by the respondent No. 2, which was registered under Jamuguri Police Station, being Jamuguri P.S. Case No. 130/2016 (Corresponding G.R. Case No. 3090/2016), under Sections 306/403/420/34 of the Indian Penal Code.

3. The brief facts of the case is that the petitioner No. 1 is a practicing advocate and he started practicing as an advocate in the Tezpur Bar Association in the year 2006. The petitioner No. 2 is the brother-in-law of the petitioner No. 1 and is a prominent businessman in the locality and both the petitioners have name and fame in the society. On 19.09.2016, one Smti Usha Maheswari, wife of Late Sitaram Maheswari, lodged an F.I.R. before the Officer-In-Charge, Jamuguri Police Station, alleging *inter alia* that her son committed suicide due to pressure and coercion by the accused/petitioners. It is alleged that an agreement for sale was made in favour of the accused/petitioners by the informant and her son- Late Ramesh Kumar Maheswari, which was not supplied

to them. After receiving the said F.I.R., the Officer-In-Charge, Jamuguri Police Station, registered a case, being Jamuguri P.S. Case No. 130/2016, under Sections 306/403/420/34 of the Indian Penal Code, and started investigation.

4. After registration of the said case, due to apprehension of arrest, both the petitioners filed an anticipatory bail application before the learned District & Sessions Judge, Sonitpur, Tezpur, and the learned Court below, after perusal of the Case Diary, granted both the petitioners with the privilege of pre-arrest bail vide its order dated 04.10.2016, and after obtaining the anticipatory bail, the petitioners also appeared before the I.O. and co-operated in the investigation as and when required.

5. It is further stated that the petitioners are no way connected with the alleged offence as stated in the F.I.R. and the case has been lodged with some false and fabricated story only to harass the present petitioners. The petitioners had good talking terms and business relation with the informant/ respondent No. 2. In the year 2016, the son of the respondent No. 2, i.e. the deceased- Ramesh Kumar Maheswari, visited to the house of the petitioner No. 1 and offered a proposal to sale a plot of land measuring 2 Katha 13 Lessas, situated in village Deka Sundar under Borbhagia Mauza, District Sonitpur. After consultation with the petitioner No. 2, the petitioner No. 1 decided to purchase the said plot of land jointly with the petitioner No. 2 with the sale consideration price of Rs. 35,50,000/- (Rupees thirty five lakhs fifty thousand) only. Accordingly, on 20.08.2016, an agreement for sale was made between the parties and the petitioner No. 1 drafted the sale deed and after putting signatures on the sale deed, the petitioners also paid an amount of Rs.

34,50,000/- (Rupees thirty four lakhs fifty thousand) only out of Rs. 35,50,000/- (Rupees thirty five lakhs fifty thousand) only to the respondent and her son on 20.08.2016. Accordingly, they also tendered written acknowledgement of receipt of money. But the complainant, due to interference of her family members, after the unfortunate incident of suicide, lodged the F.I.R. against the present petitioners. The petitioner No. 2 was also called by the respondent No. 2 and her brother to execute some set of documents after 25 days of that unfortunate incident. But, after a long discussion with the informant and her brother, the present petitioners were shocked to learn that the present F.I.R. has been lodged against them. It is reiterated that the petitioners are no way connected with the alleged offence and the F.I.R. has been lodged with some false and concocted allegation only to harass the present petitioners.

6. It is further stated that the deceased son of the respondent No. 2 was sick prior to the incident and he was undergoing treatment. Further, after the unnatural death of the son of the respondent No. 2, no post-mortem was conducted over the dead body of the deceased and hence, the reason of death was also cannot be ascertain, which was also clearly observed by the learned Sessions Judge while dealing with the petition for anticipatory bail for the petitioners. More so, there is 25 days delay in lodging the F.I.R. and there is no reasonable explanation for the said delay, which itself is sufficient to prove the *mala fide* intention of respondent No. 2 to harass the petitioners.

7. It is submitted by the learned counsel for the petitioners, Mr. R. Baruah, that for quashing of a complaint, it is well settled by the Hon'ble Apex Court that when the allegation made in the F.I.R. do not have any chances of an ultimate

conviction, the Court may quash the F.I.R. even though it may be at preliminary stage of investigation. From the plain reading of the F.I.R. also, it is crystal clear that no ingredients is established to proceed the investigation against the present petitioners and there is no chance of conviction of the petitioners even if the investigation is proceeded against the present petitioners.

8. Further it is submitted by the learned counsel for the petitioners that the respondent No. 2 and her company implicated the name of the petitioners only for the personal grudge and entangled them in a false case only with a view to teach a lesson and malign the petitioners after entering into an agreement for sale. Apart from that, both the respondent No. 2 and her son also acknowledge the receipt of Rs. 34,50,000/- (Rupees thirty four lakhs fifty thousand) only out of the sale consideration amount of Rs. 35,50,000/- (Rupees thirty five thousand fifty thousand) only. More so, there is no evidence against the present petitioners in the statements recorded under Section 161 as well as 164 Cr.P.C. and, accordingly, there is no involvement of the petitioners for abetment of suicide of the son of the respondent No. 2 as alleged in the F.I.R.

9. From the allegation made in the F.I.R, it is apparent that the statement made in the F.I.R. does not fulfill the ingredients of Section 306 of the Indian Penal Code and there is no chance of conviction as there is no evidence of any *mens rea* on the part of the petitioners to commit the offence as alleged in the F.I.R. Thus, no useful purpose will serve even if the investigation is allowed to be continued and there is no possibility of conviction even if the Charge-Sheet is filed against the present petitioners. Rather, it will be an abuse of the process of the Court. Accordingly, it is submitted by the learned counsel for the petitioners

that it is a fit case where the Court can exercise the inherent power under Section 482 Cr.P.C. to set aside and quash the F.I.R. filed against the present petitioners.

10. The learned counsel for the petitioners further relied on the decision of Hon'ble Apex Court passed in **State of Haryana Vs. Bhajan Lal**, reported in **1992 Suppl SCC 335**, wherein, the Hon'ble Supreme Court had formulated some guidelines, which reads as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases 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 channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR 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.

(3) 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.

(4) 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.

- (5) 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.*
- (6) 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.*
- (7) 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.”*

11. Accordingly, the learned counsel for the petitioners submitted that the allegation made in the F.I.R. of the instant case also *prima facie* does not constitute any offence or make out a case against the present petitioners even if they are taken at their face value and accepted.

12. The learned counsel for the petitioners also relied on the decision of the Hon'ble Supreme Court reported in **(2019) 17 SCC 301 (Ude Singh & Ors. Vs. State of Haryana)** and stressed on paragraph Nos. 15 & 16 of the said judgment, which is reproduced hereinbelow:-

“15. Thus, “abetment” involves a mental process of instigating a person in doing something. A person abets the doing of a thing when:

- (i) he instigates any person to do that thing; or*
- (ii) he engages with one or more persons in any conspiracy for the doing of that thing; or*
- (iii) he intentionally aids, by acts or illegal omission, the doing of that thing.*

These are essential to complete the abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do anything.

16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act/s of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behaviour and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act/s of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case."

13. Accordingly, it is submitted by the learned counsel for the petitioners that there is no material so far collected by the I.O. to prove that the petitioners provoked or instigated or abetted to commit suicide by the son of respondent No. 2. Therefore, the learned counsel for the petitioners submitted that this is a fit case where the inherent power under Section 482 Cr.P.C. can be invoked for quashing the F.I.R. dated 20.09.2016, of Jamuguri Police Station, being Jamuguri P.S. Case No. 130/2016 (Corresponding G.R. Case No. 3090/2016), under Sections 306/403/420/34 of the Indian Penal Code.

14. It is further submitted by the learned counsel for the petitioners that during the pendency of the present petition, the case has already been Charge-Sheeted, vide Charge-Sheet No. 12/2019, dated 31.01.2019, against the present petitioners and hence, it is also prayed to set aside and quash the said Charge-Sheet.

15. In this context, the learned Additional Public Prosecutor, Mr. B. Sharma,

has submitted that the statement made in the F.I.R. is sufficient to disclose *prima facie* case against the present petitioners under Sections 306/34 I.P.C. More so, from the F.I.R. itself, it is evident that there was a conversation between the deceased- Ramesh Kumar Maheswari with the accused persons prior to his suicidal attempt. Apart from that, the case has already been *prima facie* established against the present accused/petitioners and for which, the case has been Charge-Sheeted against them and hence, it is not at all a fit case to set aside or quash the F.I.R. as well the Charge-Sheet filed against the present petitioners.

16. The learned counsel appearing on behalf of respondent No. 2, Mr. A. K. Maheswari, has submitted in this regard that the deceased as well as the respondent No. 2 did not receive any set of documents from the accused/petitioners even after several request made by them and even after the death of the deceased, the accused/petitioners did not supply the copy of the documents, wherein it is stated that one sale deed was executed between the parties. Further it is seen that 5 (five) numbers of batteries were taken by the petitioners from the deceased without any reason and thus, they abetted or instigated the deceased to commit suicide and hence, *prima facie* the case is established against both the petitioners in the commission of offence under Sections 306/34 of the Indian Penal Code and therefore it is not at all a fit case to quash or set aside the F.I.R. as well as the Charge-Sheet by exercising the power under Section 482 Cr.P.C. and accordingly, it is submitted that the petition is liable to be dismissed.

17. The learned counsel for the respondent No. 2 also filed his Written

Argument and thereby stated that by misrepresenting the facts that no post-mortem was conducted on the dead body of the deceased, both the petitioners obtained the anticipatory bail from the learned Sessions Judge, Sonitpur, Tezpur, vide order dated 04.10.2018. Further it is stated that the petitioners have enclosed the statement of only 3 (three) witnesses recorded under Section 164 Cr.P.C., but as per the Charge-Sheet, there are total 40 (fourty) numbers of witnesses whose statements were recorded by the I.O. during the investigation of this case. Further it is submitted that the facts stated in the F.I.R. clearly constitute an offence under Sections 306/34 of the Indian Penal Code and during investigation also, 28 numbers of big batteries used in inverter were also seized from the possession of the accused- Dibya Jyoti Hazarika and 8 (eight) numbers of batteries from the possession of the petitioner No. 2- Amarjyoti Rajkhowa.

18. Coming to the delay in lodging the F.I.R., it is stated that the F.I.R. clearly disclosed that there was conversation between the petitioner No. 1 and the brother of the informant from 28.08.2016 to 06.09.2016 and also had another set of discussion with the petitioner No. 2 and the brother of the informant on 06.09.2016 and 07.09.2016. Further, it also reveals from the F.I.R. that as the respondent No. 2 was busy in doing Shradha ceremony of the deceased son, there was a delay in lodging the F.I.R.

19. Accordingly, it is submitted by the learned counsel appearing on behalf of respondent No. 2 that the prosecution has been able to establish a case *prima facie* against the present petitioners under Sections 306/34 of the Indian Penal Code and on the basis of the investigation, the I.O. filed the Charge-Sheet

against both the petitioners and hence, it is not at all a fit case to exercise the power under Section 482 Cr.P.C. to quash the F.I.R. as well as the Charge-Sheet filed against the present petitioners.

20. After hearing the submissions made by the learned counsels for both sides, I have perused the case record as well as the Case Diary.

21. It is a admitted fact that there is a delay of 25 days in lodging the F.I.R., but the delay is well explained in the F.I.R. itself stating that as to why initially the F.I.R. was not lodged against the present petitioners soon after the death of the deceased son of the respondent No. 2. Further it is seen that the F.I.R. *prima facie* disclose a case against the present petitioners and apart from that, during investigation of this case, the I.O. also seized 45 numbers of batteries from the possession of the petitioners, which are alleged to have been brought by them from the deceased- Ramesh Kumar Maheswari. It is further seen that though the 3 (three) numbers of statements of the witnesses are produced by the petitioners, but as per the F.I.R., there are 40 numbers of witnesses whose statements have been recorded by the I.O. during the entire investigation of this case.

22. The Hon'ble Supreme Court in the case of **Bhajan Lal (supra)** laid down some guidelines in paragraph No. 102 of the judgment, which is also relied by the present petitioners, and as per paragraph No. 102.1, it is held that the power under Section 482 Cr.P.C. can be exercised only when the F.I.R. or complaint even if are taken in their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused persons. Further as per paragraph No. 102.7, if any 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 due to private and personal grudge. But, here in the instant case, it is seen that from the plain reading of the F.I.R. also, a *prima facie* case is constituted against the present petitioners and it also cannot be held that only due to personal grudge, the F.I.R. has been instituted against the present petitioners to quash the F.I.R. as well as the Charge-Sheet filed against them.

23. Further, in the case of **M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra & Ors.**, reported in **2021 SCC OnLine SC 315**, the Hon'ble Supreme Court has laid down following principles of law in respect of quashing the F.I.R.:-

“i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the

jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi)

xvii)

xviii) ”

24. The Hon’ble Apex Court in the case of **Central Bureau of Investigation Vs. Aryan Singh etc**, reported in **(2003) SCC OnLine 379**, has observed that the Court, while dealing with petition under Section 482 Cr.P.C., is not supposed to conduct any mini trial. Paragraph Nos. 9, 10, 11 & 12 of the said judgment reads as under:

“9. Having gone through the impugned common judgment and order passed by the High Court quashing the criminal proceedings and discharging the accused, we are of the opinion that the High Court has exceeded in its jurisdiction in quashing the entire criminal proceedings in exercise of the limited powers under [Section 482](#) Cr.P.C. and/or in exercise of the powers under [Article 226](#) of the Constitution of India.

10. From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under [Section 482](#) Cr.P.C., the Court is not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution / investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution / investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under [Section 482](#) Cr.P.C., the Court has a very limited jurisdiction and is required to consider “whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not”.

11. One another reason pointed by the High Court is that the initiation of the criminal proceedings / proceedings is malicious. At this stage, it is required to be noted that the investigation was handed over to the CBI pursuant to the directions issued by the High Court. That thereafter, on conclusion of the investigation, the accused persons have been chargesheeted. Therefore, the High Court has erred in observing at this stage that the initiation of the criminal proceedings / proceedings is malicious. Whether the criminal proceedings was/were malicious or not, is not required to be considered at this stage. The same is required to be considered at the conclusion of the trial. In any case, at this stage, what is required to be considered is a prima facie case and the material collected during the

course of the investigation, which warranted the accused to be tried.

12. In view of the above and for the reasons stated above, when the High Court has exceeded in its jurisdiction in quashing the entire criminal proceedings and applying the law laid down by this Court in catena of decisions on exercise of the powers at the stage of discharge and/or quashing the criminal proceedings, the impugned common judgment and order passed by the High Court quashing the criminal proceedings against the accused is unsustainable and the same deserves to be quashed and set aside.

25. In the instant case, it is seen that a case is disclosed *prima facie* even from the statement made in the FIR. More so, Charge-Sheet also filed by the investigating agency finding a *prima facie* case against the petitioners. And, the issues as to whether false or concocted case is lodged only to harass the petitioners etc. are to be decided at the time of final hearing of the case.

26. In view of the discussions made above, *prima facie* material available against the petitioners and also in view of the law laid down by the Hon'ble Supreme Court in the case laws referred to hereinabove, I am of the view that this is not a fit case where the power under Section 482 Cr.P.C. can be invoked to quash and set aside the F.I.R. dated 20.09.2016, of Jamuguri P.S. Case No. 130/2016 (Corresponding G.R. Case No. 3090/2016), under Sections 306/403/420/34 of the Indian Penal Code, as well as the Charge-Sheet No. 12/2019, dated 31.01.2019.

27. In the result, I do not find any merit in this petition and accordingly the same stands dismissed.

JUDGE

Comparing Assistant