

GAHC010228232022



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

Case No. : Crl.Pet./1138/2022

ROHIMA BIBI AND 8 ORS
W/O LT. SAHAD ALI
R/O VILL- BHATIPETLA
P.S. TAMARHAT,
DIST. DHUBRI, ASSAM

2: AMINUR ALI @ AMINUR RAHMAN
S/O LT. SAHAD ALI
R/O VILL- BHATIPETLA
P.S. TAMARHAT

DIST. DHUBRI
ASSAM

3: ABBAS ALI
S/O LT. SAHAD ALI
R/O VILL- BHATIPETLA
P.S. TAMARHAT

DIST. DHUBRI
ASSAM

4: AJMAT ALI
S/O MOHIJUDDIN SK.
R/O VILL- BHATIPETLA
P.S. TAMARHAT

DIST. DHUBRI
ASSAM

5: SOBIR ALI
S/O LT. DHULAPUDDIN @ GOLAP
R/O VILL- BHATIPETLA
P.S. TAMARHAT

DIST. DHUBRI
ASSAM

6: MOSLEM ALI @ MUSLEM SK.
S/O ABDUL SHEIKH
R/O VILL- BHATIPETLA
P.S. TAMARHAT

DIST. DHUBRI
ASSAM

7: KHOYBOR ALI
S/O LT. ATAR ALI
R/O VILL- BHATIPETLA
P.S. TAMARHAT

DIST. DHUBRI
ASSAM

8: ABU SAMA SHEIKH
S/O LT. SAHALAM SK.
R/O VILL- BHATIPETLA
P.S. TAMARHAT

DIST. DHUBRI
ASSAM

9: AJID ALI
S/O LT. BAKTAR ALI
R/O VILL- BHATIPETLA
P.S. TAMARHAT

DIST. DHUBRI
ASSA

VERSUS

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

2:AFJAL SK.
S/O HOSSAIN ALI
R/O VILL- BHATIPETLA
P.S. TAMARHAT

DIST. DHUBRI
ASSAM

PIN -78333

Advocate for the Petitioner : MR. M A SHEIKH
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 14.03. 2023

1. Heard Mr. M. Hossain, learned counsel for the petitioners, (1) Rohima Bibi, (2) Aminur Ali @ Aminur Rahman, (3) Abbas Ali, (4) Ajmat Ali, (5) Sobir Ali, (6) Moslem Ali @ Muslem Sk, (7) Khoybor Ali, (8) Abu Sama Sheikh and (9) Ajid Ali. Also heard Mr. B. Sarma, learned Addl. Public Prosecutor for the State respondent No. 1 and Mr. K. Bhattacharjee, learned counsel for the respondent No.2, Afjal Sk.

2. The petitioners named above have filed this application under Section 482 Cr.P.C. for quashing the proceedings of G.R. Case No. 984/2022 (Corresponding to Tamarhat P.S. Case No. 25/2022) and the Charge Sheet No. 72/2022, dated 22.08.2022 under Sections 120B/ 343/ 201/302 IPC.

3. I have considered the submissions at the Bar.

4. The brief facts of this case is that the petitioner No. 1 Rahima Bibi lodged an FIR against Hussain Ali, Usman Ali and Subhan Ali that on 29.10.2021 they had kidnapped the husband of the petitioner No. 1 by administering poison and accordingly, Tamarhat P.S. Case No. 264/2021 under Sections 365/ 294/ 323/ 354/ 506/34 IPC was registered against Hussain Ali, Usman Ali and Subhan Ali who were arrested by the police and forwarded to jail. On 01.06.2022, the husband of the petitioner No. 1 namely Sahad Ali was recovered beside the road

near Alokjar hill in unconscious condition, and he was taken to Dhubri Civil Hospital for treatment but the victim died on 02.06.2022 at Dhubri Civil Hospital. It is suspected that the petitioners hatched a conspiracy and concealed him in an unknown place and killed him after administering poison. Thereafter, an FIR was lodged by Afzal Sheikh against the present petitioners which was registered as Tamarhat P.S. Case No. 25/2022 under Sections 120B/ 343/ 201/ 302 IPC.

5. It is submitted that Usman Ali and Subhan Ali are brothers of the deceased Sahad Ali and the petitioner No. 1 is the wife of deceased Sahad Ali.

6. The learned counsel for the petitioners submitted that an FIR was lodged by the petitioner No. 1 against the father of the present informant and his brothers on 29.10.2021 alleging that they had kidnapped the husband of the petitioner No. 1 by administering poison after taking him away from his residence.

7. The learned counsel for the respondent No. 2 has submitted that the LCR reveals cogent materials against the present petitioners. The statements of the witnesses recorded under Section 161 Cr.P.C. are completely silent with regard to administering poison. It is also submitted that the fact during investigation that husband of the petitioner 1 Sahad Ali was administered poison, was suppressed.

8. The learned counsel for the respondent No. 2 relied on a decision of this Court rendered in the case of Aminur Rahman Vs. State of Assam, reported in 2021 2 Gau LR 484 wherein it has been held as follows:

”8. Referring to the decisions reported in (1) The State Rep. by Inspector of Police, Q. Branch, CID, Tirunelveli Range, Tamil Nadu Vs.

Mariya Anton Vijay, (2015) 3 Crimes (SC) 89), (2) (Chilakamarthi Venkateswarlyu Vs. State of Andra Pradesh, 2019 0 Supreme (SC) 815) and (3) (Rajeev Kourav Vs. Baisahab and others, 2020 0 Supreme (SC) 143); it is contended that under the power under Section 482 of the CrPC, the High Court cannot act as an appellate Court, by appreciating and weighing the materials on record and cannot conclude that the charge sheet could not have been filed against the accused person and therefore, no charges could have been framed. It has also been held in the aforesaid decision that, such appreciation of evidence is to be made by the trial Court only.

9. It has been held clearly that the inherent power under Section 482 of the CrPC has to be carefully exercised so that no injustice is done to the parties. So far as regards the injustice is concerned, it is to be held that it should be a grave and not of a trivial character and it should be palpable and clear and no doubtful and there should exist no other provision of law by which the party aggrieved could have sought relief. Under Section 482 of the Cr.PC, the High Court does not function as a Court of Appeal or Revision."

9. Reverting back to this case, it is held that the present petitioners are booked under Sections 120B/ 343/ 201/302 IPC. It is pertinent to mention that the petitioners are booked under heinous offences. Prayer for quashing the proceeding under Section 482 CrPC has to be exercised sparingly. It has to be borne in mind that the charge sheet has been submitted against the petitioners under heinous offences.

10. It is also submitted on behalf of the petitioners that the learned counsel for the petitioners will be prejudiced if the records of Tamarhat P.S. Case No. 264/2021 under Sections 365/ 294/ 323/ 354/ 506/34 IPC is not scrutinized.

11. I have also perused the scanned copy of the LCR.

12. I have given my anxious consideration to the submissions of the learned counsel for the parties.

13. Considering all aspects and in view of my foregoing discussions, the petition under Section 482 Cr.P.C. is rejected.

14. With the above observations and direction, the Criminal Petition No. 1138 of 2022 is dismissed and disposed of.

JUDGE

Comparing Assistant