

GAHC010234402022



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

Case No. : Crl.Pet./1169/2022

MITALI SONOWAL
M.A., B.ED.
W/O LATE DIGANTA MANIKIAL
R/O TITABOR, SAMUGURI, BABIJAN, P.O.AND P.S. TITABOR, DIST. JORHAT,
ASSAM, PIN-785630

VERSUS

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

2:BORNALI SAIKIA KAKOTI
W/O SRI NOREN CH. KAKATI

R/O TITABOR BEBEJIA GAON

P.O. PURANA TITABOR

P.S. TITABOR
DIST. JORHAT

PIN-700279808

FOR THE PETITIONER : Mr. S.K. Das, SR. ADV.
FOR THE RESPONDENTS : Mr. B. Sarma, Addl. PP, Assam.
Mr. D. Borguhain, Adv. R/Nos.2.
Mr. K.K. Das, Addl. PP, Assam/R.No.1.

:::BEFORE:::

HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 21.01.2023

Date of Judgment & Order (CAV) : 13.03.2023

JUDGMENT & ORDER (CAV)

Heard Mr. S.K. Das, learned counsel appeared on behalf of the petitioner and Mr. D. Borguhain, learned counsel appeared on behalf of respondent No. 2 as well as Mr. K.K. Das, learned Additional Public Prosecutor for the State respondent No.1.

2. This is an application under section 482 Cr.PC. read with section 401 of Cr.P.C. for quashing and setting aside of C.R. Case No. 43/2022, under section 500 IPC pending before the Court of learned Judicial Magistrate 1st Class, Titabar, Jorhat Assam.

3. The brief facts of the present case is that the respondent No. 2 lodged a false and concocted case against the present petitioner only with an ulterior motive to harass the petitioner, which is registered as C.R. Case No. 43/2022, under section 500 IPC and is pending before the learned JMF(C), Titabor.

4. The allegation brought against the petitioner is that the B.Ed degree of the respondent No. 2 is questioned by the petitioner which was published in two vernacular newspapers which caused defamation on the reputation of the respondent No. 2. On 18.08.2022, the complainant deposed before the learned JMFC Titabor, Jorhat, and then, on the next date was fixed on 28.09.2022 for

inquiry under section 202 of Cr.P.C. But on 28.09.2022, the complainant remained absent without steps and surprisingly the learned JMFC without recording statement of the witnesses, took cognizance of offence under section 500 IPC against the petitioner and was pleased to issue summons to the present accused/petitioner and accordingly, she was asked to appear before the learned JMFC.

5. But the actual fact is that both the petitioner and the respondent No. 2 have applied for the post of in-charge principal in Padma Sharma H.S. School after superannuation of Principal Upasana Devi on 28.02.2022. Accordingly, after receiving the application before the Office of the Director of Secondary Education Assam, a hearing was taken place and accordingly, arrived at a finding that the B.Ed. Degree of the respondent No. 2 was found to be irregular as she attended the B.Ed class without taking any leave in violation of provision of section 13 of Assam Civil Service Rules 1965. Thereafter, the respondent No. 2 filed a complaint case against the petitioner alleging *inter alia* that she had given a statement before the media persons that the respondent No. 2 was not in deputation and without any permission, she attended classes of B.Ed. degree and it was also questioned by her that how a person can travel 7 hours journey to attain her class of B.Ed. Thereafter, two news items was published which had made the situation tensed amongst the students and the thereby causing defamation on the reputation of the respondent No. 2. Infact, the dispute with regard to non-appointment in the post of in-charge Principal and other allegations were published not only in two newspapers but it was published in other news papers also.

6. It is further stated that respondent No. 2 lodged the case against the

present petitioner only with a mala fide intention just to harass the petitioner. After receiving the application by the School authority, seniority list was prepared keeping the respondent no. 2 in serial No. 1 while, the petitioner was kept in serial No. 5 in connivance with the outgoing Principal with a view to project the respondent No. 2 as next in-charge Principal, who did not have valid B.Ed degree. The petitioner accordingly filed RTI application before the Deomorni B. Ed. Collage as to how the respondent No. 2 obtained the degree on regular mode and that to in an institution in different district. It was informed to the petitioner that there is no students in the name of Barnali Saikia Kakoti in their Institution and thereafter, the present petitioner had instituted a WP(C) No. 1302/2022, before this Court seeking for issuance of writ of Mandamus for not to appoint the respondent No. 2 in the ground that she did not have a valid degree and also prayed that the authority should consider the candidates who have requisite qualifications. However, this Court was not entertained the said writ petition as pre mature showing that the petitioner should approach as and when any adverse order was passed.

7. Subsequently, the petitioner also filed the representation before the concerned authority and lodged an F.I.R. before the Titabor P.S. on 23.06.2022, on the basis of RTI reply Demornoi B.Ed. Collage and the G.D. entry was made accordingly. But the petitioner has not stated anything before the media and she even does not know any reporter or correspondence of the said vernacular newspaper. But, since the dispute was in public domain, coming to know about the same had published the news item on their own. The respondent No. 2 tried her level best to influence all sources to get the post of in-charge principal but higher authority did not consider her application. At the same time, the petitioner has obtained her B.Ed. degree from Diet Jorhat on Government

deputation. It is a fact that the respondent No. 2, illegally took admission in B.Ed. course for the sessions 2014/2015 in regular mode of study, wherein, the timing was fixed as 10 am to 3 pm and at the same time, she was also attending regular class in her own school i.e. Padma Sharma H.S. School, Madhavpur and obtain her B.Ed degree in the month of February/2016.

8. The distance between two institutions is more than 300 km, and it takes 7 hours road journey which is not possible for anyone to attain classes on regular basis and hence, the B.Ed. degree which is to be considered for appointment as in-charge Principal is in violation of Assam Service Rules.

9. Further, it is stated by the petitioner that B.Ed, curriculum requires mandatory 80% attendance and sixteen weeks practice of teaching in school. The respondent No. 2 who was regularly attending classes in Padma Sharma H.S. School, without taking any leave. How she can attain her B.Ed course in Dominoi B.Ed college under Guwahati University in Darnour District. More so, an affirmation of B.Ed. Collage was subsequently cancelled by K.K. Handique State Open University for non possession of certain criteria.

10. The petitioner also came to know that the respondent No. 2 also filed a writ petition without making the petitioner as a party and suppressing the material facts that she sought for direction from this Hon'ble Court to DSA Assam to appoint her as in-charge Principal cum DDO on Padma Sharma H.S. School. The Coordinate Bench of this Court finally asked counsel to obtain instructions from the Department and accordingly, it was placed before this Court on 27.09.2022, where the Hon'ble High Court observed that "it appears that the petitioner was not place as in charge principal of Padma Sharma H.S. School on the ground that B.Ed degree obtained by her was found to be

irregular.” In spite of this fact stated above, the respondent No. 2 had filed complaint case against the present petitioner only to give monetary harassment and torture. It is further submitted that the husband of the petitioner suddenly expired, as a result of heart attack in the month of July/2022 and she was not yet fully recovered from the shock of losing her spouse suddenly. The petitioner has no criminal antecedence and was unnecessarily harassed in this case only on the assumption that the news published against the respondent No. 2 was led by the petitioner and hence, on being dissatisfied with the order of the learned Magistrate of taking cognizance against the present petitioner, she had to approach this Court with the present petition for quashing and setting aside the C.R. Case No. 43/2022, under section 500 IPC, pending before the learned J.M.F.C Titabor, Jorhat, Assam.

11. The complaint case which is registered as C.R. Case No. 43/2022 is not sustainable as the same was lodged much belatedly on 18.08.2022 as after lapse of considerable period of time of publication of the news items.

12. Further, the respondent No. 2 also should have filed a case against the publisher and reporter, as she was concerned of her reputation and the filing of case of defamation against the present petitioner is totally misconceived and liable to be set aside.

13. The complainant case pending against the present petitioner was filed only with a mala fide intention to harass the petitioner as none of the publication house of the concerned reporters is made as a party respondents, who were responsible for publication of this news items.

14. There are no materials to take cognizance under section 500 IPC against the petitioner and she is not responsible for the facts which were known to all

public domain. More so, there was a petition dated 29.09.2022 before the Minister of the Government of Assam, which was signed by 28 persons and hearing report dated 15.07.2022 passed by DSA Assam.

15. The continuation of C.R. Case No. 43/2022 will be only an abuse of process of law and further continuation of criminal proceeding would cause serious prejudice to the present petitioner. Since, she is no way involved and connected with the publication of the news item regarding invalid B.Ed degree of respondent No. 2. As the entire matter is known to all in public domain. The possibility of conviction is also considered to be remote in her case.

16. The issue regarding illegal B.Ed degree was decided by the appointing authority i.e. DSA Assam as a competent authority and there is no involvement of the petitioner in the entire episode and the said CR case was lodged only on suspicion with some false and concocted allegation against the present petitioner and accordingly in the present petition, the petitioner prayed for setting aside and quashing of the complaint case No. CR 43/2022, which is pending in the Court of learned Judicial Magistrate 1st Class, Titabar, Jorhat Assam.

17. Further, it is submitted by the learned counsel for the petitioner that the petitioner cannot be held liable for publication of news item as all the materials are in public domain. So for the publication of news item, the petitioner cannot be held responsible or cannot be prosecuted under Section 500 of the IPC. Moreso, it reveals from the order sheet maintained by the learned Magistrate that cognizance has been taken without recording the statement of any PWs or without making any enquiry under Section 202 Cr.P.C. Further, it is submitted

that one private individual cannot be made responsible for any publication of news item.

18. In support of her submissions, she relied on the decision of this Court reported in the case of ***Shri Ghisalal Agarwalla and Others-vs-State of Assam and Others***; reported in ***2017 Legal Eagle (GAU) 113***. Relying in the said judgment, it is submitted that a private person cannot be prosecuted in a defamatory case without prosecuting the Printer, Publisher and the Editor of the said newspaper. In paragraph-8 of the said judgment, it has been that *"Hence, it is settled proposition that in the absence of specific averments in the complaint and evidence to support those averments, nobody except the Printer, publisher and Editor of the newspaper can be presumed to be responsible for the contents of the newspaper and cannot be prosecuted for the offence of defamation"*. In the above judgment, a coordinate bench of this Court also relied on a decision of the Hon'ble Supreme Court reported in ***(1998) 5 SCC 749***, wherein, it has been held that *"it is a settled position of law that except the Editor, Printer and Publisher of a newspaper no other person can be fastened with the criminal liability unless specific averment/allegation is made out in the complaint petition"*.

19. The learned counsel for the petitioner further relied on a decision of Hon'ble Supreme Court in ***1997 Legal Eagle (SC) 1387***, wherein, the Hon'ble Apex Court has expressed the view that the Court cannot refuse to entertain an application under Section 482 Cr.P.C. only on the ground that the party can approach the Court for their discharge under Section 245 Cr.P.C.

20. In this context, the learned counsel for the respondent has submitted that the Court took cognizance in this case after finding a prima facie case recording

the evidence of the complainant and hence, their cannot be any bar for taking cognizance of a case only on the basis of the statement of the complainant if the Court satisfies that there are materials to take cognizance. Further, it is submitted that to establish a case under Section 499 IPC, it is not necessary at all to publish the news item in any newspaper, the act and the conduct of the person itself is sufficient to establish a case or to prosecute a person under Section 500 IPC. The news item was published on 02.07.2022 but the Authority concerned held the meeting on 15.12.2022 and the Directors report was furnished on 15.07.2022 i.e. after the publication of the news item in the newspaper. Moreso, it is very much evident from the news item that the sources of news item is the petitioner, who provided information to the newspaper authority and on the basis of which the news item were published. Thus, it is seen that even if the Reporter, Publisher and printer was not made a party in the complaint case, there is materials to prosecute the case against the present petitioner under Section 500 IPC. Accordingly, it is submitted that the present petition under Section 482 Cr.P.C. is liable to be dismissed.

21. After hearing the submission of both the parties and on perusal of the case record and the annexures as well as the citation relied on by the parties, it is seen that there was a dispute in regards to the B.Ed degree obtained by the respondent No. 2 and it is also seen that the present petitioners raised the questions regarding the validity of B. Ed degree obtained by the respondent No. 2. In the same time, it is also seen that the learned JMFC took cognizance of this case after recording the statement of the complainant and after his satisfaction. So, the cognizance which was taken by the learned JMFC cannot be questioned only on the ground that he took cognizance of the case without examining the other witnesses.

22. In the same time, it also reveals from the paper publication i.e. the annexures that there is mention about the present petitioner and it is also specifically mentioned that the allegation was brought by the present petitioner against the respondent No. 2. It is also seen from the news item, the name of the present petitioner is specifically mentioned in the news item so it cannot be out rightly denied that the present petitioner is not involved in the publication of those news item. The Hon'ble Apex Court also in the above cited case **(1998 5 SCC 749)** also expressed the view and has held that a person cannot be prosecuted under Section 500 of the IPC unless specific averments/ allegations are made out in the complaint petition. Here, in this case, it is also seen that entire allegation is brought against the petitioner in the said complaint petition and hence the proceeding cannot be quashed invoking the power under Section 482 Cr.P.C. only on the ground that Printer, Publisher and the Editor are not made a party in this case.

23. The Hon'ble Supreme Court in the case of ***State of Haryana and Others-vs- Bhajan Lal and Others***; reported in ***1992 Supp (1) SCC 335***, wherein, it has been held 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”.

24. Here, in the instant case, it is seen that the learned Magistrate took cognizance of the case against the petitioner on being satisfied after recording the statement of the complainant/respondent No. 2.

25. So considering the entire circumstances of the case, I am of the opinion that this is not a fit case where the power under Section 482 Cr.P.C. can be invoked to quash the proceeding in the said complaint case No C.R. Case No. 43/2022, under section 500 IPC pending before the Court of learned Judicial Magistrate 1st Class, Titabar, Jorhat Assam. The grounds which have been taken in the present petition can also be raised before the learned Trial Court at the time of trial but it is not the stage or to exercise the jurisdiction of 482 Cr.P.C. for quashing the proceeding in the said complaint case No. C.R. Case No. 43/2022, under section 500 IPC pending before the Court of learned Judicial Magistrate 1st Class, Titabar, Jorhat Assam.

26. In view of the above, I find no merit in this petition and the same is accordingly dismissed. Parties to bear their own cost(s).

JUDGE

Comparing Assistant