

GAHC010250492022



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

Case No. : Crl.Pet./1294/2022

MOMTAJ KHATUN
D/O MD. MANSUR ANSARI
VILL-NO. 1 ITAKHOLA
P.S. SOOTEA
DIST. BISWANATH, ASSAM

VERSUS

THE STATE OF ASSAM ND ANR
REP. BY ITS PP, ASSAM

2:MD. FIROJ ALAM
S/O MUKTAR ANSARI
VILL- MORNOIGAON
WARD NO. 1

P.O. AND P.S. MORNOIGAON
WARD NO. 1

P.O AND P.S. BIHPURIA

DIST. LAKHIMPUR
ASSAM
PIN-78416

Advocate for the Petitioner : MR. S SAHU

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 16.10.2023

Heard Mr. A.K. Sahu, learned counsel for the petitioner. Also heard Ms. A. Begum, learned Additional Public Prosecutor for the State/respondent No.1.

2. This is an application under Section 482 Cr.P.C. praying for quashing the impugned order dated 13.05.2022 passed by the JMFC, Lakhimpur, at North-Lakhimpur in C.R.(W) Case No. 43/2021, wherein the learned Magistrate took cognizance against the petitioner under Section 406/352 IPC and summons were issued.

3. The brief facts of the case is that the petitioner is the wife of the respondent No. 2, who has filed a complaint case against the petitioner along with her parents alleging that from the date of their marriage, the petitioner had a hatred feeling towards the respondent No. 2 as because the petitioner had love affair with somebody else prior to her marriage and the parents of the petitioner solemnized her marriage with the respondent No. 2 forcefully against her will. In spite of having such illicit relationship with somebody else, the respondent No. 2 advised the petitioner to remain as his wife. Accordingly, the petitioner remained in the house of the respondent No. 2 for a month. Thereafter, she went to her matrimonial house and involved in an illicit relationship with her paramour and asking the respondent No. 2 to give her divorce. On being denied to give divorce, the petitioner became angry and started to create

nuisance in the house of the respondent No. 2.

4. It was also alleged that the petitioner has sold out the ornaments given to her on the day of marriage. After nine months of their marriage, a male child was born out of their wedlock. According to the petitioner, the child born to her is not of the respondent No.2 and accordingly sought for a divorce. It was further alleged that the petitioner had been in the house of her parents since 16.10.2021 and informed the respondent No.2 that she had left the house of the respondent No. 2 and at the time of leaving the house of the respondent No. 2, the petitioner committed theft of money amounting to Rs.90,000/-. Subsequently, a complaint case was filed by the respondent No. 2 against the petitioner and her parents.

5. On receipt of the complaint case, the learned JMFC, recorded the statement of the complainant under Section 200 Cr.P.C. and one Amina Khatum as well as mother of the respondent No. 2 under section 202 Cr.P.C. and on consideration of their statements, learned Magistrate took cognizance of the case against the present petitioner and summons were issued to her.

6. Learned counsel for the petitioner has submitted that the allegations made in the complaint case are absolutely false and concocted one. The complaint petition was filed with an ulterior motive to deprive the petitioner from her legitimate claim. The petitioner has filed an application under Section 125 Cr.P.C. against the respondent No. 2 claiming maintenance for herself and her child before the court of learned SDJM, Biswanath much prior to filing of the complaint case. The

learned SDJM as an interim measure allowed maintenance of Rs.2000/- to the petitioner to be paid by the respondent No. 2. In order to avoid the order of maintenance, the respondent No.2 filed the complaint in question with a manufactured story.

7. It is also the submission of learner counsel for the petitioner that the learned JMFC ought not to have taken the cognizance of the commission of an offence under section 406 IPC as there is not a single whisper in the complaint or in the statement of the witnesses recorded under section 202 Cr.P.C., to the effect that the money alleged to have been stolen was entrusted to the petitioner. In order to attract the offence under section 406 IPC, the basic ingredient is to entrust the money or property to the accused. In the instant case, the very basic ingredients of the said section is missing and as such the impugned order of taking cognizance under section 406 IPC is not sustainable in law.

8. The learned counsel for the petitioner has further pointed out that learned Magistrate has also erred in taking cognizance under Section 352 IPC on the facts that the petitioner had pushed her mother-in-law, as a result of which, she fell down and sustained injury. But when the statement of the mother of the respondent No. 2 was recorded under Section 202 Cr.P.C., the mother did not utter a single word regarding her injury on pushing or pulling made by the petitioner. This being the position, no prima facie case is made out under section 352 IPC against the petitioner.

9. None appears for the respondent No. 2 though notice was duly served to the respondent No. 2/complainant.

10. Though the powers possessed by the High Court under *Section 482* are wide, however, such power requires care/caution in its exercise. The interference must be on sound principles and the inherent power should not be exercised to stifle a legitimate prosecution. It is made clear that if the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of inherent powers under Section 482.

11. Hon'ble Supreme Court in the case of ***Padal Venkata Rama Reddy Vs. Kovuri Satyanarayana Reddy***, reported in ***(2012) 12 SCC 437*** has held as under :

“11. Though the High Court has inherent power and its scope is very wide, it is a rule of practice that it will only be exercised in exceptional cases. Section 482 is a sort of reminder to the High Courts that they are not merely courts of law, but also courts of justice and possess inherent powers to remove injustice. The inherent power of the High Court is an inalienable attribute of the position it holds with respect to the courts subordinate to it. These powers are partly administrative and partly judicial. They are necessarily judicial when they are exercisable with respect to a judicial order and for securing the ends of justice. The jurisdiction under Section 482 is discretionary, therefore, the High Court may refuse to exercise the discretion if a party has not approached it with clean hands.

12. In a proceeding under Section 482, the High Court will not

enter into any finding of facts, particularly, when the matter has been concluded by concurrent finding of facts of the two courts below. Inherent powers under Section 482 include powers to quash FIR, investigation or any criminal proceedings pending before the High Court or any court subordinate to it and are of wide magnitude and ramification. Such powers can be exercised to secure ends of justice, prevent abuse of the process of any court and to make such orders as may be necessary to give effect to any order under this Code, depending upon the facts of a given case. The Court can always take note of any miscarriage of justice and prevent the same by exercising its powers under Section 482 of the Code. These powers are neither limited nor curtailed by any other provisions of the Code. However, such inherent powers are to be exercised sparingly, carefully and with caution.

13. It is well settled that the inherent powers under Section 482 can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. It cannot be used if it is inconsistent with specific provisions provided under the Code (vide Kavita v. State and B.S. Joshi v. State of Haryana). If an effective alternative remedy is available, the High Court will not exercise its powers under this section, specially when the applicant may not have availed of that remedy.

14. The inherent power is to be exercised ex debito justitiae, to do real and substantial justice, for administration of which alone

courts exist. Wherever any attempt is made to abuse that authority so as to produce the injustice, the Court has power to prevent the abuse. It is, however, not necessary that at this stage there should be a meticulous analysis of the case before the trial to find out whether the case ends in conviction or acquittal. (Vide Dhanalakshmi v. R. Prasanna Kumar; Ganesh Narayan Hegde v. S. Bangarappa and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque.)

15. It is neither feasible nor practicable to lay down exhaustively as to on what ground the jurisdiction of the High Court under Section 482 of the Code should be exercised. But some attempts have been made in that behalf in some of the decisions of this Court vide State of Haryana v. Bhajan Lal, Janata Dal v. H.S. Choudhary, Rupan Deol Bajaj v. Kanwar Pal Singh Gili and Indian Oil Corpn. v. NEPC India Ltd."

12. In the landmark case of ***State of Haryana v. Bhajan Lal***, reported in **1992 SCC(Cr) 426**, the Hon'ble Supreme Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. This Court summarised the legal position by laying down the following guidelines to be followed by the High Courts in exercise of their inherent powers to quash a criminal complaint:

"(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 Act concerned (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 Act concerned, 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."

13. In ***State of Orissa v. Saroj Kumar Sahoo***, reported in **2005 Supp 5 SCR 548**, it has been held that probabilities of the prosecution version cannot be analysed at this stage. Likewise, the allegations of mala fides of the informant are of secondary importance. The relevant passage reads thus:

"11. ... It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with."

14. In ***Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre***, reported in **1988 0 Supreme(SC)119** Hon'ble Supreme Court held as under:

"7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a

particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

15. The Supreme Court in the case of ***M. Srikanth v. State of Telangana***, reported in **(2019) 10 SCC 373** has held as under :

"It could thus be seen, that this Court has held, that where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute a case against the accused, the High Court would be justified in quashing the proceedings. Further, it has been held that where the uncontroverted allegations in the FIR and the evidence collected in support of the same do not disclose any offence and make out a case against the accused, the Court would be justified in quashing the proceedings."

16. On a bare look at the aforesaid legal propositions, thus, it is clear that although this Court cannot make a roving enquiry at this stage, but if the un-controverted allegations do not make out any offence, only then this Court can quash the F.I.R.

17. Reverting to the present case, it appears that the magistrate took

cognizance against the petitioner under section 406/352 IPC. The allegation against the petitioner is that at the time of leaving the house of her husband, she committed theft of Rs.90,000/- but for an offence under section 406 IPC, the basic ingredient is to entrust the money or property to the alleged accused. In the instant case, the very basic ingredients of the said section is missing. There is no allegation against the present petitioner that the respondent No.2 as complainant has entrusted the said money to the petitioner. Hence, Section 406 IPC is not attracted here in this case.

18. Regarding offence under section 352 of IPC, as it appears from the complaint case as well as the statement of the witnesses recorded under section 200/202 Cr.P.C., the respondent No.2 alleged in the complaint petition that the petitioner pushed his mother as a result of which she sustained injury on her person. She was treated in a hospital. The statement of the mother-in-law of the petitioner was recorded by the magistrate under section 202 Cr.P.C., wherein she stated that her daughter-in-law after marriage engaged herself in altercation and fight with her and she pushed her down on two occasions but she could not remember the dates. She nowhere stated in her statement before the Magistrate that due to the alleged assault caused by the petitioner, she sustained injury on her person. Under such backdrop, section 352 IPC is also not attracted here in this case.

19. As observed hereinabove, there may be some cases where the initiation of criminal proceedings may be an abuse of process of law. In such cases, and only in exceptional cases and where it is found that non interference would result into miscarriage of justice, the High Court, in

exercise of its inherent powers under Section 482 Cr.P.C. may quash the FIR/complaint/criminal proceedings and even may stay the further investigation. There is no denial of the fact that power under Section 482 Cr.P.C. is very wide but as observed by the Hon'ble Supreme Court in catena of decisions, as stated above, conferment of wide power requires the court to be more cautious and it casts an onerous and more diligent duty on the court. Therefore, in exceptional cases, when the High Court deems it fit, regard being had to the parameters of quashing and the self-restraint imposed by law, may pass appropriate orders, as thought apposite in law.

20. In the present case, the allegations made out against the petitioner prima facie finds no case against the petitioner under Section 406/352 IPC. Hence, the impugned order dated 13.05.2022 passed by the JMFC, Lakhimpur, at North-Lakhimpur in C.R.(W) Case No. 43/2021, is hereby set aside and quashed.

21. With the above observation, the criminal petition stands disposed of.

JUDGE

Comparing Assistant