

GAHC010259132022



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

Case No. : Crl.Pet./1283/2022

ABHIJIT DUTTA AND 2 ORS
S/O TARUN DUTTA
R/O KUMUD NAGAR,
BORAGADHAI, P.O. AND P.S. DULIAJAN, DIST. DIBRUGARH, ASSAM-786602

2: ANNADA DUTTA
W/O TARUN DUTTA
R/O KUMUD NAGAR

BORAGADHAI
P.O. AND P.S. DULIAJAN
DIST. DIBRUGARH
ASSAM- 786602

3: PUSPANJALI DUTTA
D/O TARUN DUTTA
R/O KUMUD NAGAR

BORAGADHAI
P.O. AND P.S. DULIAJAN

DIST. DIBRUGARH
ASSAM-78660

VERSUS

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

2:NAYANA CHETIA DUTTA
D/O JUN CHETIA

R/O KUMUD NAGAR
MOUJA- TIPLING

P.O. AND P.S. DULIAJAN
DIST. DIBRUGARH
ASSAM-78660

Advocate for the Petitioner : MR F KHAN

Advocate for the Respondent : PP, ASSAM

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

13.12.2023

Heard Mr. F. Khan, the learned counsel appearing for the petitioners. Also heard Ms. S. Jahan, the learned Addl. Public Prosecutor, Assam representing respondent no.1. Mr. U. Choudhury, the learned counsel represents respondent no.2.

2. This is an application under Section 482 of the CrPC praying for quashing the FIR dated 26.08.2016, corresponding to Duliajan P.S. Case No.321/2016, the *Charge Sheet* No.154 dated 30.08.2016 and the order dated 13.07.2017 passed by the learned Judicial Magistrate 1st Class, Dibrugarh in G.R. Case No.2451 of 2016.

3. The respondent no.2 Nayana Chetia Dutta had lodged the FIR on 26.08.2016 stating that she had eloped with the petitioner Abhijit Dutta on 20th December, 2015. Initially, they led a happy life. Subsequently, Abhijit Dutta started to change his behaviour. He often spent the night outside his house. In the meantime, Nayana Chetia Dutta came to know that on 2nd February, 2015, Abhijit Dutta had married another girl called Mousina

Begum at Guwahati. Nayana Chetia Dutta came to know about that fact after Mousina had informed her over phone. When Nayana confronted Abhijit Dutta and his family members, all of them, more particularly the mother and sister of Abhijit Dutta along with Abhijit Dutta himself started to physically as well as mentally harass her.

4. Abhijit Dutta along with his mother Annada Dutta and his sister Puspanjali Dutta, have filed this petition under Section 482 of the CrPC stating that they have settled their dispute with Nayana Chetia Dutta (respondent no.2) and prayed for quashing the FIR and the connected proceedings.

5. Police registered the FIR of Nayana Chetia Dutta under Section 498A and 494 of the Indian Penal Code. Since Section 498A is not compoundable under Section 320 of the Criminal Procedure Code, they have approached this Court under Section 482 of the CrPC.

6. Mr. Khan has relied upon a judgment of the Hon'ble Supreme Court that was delivered in *Jitendra Raghuvanshi & Ors. -Vs- Babita Raghuvanshi & Anr.*, reported in (2013) 4 SCC 58. Paragraph 7 and 8 of the said judgment are quoted as under:

“**7.** The scope and ambit of power under Section 482 of the Code has been examined by this Court in a catena of earlier decisions. In the present case, we are concerned about interference by the High Court exercising jurisdiction under Section 482 in relation to matrimonial disputes.

8. It is not in dispute that matrimonial disputes have been on considerable increase in recent times resulting in filing of complaints under Sections 498-A and 406 IPC not only against the husband but also against the relatives of the husband. The question is when such matters are resolved either by the wife

agreeing to rejoin the matrimonial home or by mutual settlement of other pending disputes for which both the sides approached the High Court and jointly prayed for quashing of the criminal proceedings or the FIR or complaint by the wife under Sections 498-A and 406 IPC, whether the prayer can be declined on the sole ground that since the offences are non-compoundable under Section 320 of the Code, it would be impermissible for the Court to quash the criminal proceedings or FIR or complaint."

7. Mr. Choudhury, appearing for Nayana Chetia Dutta has submitted that she has no objection if the prayer of the petitioners are allowed.

8. I have considered the submissions made by the learned counsels of both sides.

9. In *State of Haryana v. Bhajan Lal*, AIR 1992 SC 604, the Supreme Court has laid down the guidelines as to when the power under Section 482 of the CrPC can be exercised by the High Court. Paragraph 102 of the judgment 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 channelised 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."

10. The power to quash proceeding under Section 482 of the CrPC is exercised to prevent abuse of the process of the court. I am of the

considered opinion that in the instant case, under the given circumstances, there is no possibility of conviction in future. So, allowing the criminal proceeding to continue in the trial court, would be nothing but an abuse of the process of the court. I find that this is a fit case for exercise of power under 482 of the CrPC. Accordingly, the criminal petition is allowed.

11. The FIR dated 26.08.2016, corresponding to Duliajan P.S. Case No.321/2016, the *Charge Sheet* No.154 dated 30.08.2016 and the order dated 13.07.2017 passed by the learned Judicial Magistrate 1st Class, Dibrugarh in G.R. Case No.2451 of 2016 are quashed and set aside.

The criminal petition is disposed of.

JUDGE

Comparing Assistant