

GAHC010266992019



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

Case No. : Crl.Pet./1285/2019

DIPANKAR SAHA
S/O LT. BHUBAN CH. SAHA, R/O R.P. DISPUR, GUWAHATI-6, P.O. AND P.S.
DISPUR, DIST. KAMRUP (M), ASSAM

VERSUS

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

2:PRADIP KANTI PAUL
S/O LT. NRIPENDRA NATH PAUL
R/O ANANDA PATH
HOUSE NO. 19
R.P. ROAD
GANESHGURI
GUWAHATI-5
P.O. AND P.S. DISPUR
DIST. KAMRUP (M)
ASSA

Advocate for the Petitioner : MS. M DEV

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 22.03.2023

Heard Ms. M. Dev, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State respondent No. 1.

2. Scanned copy of the LCR along with the Case Diary have already been received.

3. From the Office Note, it reveals that the service in respect of respondent No. 2 has already been completed; however, no counsel has represented the respondent No. 2 in spite of lapse of several dates and hence, the petition is heard in absence of respondent No. 2.

4. This is an application under Section 482 of the Code of Criminal Procedure for quashing the criminal proceeding in G.R. Case No. 12652/2017, pending before the Court of learned Judicial Magistrate 1st Class, Kamrup (M), Guwahati, arising out of the impugned Charge-Sheet No. 369/2017, dated 30.10.2017, under Sections 294/506 of the Indian Penal Code, on the basis of the F.I.R. registered as Dispur P. S. Case No. 2547/17, under Sections 294/506 of the Indian Penal Code.

5. It is submitted by the learned counsel for the petitioner, Ms. M. Dev, that from the statement made in the F.I.R. as well as from the contents of the

Charge-Sheet, it reveals that no such incident had taken place to register a case under Sections 294/506 of the Indian Penal Code and no case is made out against the present petitioner under the said Sections of law. Further it is submitted that civil disputes are going on between the parties and an injunction order was also passed by the Civil Judge No. 1, Kamrup(M), Guwahati, in Title Suit No. 498/2016, which is pending disposal, and for violation of the said injunction order, the present petitioner has already filed 2-3 F.I.Rs. against the present petitioner. The criminal proceeding, on the basis of the impugned F.I.R. and subsequent Charge-Sheet, in the present case would result in abuse of the process of the law and would cause grave miscarriage of justice and hence, the impugned F.I.R. and the Charge-Sheet as well as the subsequent criminal proceeding is liable to be set aside and quashed. It is further submitted that this Court can exercise power under Section 482 Cr.P.C. to quash any F.I.R. or subsequent criminal proceeding to prevent abuse of the process of law or otherwise to secure the ends of justice.

6. In this context, the learned Additional Public Prosecutor, Mr. D. Das, has submitted that on perusal of the scanned copy of the record as well as the statement made by the witnesses, it is seen that except one altercation, no other incident had happened and the complainant had exaggerated the entire matter and lodged the F.I.R. Further it is submitted that as per the statement of the witnesses, recorded under Section 161 Cr.P.C., the dispute arose when the petitioner prevented the workmen of the informant while they were cutting the leaves of the coconut tree. It is a fact that there was an altercation took place between the petitioner and the labourer, but except that, no other incident had taken place, nor there is any evidence that the present petitioner tried to assault

the informant with a Dao or threatened him with any dire consequences. Further it is submitted by the learned Additional Public Prosecutor that the civil dispute is going on between the parties for their boundaries and from the annexures filed along with the petition, it is seen that the dispute is still pending before the learned Civil Judge No. 1, Kamrup(M), Guwahati. Accordingly, the prosecution raised no objection if the criminal proceeding is quashed along with the F.I.R. and the Charge-Sheet.

7. After hearing the submissions of learned counsels for both sides, I have perused the case record as well as the Case Diary along with the scanned copy of the LCR.

8. Considering the entire facts of the case narrated in the F.I.R. as well as the statement of the witnesses recorded by the I.O., it is seen that the present F.I.R. is lodged only due to outcome of civil dispute between the parties. More so, the statement made in the F.I.R. does not attract Section 294 of the Indian Penal Code, though some materials have been brought to attract Section 506 of the Indian Penal Code.

9. The Hon'ble Supreme Court in the case of **State of Haryana & Ors. Vs. Bhajan Lal & Ors.**, reported in **1992 Supp (1) SCC 335**, has 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."*

10. In the instant case also, as stated above, the statement made in the F.I.R. and by the witnesses, it is seen that *prima facie* no case is established against the present petitioner. Rather, it is seen that the dispute arose between the parties only for their land dispute which is pending before the Civil Court.

11. Under the above facts and circumstances of this case and also considering the view of the Hon'ble Apex Court in **Bhajan Lal (supra)**, I am of the considered opinion that this is a fit case where the extra-ordinary power under Section 482 Cr.P.C. can be invoked to quash the criminal proceeding.

12. Accordingly, the F.I.R. of Dispur P. S. Case No. 2547/17, under Sections 294/506 of the Indian Penal Code, and the criminal proceeding in G.R. Case No. 12652/2017, pending before the Court of learned Judicial Magistrate 1st Class, Kamrup (M), Guwahati, arising out of the impugned Charge-Sheet No. 369/2017, dated 30.10.2017, under Sections 294/506 of the Indian Penal Code, stand set aside and quashed.

13. In terms of above, this criminal petition stands disposed of.

JUDGE

Comparing Assistant