

GAHC010270192018



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

Case No. : Crl.Pet./1229/2018

KAMALESWAR DEKA AND 6 ORS.
S/O. LT. JADAV DEKA, VILL. ISSADGHORIA, P.S. RANGIA, DIST. KAMRUP,
PIN-781354.

2: SONESWAR DEKA
S/O. LT. JADAV DEKA
VILL. ISSADGHORIA
P.S. RANGIA
DIST. KAMRUP
PIN-781354.

3: RATUL DEKA
S/O. LT. JADAV DEKA
VILL. ISSADGHORIA
P.S. RANGIA
DIST. KAMRUP
PIN-781354.

4: MS. NAMITA KALITA
D/O. LT. JADAV DEKA
VILL. ISSADGHORIA
P.S. RANGIA
DIST. KAMRUP
PIN-781354.

5: MRS. RANJU DEKA @ RANJU KALITA
W/O. SRI KAMALESWAR DEKA
VILL. ISSADGHORIA
P.S. RANGIA
DIST. KAMRUP
PIN-781354.

6: MRS. JUNU DEKA @ JUNU KALITA
W/O. SRI SONESWAR DEKA

VILL. ISSADGHORIA
P.S. RANGIA
DIST. KAMRUP
PIN-781354.

7: MRS. JUMI DEKA @ JUMI KALIT DAS
W/O. SRI RATUL DEKA
VILL. ISSADGHORIA
P.S. RANGIA
DIST. KAMRUP
PIN-781354

VERSUS

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

2: PRANAB KALITA
S/O. SRI DHARANI KALITA
VILL. GARAKA
P.S. RANGIA
DIST. KAMRUP
PIN-781354

Advocate for the Petitioner : MR H BARUAH

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 22-08-2023

Heard Mr. H Baruah, learned counsel for the petitioners. Also heard Ms. B Bhuyan, learned Additional Public Prosecutor appearing for the State respondent No. 1 as well as Mr. S Das, learned counsel for the respondent No. 2.

2. The petitioners have preferred this application under Section 482 Cr.PC against the order dated 02.11.2018, passed by the learned Judicial Magistrate

First Class, Kamrup, Rangia, in CR Case No. 32/2018, whereby the learned Magistrate took cognizance of the offence under Sections 447/323 IPC against the present petitioners and issued summons accordingly.

3. The case of the petitioners is that the petitioner No. 5 lodged an FIR on 22.03.2018 before the Officer-In-Charge of Rangia Police Station stating *inter alia* that on 22.03.2018, at about 10:00 am, when her husband was working on their own land at village Garaka, the respondent No. 2 and his family members trespassed into their land and intercepted them. They also assaulted the petitioners with lathis, as a result of which, the petitioners sustained injuries on their persons.

4. On the basis of the said FIR, a case was registered vide Rangia P.S. Case No. 117/2018 under Sections 143/447/341/325/354(A)/379 IPC and the case was under investigation.

5. Subsequently, the respondent No. 2 lodged an FIR before the Officer-In-Charge of Rangia Police Station on the same set of incident. It is alleged that the present petitioners had brought a JCB tractor, etc and forcibly trespassed into their land at Raghar Basti and started digging their land. When the respondent No. 2 and his family members intervened, the petitioners assaulted them with fists and blows. On the allegation made in the FIR, a case was registered vide Rangia P.S. Case No. 118/2018, under Sections 447/323/354(A)/294/506/34 IPC.

6. After lodging of the aforesaid FIR, the respondent No. 2 also filed another complaint case on 23.03.2018 on the same allegations made in the FIR and the complaint case was registered vide CR 32/2018. In fact the allegations in the complaint case and the FIR dated 22.03.2018 are literally one and the

same.

7. Subsequently, the learned Magistrate took cognizance of the offence and issued summons against the petitioners for their appearance before the Court.

8. Being highly aggrieved and dissatisfied with the impugned order, the petitioners have filed this criminal petition under Section 482 Cr.PC praying for quashment of the said order dated 02.11.2018.

9. It is submitted by the learned counsel for the petitioners that the impugned order dated 02.11.2018, passed by the learned Trial Court is manifested with errors and fails to exercise its jurisdiction conferred by the law resulting into non-application of judicial mind thereby causing miscarriage of justice.

10. It is also the submission of the learned counsel for the petitioners that the learned Trial Court committed gross error in exercising its jurisdiction in taking cognizance against the present petitioners when for the same allegation the investigation was already proceeding and pending before the Rangia Police Station. It is also submitted that the learned Trial Court acted contrary to the provisions of Section 210(1) of the Cr.PC and as such, the impugned order dated 02.11.2018 is liable to be set aside.

11. In response, the learned Additional Public Prosecutor and the learned counsel for the respondent No. 2 submitted that this is an irregularity caused by the learned Trial Court for not calling any report regarding institution of any case on the basis of the FIR lodged by the respondent No. 2 for which the proceeding of the complaint case cannot be quashed.

12. I have considered the submissions of the learned counsels for the parties. I have also perused the scanned copies of the records.

13. It appears from the record of CR 32/2018 that when the initial statement of the complainant, i.e., the respondent No. 2 was recorded under Section 200 Cr.PC, it is admitted by the respondent No. 2 that an FIR was lodged at Police Station but Police did not investigate. Though the FIR was registered, Police did not come to the place of occurrence after registering the case. Hence, they filed the complaint case.

It appears from the statement of the respondent No. 2 that prior to filing of the present complaint case, an FIR was lodged by the respondent No. 2 on the same set of incident. As the Police did not take any action on the allegation made by him, the respondent No. 2 was compelled to file the present complaint case before the learned Sub-Divisional Judicial Magistrate, Rangia. It appears from the scanned copy of the record that the initial statement of the complainant was recorded under Section 200 Cr.PC on 14.05.2018 but no report was called for from the concerned Police Station with regard to whether any case was registered on the FIR lodged by the respondent No. 2 and subsequently on 02.11.2018, cognizance was taken against the present petitioners and summons were issued.

Section 210(1) Cr.PC reads as follows:-

“Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.

(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the

Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.”

14. On a bare perusal of the provisions, it reveals that when a complaint case has been filed and it is made to appear to the Magistrate during the course of the enquiry or trial that an investigation by the Police is in progress in relation to the same offence, which is subject matter of the enquiry or trial, it is the duty of the Magistrate to call for a report from the concerned Police Station regarding the status of the investigation of the Police case. Admittedly, in the instant case though it has come to the knowledge of the learned Magistrate that prior to filing of the complaint case, an FIR was lodged by the respondent No. 2, no report was called for from the concerned Police Station regarding progress of the investigation of the said case, which is an irregularity made by the learned Magistrate.

15. Under such backdrop, both the parties are directed to appear before the learned Trial Court on 25.09.2023 and the learned Magistrate is directed to proceed with the complaint case in view of the above discussion and by following the provisions of Section 210 Cr.PC.

16. The order passed by the learned Trial Court dated 02.11.2018 is hereby set aside. The interim order passed earlier is also vacated.

17. The criminal petition stands disposed of accordingly.

JUDGE

Comparing Assistant