

GAHC010282912023



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

Case No. : WP(C)/7342/2023

SONARAM HAZARIKA
S/O- LATE BOGAMOL HAZARIKA, R/O- VILL.- JORHOTIA, P.O.
CHARAIMARIA, P.S. BOGINADI, PIN- 787056, DIST. LAKHIMPUR, ASSAM

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO THE GOVT.
OF ASSAM, HOME AND POLITICAL DEPARTMENT, ASSAM ,DISPUR,
GUWAHATI-6.

2:THE DIRECTOR GENERAL OF POLICE
ASSAM ULUBARI
GUWAHATI-7.

3:THE DISTRICT COMMISSIONER
LAKHIMPUR
NORTH LAKHIMPUR.

4:THE SUPERINTENDENT OF POLICE
LAKHIMPUR
NORTH LAKHIMPUR.

5:SMTI. TULUMONI DUWARAH
OFFICER-IN-CHARGE
NORTH LAKHIMPUR POLICE STATION
P.O. AND P.S. NORTH LAKHIMPUR
DIST. LAKHIMPUR
ASSAM PIN- 787001.

6:MILTON BURAGOHAIN
TSI NORTH LAKHIMPUR POLICE STATION
P.O. AND P.S. NORTH LAKHIMPUR
DIST. LAKHIMPUR

ASSAM PIN- 787001.

7:DAMTEJIT DEORI
PRESENT TSI
NORTH LAKHIMPUR POLICE STATION
P.O. AND P.S. NORTH LAKHIMPUR
DIST. LAKHIMPUR
ASSAM PIN- 787001.

8:AMRIT KUMAR TAMULI
S/O- LATE TULAN TAMULI
R/O- WARD NO. 5
D.K. ROAD
C/O- MRS. ILA HAZARIKA
P.O. AND PS. NORTH LAKHIMPUR
DIST. LAKHIMPUR
ASSAM PIN- 787001

Advocate for the Petitioner : MR. J C GOGOI
Advocate for the Respondent : GA, ASSAM

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MRS. JUSTICE MITALI THAKURIA

ORDER

18-12-2023
(M.R.Pathak, J)

Heard Mr. J. C. Gogoi, learned counsel for the petitioner and Mr. P. Sharma, learned Additional Senior Government Advocate, Assam for the official respondent Nos. 1 to 4.

2) The petitioner herein is a registered Contractor under the Public Health and Engineering Department of the State and he obtained a contract from the District Mission Director-cum-Executive Engineer (Public Health Engineering) North Lakhimpur Division on 07.03.2022 for construction of a new Scheme under the Jal Jeevan Mission, Assam. For the said purpose, he entered into an agreement with the respondent No.8, namely, Sri Amrit Kumar Tamuli to execute the work, where it was

agreed upon that the investment would be made by the petitioner as well as by the said respondent No.8 for the said work and that they will look after the execution of the said work, agreeing further that for the said purpose, the respondent No.8 will get a share of profit along with the amount he invested in execution of the said work.

3) It is stated that after getting the first running bill, the petitioner paid an amount of Rs.20,00,000/- to the said respondent No.8 on 23.06.2022 through RTGS. The petitioner alleged that thereafter, the respondent No.5, Officer-in-Charge of North Lakhimpur Police Station on many occasions called him to the said police station stating that the respondent No.8 lodged a complaint against him before the Superintendent of Police, Lakhimpur, which has been forwarded to her and in that process, the respondent Nos. 5, 6 and 7 who are police officials of North Lakhimpur Police Station in collusion with the said respondent No.8 extorted money from the petitioner putting him under fear.

4) Hence, this writ petition by the petitioner praying amongst others, for a direction to the State respondents to take departmental action against those respondent Nos. 5, 6 and 7 for harassing the petitioner and extorting money from him by those respondents by misusing their official powers and to direct those police personnel of North Lakhimpur Police Station not to harass him anymore, without any valid complaint and proper investigation and further to register a police case against the respondent Nos. 5 to 8 by police of North Lakhimpur Police Station and thereby to grant him relief.

5) On being enquired Mr. J. C. Gogoi, learned counsel on instruction, submitted that it is not possible for the petitioner to visit the North Lakhimpur Police Station and to lodge an FIR against the accused persons involved in the alleged case, as he might be arrested and detained by police personnel of North Lakhimpur Police Station on his such visit.

6) Mr. Gogoi, learned counsel for the petitioner on further enquiry submitted that

as on date, no such FIR has been filed against the respondent Nos. 5 to 8 with regard to the alleged incident.

7) The Constitution Bench of the Hon'ble Supreme Court in the Case of *Lalita Kumari Vs. Government of Uttar Pradesh* reported in (2014) 2 SCC 1 held that – whenever an FIR is lodged by an informant relating to the cognizable offence it has to be registered. In the said Constitution Bench judgment, the Hon'ble Supreme Court has laid down various aspects as to when a detailed enquiry is required before registering an FIR and further, where an FIR on the basis of complaint/written information is to be registered straightway.

8) In the case in hand, it is not the case of the petitioner that the petitioner lodged an FIR against the respondent Nos. 5 to 8 and that his said or such FIR has not been registered.

9) Chapter XII of the Code of Criminal Procedure, 1973 relates to "Information to the Police and their powers to investigate" and Section 154 of Cr.P.C. relates to "Information in cognizable cases". Section 156 under said Chapter XII of the Cr.P.C. relates to "Police Officer's power to investigate cognizable case". Section 156 (3) provides that any Magistrate is empowered under Section 190 of the Cr.P.C. to pass any order pertaining to an investigation as provided under Section 156 (i).

10) Further, Section 154 (3) of the Cr.P.C. clearly provides that any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-Section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of an cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by the Cr.P.C. and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

11) It is not the case of the petitioner that after filing any such FIR by him or through his agent or by anyone on his behalf before the North Lakhimpur Police Station with regard to the allegations made against the respondent Nos. 5 to 8 on being not registered, he submitted a written complaint before the Superintendent of Police of District – Lakhimpur. Further, the petitioner has also not approached the Magistrate concerned of Lakhimpur District as provided under Section 156 (3) of the Cr.P.C.

12) In view of above, considering the judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of *Lalita Kumari* (supra) and the provisions laid down under Section 154 Cr.P.C., as well as Section 156 Cr.P.C., we are not inclined to accept this writ petition preferred by the petitioner, as he has sufficient alternative remedy available for redressal of his grievances, as noted above.

13) Accordingly, this writ petition stands rejected, on the grounds, mentioned above.

14) However, it is made clear that the petitioner may avail the other alternative remedy available to him as provided under the Code of Criminal Procedure, noted above, for redressal of his grievances stated herein.

JUDGE

JUDGE

Comparing Assistant