

GAHC020002132023



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

Case No. : Crl. Pet./4/2023

NAGA CLUB
BEARING REGD NO. 1375, REPRESENTED BY ITS PRESIDENT SHRI.
KUOLACHALIE SEYIE, AGED ABOUT 75 YEARS, SON OF SEIVIZO SEYIE, R/O
I.G. STADIUM RULEIZOU, HIGH SCHOOL AREA, KOHIMA

VERSUS

THE STATE OF NAGALAND AND ANR
NAGALAND, KOHIMA

2:THE NAGA STUDENTS FEDERATION
REPRESENTED BY ITS PRESIDENT SHRI. KEGWAYHUN TEP

Advocate for the Petitioner : SENTIYANGER

Advocate for the Respondent : VETO V. ZHIMOMI P.P, NAGALAND

**BEFORE
HONBLE MR JUSTICE KARDAK ETE**

ORDER

26.09.2023

Heard Mr. Sentianger, learned counsel for the petitioner. Also heard Mr. Veto V. Zhimomi, learned Public Prosecutor for the respondent No. 1. None appears for the respondent No. 2 despite service of notice which has been effected through *dasti*.

By filing this petition under Section 482 CrPC, 1973 the petitioner has prayed for quashing of FIR dated 27.05.2023 and consequential criminal proceedings registered as Kohima North PS Case No. 0021/2023 under Section 457/427/120B/34 IPC.

The case in nutshell is that the FIR was lodged by the respondent No. 2, *i.e.* Shri Kegwayhun Tep, the President of Naga Students' Federation alleging that their office premise and the building have been damaged on the early hours of 27.05.2023 by unknown miscreants. Accordingly, a case was registered as Kohima North PS Case no. 0021/2023 under Section 457/427/120B/34 IPC. It is the contention of the petitioner that the land on which the Naga Students' Federation Office is presently established and some other adjacent buildings with other shops/offices/printing press were given to the petitioner by the Kohima Village. Accordingly, the authority has issued patta measuring an area of 9,257 sq.ft. situated at Old Secretariat Complex, Kohima on 14.04.2021 in favour of the petitioner.

The petitioner being the owner of the building wrote to the Naga Students' Federation on 24.11.2020 and 20.10.2021 for a meeting regarding the Naga Club building, however the Naga Students' Federation never turned up nor did they pay the rent. The part of the building was allotted to the Naga Students' Federation way back in 1983 on being approached by the then Naga Students' Federation on rental basis. Thereafter, the petitioner after waiting for 6 to 7 years served eviction notice to the respondent No. 2 *vide* letter dated 12.07.2022 and 06.03.2023 as the petitioner has decided to demolish their building for construction of new building.

The petitioner has obtained construction permit from the competent authority for constructing new building on the land where the present Naga Club building is standing on for which a demolition has to be done.

The petitioner contends that it is not only the respondent No. 2 but all the other occupants of the Naga Club building, who have been asked to vacate so as to pave way for demolishing and construction of new building. For the purpose of such construction the empty houses and rooms were demolished. As the place is situated in the heart of the town and heavy machinery and vehicle is required to dispose of the debris so it was decided that in order to avoid public inconvenience the same was removed in the early hours of 27.05.2023. The petitioner engaged some youths to dispose of the debris of the demolished building in the early hours of 27.05.2023. On such act of removal of the debris in the early hours of 27.05.2023, the respondent No. 2 filed an FIR without there being commission of any offence. It is the respondent No. 2 who never paid the rent to the petitioner except for the month of April, 1983. The petitioner contended that when the removal of the debris has been done so as to avoid public inconvenience in the early hours of 27.05.2023 the question of vandalizing public property or criminal trespass by unknown miscreants, as alleged by respondent No. 2 does not arise. Hence, this present petition for quashing of the FIR dated 27.05.2023.

Mr. Sentianger, learned counsel for the petitioner submits that the petitioner being the rightful owner of the Naga Club building has decided to demolish and construct the new building as the building

had become dilapidated over passage of time. The petitioner has also obtained written permission from the competent authority for such construction.

He further submits that the respondent No. 2 despite receipt of notices of eviction has filed the false FIR of vandalizing public property or criminal trespass by unknown miscreants. He further submits that in the meantime, the parties have entered into a settlement and on the intervention of some organization have resolved the misunderstanding between the petitioner and the respondent No. 2. Therefore, prays for quashing the FIR dated 27.05.2023 which has been registered as Kohima North PS Case No. 0021/2023 under Section 457/427/120B/34 IPC.

Mr. V. Zhimomi, learned Public Prosecutor submits that he has no objection for quashing of the FIR as the matter has been amicably settled between the informant and the petitioner on the intervention of the social organization.

In the case of **State of Haryana –Versus- Bhajanlal**, reported in 1991 Supp (1) SCC 335, the Hon'ble Supreme Court has laid down category of cases by way of illustration wherein the power under Section 482 of CrPC, 1973 can be exercised either to prevent abuse of process of court or either to secure the ends of justice. Those circumstances are as follows:

“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 F.I.R. 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.”

Having considered the submissions of the learned counsels for the parties and perusal of the FIR as well as the materials available on record, this Court is of the view that the allegation made in the FIR do not disclose the commission of any offence and make out a case against the petitioner as the demolition and removal of the debris by the engaged persons of the petitioner cannot be said to be an act of vandalizing of public property much less criminal trespass. Moreover, after the filing of the FIR, the petitioner and the respondent No. 2 have resolved the issue as the same is out of sheer misunderstanding between the parties. It is also noticed that

the informant/respondent No. 2 has sought for withdrawal of the FIR by himself though the permission to withdraw the FIR is permissible or not under the law is a different issue altogether.

In view of the above this Court is of the view that the petition be allowed quashing the FIR dated 27.05.2023 by invoking the inherent power of this Court under Section 482, CrPC, 1973.

Accordingly, the FIR dated 27.05.2023 being Kohima North PS Case No. 0021/2023 under Section 457/427/120B/34 IPC is hereby quashed.

In the result the petition is allowed and disposed of.

Sd/-
JUDGE

Comparing Assistant