

GAHC040013952024



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

Case No. : Crl.Petn./180/2024

Smti Liter Bagra Doye
Wife of Shri Ego Doye, resident of Mowb-I, Itanagar, PO and PS Itanagar, Papum
Pare District, Arunachal Pradesh 791111

VERSUS

The State of AP and Anr
represented by the PP of AP 2:Miss Jonya Gara
Age: 0
Occupation :
Daughter of Tajo Gara
resident of Village Dipa
Po and PS Likabali
Lower Siang District
Arunachal Pradesh

Advocate for the Petitioner : Eho Menjo,

Advocate for the Respondent : P P of AP,

-BEFORE-

HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

-O R D E R-

23.10.2024

1. Heard Mr. A Tiwari, learned counsel for the petitioner. Also heard Mr. T Ete,

learned Additional Public Prosecutor, AP.

2. The present application is filed by the petitioner under Section 528 of BNSS, 2023 for quashing and setting aside criminal prosecution launched against the petitioner by way of filing ITA PS case No. 215/2020 under Section 448/427 IPC. The further challenge is the order of framing charge dated 23.09.2024 passed by the learned CJM, Yupia in GR case No. 564/2023.
3. The learned counsel for the petitioner submits that the present criminal prosecution is nothing but an abuse of process. The learned counsel for the petitioner contends that from the admitted allegation as disclosed in the FIR, in the statement recorded by the Investigating Officer under Section 161 of Cr.P.C., no interference can be drawn that the petitioner in any manner has committed any offence under Section 448/427 of IPC and the learned Magistrate without application of mind has framed the charges. It is also contended by the learned counsel for the petitioner that there was a delay of five days between the alleged occurrence and intimation given to the police inasmuch as the alleged occurrence took place on 05.10.2020 and the FIR was registered on 11.10.2020 and such delay has not been explained and on this count alone the entire proceeding is liable to be quashed.
4. According to the learned counsel, the malafide intention behind lodging the FIR is clear from the material available on record if the same are taken on its face value inasmuch as the complainant and the husband of the petitioner were having an extra marital affair and only to pressurise the petitioner, the aforesaid FIR has been lodged.
5. Referring the statement of one Smt. Tsering Riba, recorded under Section 161 Cr.P.C., whom the prosecution has projected as an eye witness, the learned counsel submits that the said eye witness has specifically stated that she did not

witness the accused person in committing the offence. Therefore, in the backdrop of the prosecution case, the investigating officer would not have sent the petitioner for trial. Therefore, this Court in exercise of its inherent power should protect the petitioner from facing a malicious prosecution.

6. Referring to the determination made by the Hon'ble Apex Court in the case of ***Mohammad Wajid & Anr vs. State of UP and Ors reported in 2023 INSC 683***, the learned counsel for the petitioner submits that the present criminal proceeding launched against the petitioner is manifestly frivolous and vexatious and instituted with the ulterior motive to wreaking vengeance in view of the extra marital affair as submitted hereinabove.
7. Referring to one of the prosecution document, a certificate which was issued by the DDSE, Changlang certifying that on the fateful date i.e. on 05.10.2020 the petitioner, who is a Headmistress of Govt. Secondary School Laktong, Changlang was present in her duty and therefore, in view of such admitted document by the prosecution, the entire proceeding is liable to be quashed argues the learned counsel.
8. Per contra, the learned Additional Public Prosecutor, AP submits that if the material collected by the prosecution including the statement of the witnesses are taken on its face value, a prima-facie case under Section 448/ 427 are made out and therefore the learned trial court has not committed any illegality in framing the charges. Referring to the statement of one of the witness, namely Goping Ribak Kamdul, recorded under Section 161 of Cr.P.C., the learned Additional Public Prosecutor submits that the said witness has clearly stated the role of the petitioner in commission of the crime. He further contends that there are sufficient materials including the photographs duly taken, seized material which suggest that the petitioner entered into the house of the victim, when the

victim was not present and ransacked her house. Therefore, this court may not at this stage, like to reevaluate and weight such evidence inasmuch as same shall be subject matter of the trial. According to the learned Additional Public Prosecutor, in view of the materials available on record, this is not a fit case to exercise the inherent power of this court under Section 528 of BNSS, 2023.

9. Countering such argument, the learned counsel for the petitioner contends that though one witness, namely, Smt. Gopin Riba Kamduk stated in her 161 statement that she witnessed the petitioner entering into the house with weapons in her hand, however, there is nothing on record to show how the said witness knows the present petitioner and how she indentified her. Therefore, statement of such witness is liable to be discarded for the purpose of consideration of the present case.
10. I have heard the learned counsel for the parties. Also perused the material available on record including the statement of the witnesses, the FIR and the charge-sheet.
11. In the FIR, it is alleged that on 05.10.2020 at about 9.10 a.m., the petitioner along with 10 other persons forcefully entered the rented house of the informant by breaking the lock with hammer and the said predator was armed with local 'dao' and stick with an intention to harm her and they had stolen away different items, which are detailed in the FIR. It was further alleged that that the said persons had damaged other properties of the house. It was also alleged that the petitioner had threatened to kill the informant. Accordingly, the FIR was lodged. After completion of the investigation, the Investigating Officer has filed the charge-sheet. Amongst others the charge-sheet concluded the followings:

“During investigation of the undersigned, re-examined the victim and revealed

that on 5th Oct' 2020 the complainant was underwent local treatment at Pasighat. She had received call from Smt Tsering Riba (8837266121) informing about vandalization of her rental room and damages of all household items by Smt Liter Bagra Doye. On being informed, the complainant called her younger sister Miss Jojum Gara and instructed her to visit the rent rooms. On 11.10.2020 the complainant came back at Itanagar from Pasighat and lodged a complaint.

Investigation further revealed that the husband of the accused, Shri Ego Doye had extra affairs with complainant. Out of anger, the accused went to the complainant's rented house located at building of Mowb-I, Itanagar with pre-planned to assault the complainant. Fortunately, complainant was out of station underwent local medication at Pasighat. The accused taking advantage of absence of the complainant vandalized and damaged household properties of the complainant. The accused also stolen household properties and bank passbook, passport, educational certificate and service appointment letter of the complainant. The then investigation officer could not recover the same on time and accused released on anticipatory bail on 21.10.2020.

Under above facts and circumstances, prima-facie charge under Section 448/427/506 IPC found well established against the accused, Liter Bagra W/O Shri Ego Doye vill-Nari PO/PS Lower Siang AP, C/O Ego Doye DDSE Changlang Dist-Changlang, AP.

Therefore, the undersigned sending her name before your honourable court to face her trial under Section 448/427/506 IPC The witnesses mentioned in the Col No 13 may be summoned during trial to prove the case and supplementary charge will be filed if any evidence bring into light pertaining to the stolen properties and documents of the victim."

12. Subsequently, the learned trial court after perusal of the material by the impugned order dated 23.09.2024 framed charges under Section 448/427 IPC, however, the charge under Section 506 and 379 IPC were dropped.
13. The Hon'ble Apex Court in **Mohammad Wajid & Anr** (supra), relied on by the

petitioner, after dealing elaborately with the power of revision so far same relates to the quashing of FIR and charge sheet has laid down the following principles.

- i. It will not be just enough for the court to look into the averments made in the FIR/ complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not.
- ii. In frivolous or vexatious proceedings, the court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments made.
- iii. The overall circumstances leading to the initiation/ registration of the case as well as the materials collected in the course of investigation is to be looked into.

14. In view of the aforesaid settled proposition of law, this court has perused the entire materials and the intending circumstances under which the alleged FIR was filed inasmuch as it was specifically argued the FIR is vexatious.
15. It is reflected in the charge-sheet that the husband of the accused had extra marital affairs with the informant and out of anger, the accused went to the informant's rented house to assault the complainant. Thus, one of the reasons of the attack, as projected by the prosecution is the extra marital affairs between the husband of the accused with the informant. It is true that this is an important circumstance under which the crime was committed, however, such extra marital affairs, in the considered opinion of this court, shall not give a liberty to a person to criminally act and in the aforesaid backdrop, it cannot be said that the FIR was lodged vexatiously, more particularly, when there is statement of the independent eye witnesses recorded under Section 161 of the

Cr.P.C. suggesting that the petitioner entered the rented premise of the petitioner with arms in her hands.

16. It is also correct, as urged by the learned counsel for the petitioner that the eye witness projected by the prosecution has in her statement recorded under Section 161 Cr.P.C. denied witnessing the incident. However, another witness, namely, Gopin Riba Kamduk specifically stated that on 05.10.2020 when she was at her shop, she saw the accused parked her car opposite to the shop and got down from her car with a stick on her hand and went inside the rented building where the informant was staying and some group of people was following her and after few minutes, she intimated other two witnesses, as this witness suspected the violent attitude of the informant. If such statements are taken in its face value, it suggests that on the date of the incident the accused went to the rented house of the informant with weapons such as stick in her hand. There are materials on record to suggest that there was ransacking of the house. Therefore, at this stage, this court in exercise of its power under Section 528 BNSS, 2023 will not be in a position to weigh the statements of these witnesses and to determine which was correct version and which was not.
17. Now coming to the plea of alibi and the documents relied on by the prosecution, it is seen that a certificate was signed by the Deputy Director, School Education Changlang on 13.10.2020 who happened to be the husband of the accused. Be that as it may, this court at this stage cannot conclude on the basis of such document, until and unless proper evidences are taken, that the petitioner was not present in the place of occurrence and was in fact in the school performing her duty. Such determination can be made on the basis of the evidence that may be led by the prosecution/defence during course of trial, including examination of the author of such document.

18. In the considered opinion of this Court, this Court cannot also conclude that the materials collected by the Investigating Officer are not legal evidence inasmuch as same shall finally be subject matter of the trial. It cannot also be said that the statements recorded by the Investigating Authority are inconsistent with the accusation made. The delay in lodging the FIR in five days cannot also be decided to be fatal without the informant subjected to cross examination. Therefore, this Court is also not inclined to entertain such a ground.
19. In the totality of the matter, this Court in exercise of its inherent power under Section 528 of BNSS, 2023 would not like to embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it the accusation would not be sustained inasmuch as such exercise of power is within the domain of the trial Court. Accordingly, in totality of the matter, in the considered opinion of this Court, the present criminal petition lacks merits and accordingly, the same stands dismissed.
20. However, while parting with the record, it is made clear that the observation made in this order is for the purpose of exercise of its inherent power and same shall not influence the learned trial Judge in determining the matter on merit.

JUDGE

Comparing Assistant