

GAHC010022392021



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

Case No. : Crl.Pet./82/2021

SIDDEK AHMED @ SIDDEQUE AHMED
S/O LATE BOLAI MIA, R/O VILL-DALOPAR, P.O.-ASALKANDI, P.S.-
PATHARKANDI, DIST-KARIMGANJ, ASSAM, PIN-788723

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:NASIR UDDIN
S/O LATE MOULANA ABUL HUSSAIN
R/O RATABARI
P.O.-RATABARI
P.S.-RATABARI
DIST-KARIMGANJ
ASSA

Advocate for the Petitioner : MR. A M BORA, MR. V A CHOWDHURY,MR. D GOGOI

Advocate for the Respondent : PP, ASSAM, MR. U CHOUDHURY,MR. B M CHOUDHURY,MR K UDDIN (R-2),MR. A K AZAD (R-2)

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 04.11.2024

Heard Mr. A.M. Bora, learned Senior counsel assisted by Mr. V.A.

Chowdhury, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor representing the State and Mr. B.M. Choudhury, learned counsel for the respondent No. 2.

2. This is an application under Section 482 read with Section 401 Cr.P.C. for quashing the impugned orders dated 21.03.2018 and 29.12.2018 and the proceedings of Complaint Case No. 1202/2017, pending in the court learned CJM, Karimganj.

3. It is submitted by the learned Senior counsel for the petitioner that the trial court took cognizance of the offence against the petitioner under Section 120B/465/468/471/109 of IPC. Subsequently, the petitioner filed a petition before the trial court by invoking the provision of section 245 Cr.P.C. for discharge of the accused/petitioner from the case. It is further submitted by the learned counsel for the petitioner that the order of the trial court dated 28.12.2018 disclosed that the complainant failed to produce any document creating link between the plot of land covered by dag No. 480 and dag No. 159. But the trial court observed that after taking cognizance, the court has no jurisdiction to alter or modify of its own order.

4. According to the learned counsel for the petitioner, as per Section 245 Cr.P.C., the court has ample power to discharge the accused in warrant procedure case at any time during trial. Hence, the learned counsel for the petitioner prays to remand the matter to the trial court for re-consideration afresh.

In support of his submissions, the learned counsel for the petitioner has

referred a case law- 2009 (v.14) SCC 115 (Ajoy Kumar Ghose vs. State of Jharkhand & Anr.)

5. On the other hand, the learned counsel for the respondent No. 2 submits that he has no objection on the prayer of the petitioner.

6. Section 245 Cr.P.C. deals with when accused shall be discharged which reads as follows-

“S.245. If, upon taking all the evidence referred to in section 244 the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.”

7. The judgment of the Hon’ble Supreme Court vide Ajoy Kr. Ghose (supra), which is reproduced as follows-

“...24 Now, there is a clear difference in Sections 245(1) and 245(2) of CrPC. Under Section 245(1), the Magistrate has the advantage of the evidence led by the prosecution before him under Section 244 and he has to consider whether if the evidence remains unrebutted, the conviction of the accused would be warranted. If there is no discernible incriminating material in the evidence, then the Magistrate proceeds to discharge the accused under Section 245(1) CrPC.

25. The situation under Section 245(2) CrPC, is, however, different. There under sub-section(2), the Magistrate has the power of discharging the accused at any previous stage of the case i.e. even before such evidence is led. However, for discharging an accused under Section 245(2) CrPC, the Magistrate has to come to a finding that the charge is groundless. There is no question of any consideration of evidence at that stage, because there is none. The Magistrate can take this decision before the accused appears or is brought before the court or the evidence is led under Section 244 CrPC. The words appearing in Section 245(2) CrPC 'at any previous stage of the case'."

8. Having heard the learned counsel for the parties and in view of the law laid down in the case of Ajoy Kr. Ghose (supra), the matter is remanded to the trial court for fresh consideration. It is directed that after hearing the learned counsel of both the parties, the trial court will decide the matter afresh in accordance with law. The orders dated 21.03.2018 and 29.12.2018 are hereby set aside.

9. The criminal petition stands disposed of.

JUDGE

Comparing Assistant