

GAHC010033692023



2024:GAU-AS:7180

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

Case No. : Crl.Pet./158/2023

SHAH ABDUL AZIZ KHAN AND ANR.
S/O MD. HUMAYUN KHAN
VILL- KARAIGURI
P.S. MURAJHAR
DIST. NAGAON, ASSAM

2: SHAH IMRAN KHAN
S/O MD. HUMAYUN KHAN
VILL- KARAIGURI
P.S. MURAJHAR
DIST. NAGAON
ASSA

VERSUS

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

2:MD. SUKUR ALI
S/O LATE ABDUL LATIF
VILL- NIZ DOBOKA
PO.S. DOBOKA
DIST. NAGAON
ASSA

Advocate for the Petitioner : MD. A J ATIA, MS J MARIYAM,MS A H ATIA

Advocate for the Respondent : PP, ASSAM, MR. H A TALUKDAR (R2),MR. L R MAZUMDER (R2)

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

29.07.2024

Heard Mr. A. J. Atia, learned counsel appearing for the petitioners and Ms. S. Jahan, learned Additional Public Prosecutor for the State respondent No.1. Also heard Mr. L. R. Mazumdar, learned counsel appearing for the informant/respondent No.2.

2. One Sitara Khanam, wife of Sahabuddin, resident of Village-Doboka, Ward No.3, committed suicide. With regard to the said incident of suicide of said Sitara Khanam, a police case was registered, in which three persons were arrested. However, on 25.02.2017, a group of 40/50 students at the instigation of the Principal of Anfar Ali College, Doboka, came in bikes and magic vehicle and burnt down the house of Sahabuddin, husband of the deceased Sitara Khanam and also physically assaulted the women of the family of Sahabuddin.

3. Because of such fire, not only important documents and other valuables were lost, but there was also loss to the family of Sahabuddin. In that regard, one Sukur Ali of Village-Nij Doboka on 25.02.2017 itself lodged an F.I.R, which was registered as Doboka Police Station Case No.48/2017, corresponding to P.R.C No.1495/2019, under Sections 120(B)/147/148/149/435/325/427 IPC.

4. During investigation of the case, after recording of the statements by the concerned Investigating Officer under Section 161 of CrPC, one Shah Abdul Aziz Khan, petitioner No.1 was arrested on 01.03.2017 in connection with said Doboka P.S. Case No.48/2017.

5. After completion of the investigation of the case, police in said Doboka P.S. Case

No.48/2017 submitted charge-sheet vide C.S No.73/2017 against the present two petitioners and one Md. Zabed Ahmed under Sections 120(B)/435/427/353/34 IPC, wherein the petitioner No.2 and Md. Zabed Ahmed were shown as absconders as they did not appear before the police during investigation of the case and evaded arrest and further, police also failed to take them into custody in spite of search.

6. After filing of the charge-sheet in said Doboka P.S. Case No.48/2017, corresponding to P.R.C No.1495/2019, the learned Judicial Magistrate 1st Class, Hojai, Sankardev Nagar on 30.09.2019 took cognizance of the offence under Sections 120(B)/436/427/ 353/34 IPC and issued summons to all the three accused persons for their appearance. As the petitioner No.2 and the other accused person Shah Abdul Aziz Khan did not appear in the matter before the learned Judicial Magistrate 1st Class (JMFC) in said Doboka P.S Case No.48/2017, the learned Magistrate on 04.05.2023 issued Non-Bailable Warrant of Arrest for their appearance.

7. Subsequently, the petitioners on 17.02.2023 filed this criminal petition praying amongst others to set aside and quash the impugned charge-sheet No.73/2017 filed in said Doboka P.S. Case No.48/2017, corresponding to PRC No.1495/2019 for taking cognizance of the offence under Sections 120(B)/436/427/353/34 IPC against them in the said PRC No.1495/2019 arising out of Doboka P.S. Case No.48/2017 pending before the Court of learned JMFC, Hojai at Sankardev Nagar, stating that the informant of said Doboka P.S. Case No.48/2017 have filed an application before the Officer-in-Charge of Doboka Police Station i.e. the respondent No.2 informing that because of some misunderstanding, he lodged the F.I.R relating to said Doboka P.S. Case No.48/2017 and he does not have any objection if police submits a final report in the said matter as the parties to the said proceeding have compromised the matter.

8. While issuing notice, the Court by order dated 22.03.2023 called for the scanned copy of the records of said PRC No.1495/2019. From the records, it is seen that though the learned Judicial Magistrate 1st Class, Hojai at Sankardev Nagar took cognizance of the offence against all the three accused persons of said Doboka P.S. Case No.48/2017, but it was also observed that Section 436 IPC being exclusively

triable by the Court of Sessions and that the learned JMFC, Hojai at Sankardev Nagar could not forward the matter to the Court of learned Sessions Judge, Hojai due to non-appearance of the accused persons of the case namely Shah Imran Khan and Md. Zabed Ahmed.

9. From the records of the case including the records of Doboka P.S. Case No.48/2017, it can be seen that the witness acquainted with the incident during investigation named the present petitioners and Shah Abdul Aziz Khan regarding their involvement in the said incident and burning down the house of said Sahabuddin and also stated that they stopped the fire tenders on the road and thereby blocked those fire tenders to reach the place of occurrence to douse/extinguish the fire.

10. Though the petitioners have annexed the copy of the letter written by the informant of said Doboka P.S. Case No.48/2017 to the Officer-in-Charge of Doboka Police Station that the F.I.R relating to said Doboka P.S. Case No.48/2017 was lodged by him was due to misunderstanding and the matter has been compromised, between them, but the said is without any date and without mentioning as to when such compromise between the parties relating to the said incident took place.

11. As the charges are grave in nature and since the relevant case records indicates the involvement of the petitioners and Shah Abdul Aziz Khan in the case and considering the fact that the learned JMFC Hojai, Sankardev Nagar on 30.09.2019 had already taken cognizance of the offence under Sections 120(B)/436/427/353/34 IPC in PRC No.1495/2019 arising out of said Doboka P.S. Case No.48/2017, and after hearing the parties and on perusal of the case records, this Court deems that this is not a fit case to exercise the Court's inherent power under Section 482 CrPC to set aside and quash the charge-sheet No.73/2017 submitted in said Doboka P.S. Case No.48/2017, corresponding to G.R. Case No.445/2017, which has been re-registered as PRC No.1495/2019 and presently pending before the court of learned Judicial Magistrate 1st Class, Hojai at Sankardev Nagar as there is no abuse of the process of the Court.

12. Accordingly, this criminal petition, being devoid of merit, stands dismissed.

JUDGE

Comparing Assistant