

GAHC010094312019



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

Case No. : Crl.Pet./484/2019

SWATI BIDHAN BARUAH
D/O SUPTI RANJAN BARUAH, PANDU BBC COLONY, RLY QTR NO. 31/B,
GUWAHATI-781012 (ASSAM)

VERSUS

THE STATE OF ASSAM AND ANR.
THROUGH THE PUBLIC PROSECUTOR, ASSAM

2:NEERAJ KUMAR BACHHRAJ
PREVIOUS ADDRESS-14 A WING
AIR FORCE STATION CHABUA
C/O 99 APO
DIBRUGARH (ASSAM)
P/A TAMBARAM AIR FORCE STATION
CHENNAI-60004

Advocate for the Petitioner : MS. N MODI, MR I AHMED, MR J RAJBONGSHI, MR A K AZAD

Advocate for the Respondent : PP, ASSAM, MR. M K DAS (LEGAL AID COUNSEL FOR R-2)

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

JUDGMENT & ORDER (ORAL)

Date : 21-08-2024

Heard learned Senior Counsel Ms. N. Modi for the petitioner Swati

Bidhan Baruah.

2. The petitioner has filed this application under Section 482 of the Code of Criminal Procedure, 1973 (CrPC for short) with prayer for quashing the FIR, Complaint, Charge Sheet & Criminal Proceeding pending in the Court of Chief Judicial Magistrate, Kamrup (M) (the CJM for short) against the petitioner, registered as GR Case No. 3354/2013 arising out of CID Police Station Case No. 21/2013 registered under Sections 385/506 of the Indian Penal Code, 1860 (the IPC for short) read with Section 66 A of the Information Technology Act, 2000 (IT Act for short) and later Sections 406/419/420 IPC were also added. It is submitted that charges have been framed against the petitioner and this case is pending at the stage of evidence. Charge under Sections 385/406/420/506 IPC has been framed against the petitioner vide order dated 15.07.2016 passed by the learned CJM, Kamrup (M).

3. It is submitted that charges have erroneously been framed and thereafter, the complainant failed to appear before the learned trial Court. Not a single witness has appeared before the learned trial Court. This case which was initiated on 05.04.2013 was pending for evidence continuously. No offence under Sections 385/406/420/506 IPC has been made out against the petitioner. The trial Court has gravely erred in taking cognizance and framing charge under the aforementioned Sections of law. The FIR only reveals telephone conversations between the complainant and the present petitioner.

4. The FIR unfolds that the informant Neeraj Bachhraj, a combatant member of Indian Air Force who was posted at Air Force Station Chabua with effect from 05.10.2012, has a Facebook account in his name as Neeraj Bachhraj and user ID as 8901589742. On 10.03.2013, he had received a friend request from an

unknown girl as Sagrika Baruah and on asking, he gave his mobile number to the girl and she called immediately from her mobile number. They developed friendship and used to share their feelings with each other. Initially, she sent her photograph through Facebook and on her request, he also forwarded his photographs, but after a few days, the girl started compelling him to marry her. It is further alleged through the FIR by Neeraj Bachhraj that he had expressed his inability to marry her due to his own reasons but on 25.03.2013, the girl threatened to commit suicide if he did not marry her. On 26.03.2013, the girl's brother identifying himself as Squardon Leader at Hasimara, called him over phone and informed him that as the girl had attempted to commit suicide, he would have to come and meet the girl, failing which the girl's brother threatened Neeraj Bhachhraj with dire consequences like terminating him from service as he (girl's brother) is acquainted with the Officer Commandant in Chief. The girl also demanded Rs.18,000/- (Rupees Eighteen Thousand) to gift him a motorcycle.

5. Section 385 IPC reads : -

Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 406 IPC reads : -

Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 420 IPC reads : -

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and;

Section 506 IPC reads : -

Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; If threat be to cause death or grievous hurt, etc. - And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or [imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

6. It is submitted that this case was registered against the petitioner but there is a hint of allegation of extortion against the petitioner's brother and not against the petitioner because the FIR reveals that the petitioner's brother had threatened him to terminate him from service. It is also submitted that there is no inducement to the informant by the petitioner to deliver any property to any person so that the property could be converted into valuable security. There is no instance of any criminal breach of trust. On the contrary, there was no threat exercised by the petitioner to the informant rather the allegation is that the petitioner's brother has informed the complainant that the petitioner is

contemplating to harm herself by committing suicide and not to cause any loss or injury to any person or property of the informant.

7. It is submitted that this is a fit case where the inherent jurisdiction under Section 482 of the CrPC ought to be invoked as further proceeding will be an abuse of the process of the Court as this case will not end in conviction.

8. Heard learned legal aid counsel Mr. M.K. Das for the respondent No. 2 Neeraj Kumar Bachhraj. The learned legal aid counsel has submitted that the informant's presence is not at all necessary. It is true that the learned Senior Counsel Ms. N. Modi has submitted that the informant has become untraceable and further proceeding will be an abuse of the process of the Court, but at the same time it cannot be ignored that the informant's presence is not necessary. This case is at the stage of evidence, and thus the witnesses can be called and this case can be decided on the evidence of the witnesses. At this juncture, it is not fathomable that the probability of conviction appears to be remote and bleak.

9. It is further submitted on behalf of the respondent that when charges were framed, the petitioner was sleeping over her rights and she has not challenged the order of framing of charges and at this later stage when charges have been framed and case is proceeding for evidence, the petitioner has challenged the order of framing of charges. It is submitted that this petition ought to be dismissed.

10. Heard Mr. R.R. Kaushik, learned Additional Public Prosecutor for the respondent State.

11. The respondents have submitted that this Court cannot get into the merits of this case while deciding the petition under Section 482 of the CrPC. The

provision of Section 482 CrPC has to be exercised sparingly.

12. I have considered the submissions at the bar with circumspection. GR Case No. 3354/2013 arising out of CID Police Station Case No. 21/2013 has been pending since 18.06.2013. Not a single witness was examined till 04.04.2019. Thereafter, the petitioner has preferred this petition before this Court and the proceeding of the GR Case No. 3354/2013 have been stayed vide order dated 17.05.2019 passed by this Court. A stay order was passed on a much later date by this Court but prior to that, the prosecution had every opportunity to produce the witnesses which the prosecution has failed. After this case came up for hearing, notices were continuously issued to the respondent No. 2 since 17.05.2019 but the respondent No. 2 could not be traced out after sincere and relentless efforts to serve notice to the respondent No. 2.

13. It is true that complaint/respondent No. 2 is not at all traceable. I also find force in the argument of the learned Senior Counsel for the petitioner that the allegations of the offence in the FIR reveals that offences are alleged to have been committed solely through telephone conversations which appears to be vague and bald allegations. It is also submitted that most of the witnesses enlisted in the charge sheet are family members of the petitioner. This also casts a doubt over the possibility of conviction.

14. It is submitted that the Lawazima order dated 11.09.2023 of the Registry of this Court reflects that endeavours have been made to serve summonses through Madras High Court at Chennai.

15. The learned counsel at the bar has drawn the attention of this Court to the order dated 04.04.2019 passed by the Trial Court which reflects that summons could not be served upon the complainant/respondent No. 2 as he does not

reside at Air Force Station Chabua (Dibrugarh) and his present place of posting is at Air Force Station, Tambaram, Chennai and the summons may be forwarded through 99 APO. It is also submitted at the bar that summons have been forwarded through 99 APO.

16. Annexure-III also reveals that the informant Neeraj Bhachhraj's Facebook account clearly reveals that he has received the summonses, but he is evading to appear and place his submission. He was thus represented by a legal aid counsel for the interest of justice.

17. It has been held by the Hon'ble Supreme Court in the decision of *State of Haryana and ors. Vs. Ch. Bhajan Lal and ors. reported in (1992) AIR 604* that:

"8.1. In the exercise of the extra-ordinary power under [Article 226](#) or the inherent powers under [Section 482](#) of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide- myriad kinds of cases wherein such power should be exercised:

(a) 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;

(b) 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;

(c) 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;

(d) 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;

(e) 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;

(f) 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;

(g) 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. [305D-H; 306A-E].”

18. Reverting back to this case, it is held that this case has been pending without any fruitful result since 2013. Although the informant is not required to be present in the G.R. Case no. 3354/2013 but the informant has failed to appear even in the instant case. Several attempts were made to trace out the informant/respondent No. 2 to serve notice upon him. The informant has failed to appear. The case is still at the stage of evidence. Not a single witness has been examined so far. This case has already been pending for a prolonged period without any fruitful result. It thus appears that there will indeed be an abuse of the Court, if the case is kept pending any further. The submission of the learned Senior Counsel that no case under the aforesaid Sections has been made out also cannot be ignored. This Court cannot be oblivious of the FIR which reflects that the petitioner had a telephonic conversation with the complainant, thereafter, there was allegation of the offences having been committed by the petitioner. It appears that this is a fit case to invoke the jurisdiction under Section 482 of the CrPC. Hence, the proceedings of the G.R. Case No. 3354/2013 is set aside and quashed.

19. In terms of the above observations, this Criminal Petition stands disposed of.

20. Send back the Trial Court Records.

JUDGE

Comparing Assistant