

GAHC010029782023



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

Case : Crl.Pet./423/2023

HABIBUR RAHMAN AND ANR
S/O LATE KHALILUR RAHMAN
VILL- KHUTAKHUTIA
P.S. NORTH LAKHIMPUR
DIST. NORTH LAKHIMPUR
ASSAM
PIN-787001

2: MONUJ SARMAH
S/O LATE GANESH SARMAH
VILL- SUNAI SARMAH
P.S. DHAKUAKHANA
DIST. LAKHIMPUR
ASSAM
PIN-787055
VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE PP
ASSAM

2:THE SPECIAL PUBLIC PROSECUTOR

WILD LIFE PROTECTION.
3:DR VIJAY T. PALVE
IFS
OFFICER ON SPECIAL DUTY
ENVIRONMENT AND FOREST DEPARTMENT
DISPUR
GUWAHATI-781006
ASSAM

Advocate for : MR. A M AHMED
Advocate for : PP

ASSAM appearing for THE STATE OF ASSAM AND 2 ORS

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

02.05.2024

Heard Mr. A. M. Ahmed, learned counsel for the petitionee. Also heard Mr. R. R. Kaushik, learned Additional Public Prosecutor, appearing for State respondent No.1 and Mr. B. Sarma, learned Special Public Prosecutor, Wildlife Assam appearing for respondent Nos. 2 and 3.

The petitioner has filed an application under Section 482 Cr.P.C. with a prayer for quashing of FIR dated 06.11.2022 registered as Lumding PS Case No. 224/2021 and impugned charge-sheet being charge-sheet No.124/2022 corresponding to PRC Case No. 03/2023 pending in the court of learned JMFC, Hojai under Section 147/427/326/506/307 IPC read with Section 24(a)(b)/25(a)(b)(c)(d)(f)/40(2)(b)/60/1 of Assam Forest Regulation Act.

Though the case is fixed for admission, however, with the consent of both sides the case is taken up for final disposal.

The brief fact of the case is that both the petitioners are the government employees working in the department of Environment and Forest, Assam. The petitioner No.1 joined on 18.03.2021 while the petitioner No.2 joined in the year of 2018 at Nakhuti Forest Beat Office under Lanka range in the District of Hojai. The petitioner No.2 was again posted at Lamsakhang Beat Office in July, 2019.

On 06.11.2021 an FIR has been lodged alleging *inter alia* that encroachment of the forest land in Lumding reserve forest was started from the year 2012-13. A number of eviction drives have been carried out by District Administration. In spite of that encroachment of forest land have been going on in large scale. The encroached land is basically used for cultivation of jute, turmeric and chili. Such cultivation and production chain is illegally maintained by one Nazrul along with other unknown persons.

Learned counsel for the petitioners has argued that the petitioners are innocent and falsely implicated in this case. The actual fact of the case is that encroachment was started in the Lumding reserve forest since 25/30 years back and cultivation was going on there. After joining in the beat office, petitioners noticed the illegality and informed the Divisional Forest Officer. The DFO along with other officials including the petitioners went to the said encroached area for inspection but the illegal occupants attacked them and thereafter, an FIR has been lodged in connection with the alleged incident.

It is further submitted that the petitioners have taken active part in the eviction process with the other Forest Officials. The instant FIR was lodged against one Nazrul Islam who brought the unknown persons from other areas and gave them accommodation in the encroached land.

According to learned counsel for the petitioners, following arrest of the petitioners in connection with this case, they have been placed under suspension. Thereafter, the petitioners approached before this Court by filing a writ petitions and their suspension orders have been set aside and directed the authority to reinstate the petitioners in service.

The learned counsel for the petitioners also contended that the FIR did not disclose the involvement of the petitioners in the alleged offence and they were arrested purely on suspicion. The ingredients of the alleged offence are not attracted against the present petitioners. Hence, the learned counsel for the petitioners prays to set aside and quash the FIR, Charge-sheet and entire proceeding of PRC Case No. 3/2023.

Learned counsel for the petitioner also submits that when on the same allegations a departmental proceeding was initiated against the petitioners and they were exonerated, the criminal case should be quashed at the threshold.

Per contra, B. Sarma, learned Special Public Prosecutor, Wildlife Assam submits that after completion of investigation, charge-sheet has been submitted against the petitioners along with other co-accused. Accordingly, cognizance was taken by the trial court. It is further stated that at this stage the High Court will not be justified in quashing the order taking cognizance on perusal of any defence material. According to him, the petitioners can agitate the matter before the learned Magistrate by producing relevant documents at the stage of framing of charge.

The jurisdiction of the High Court for exercising its power under Section 482 Cr.P.C. has been explained by the apex court on more than one occasion. In the case of Rupan Deol Bajaj Vs. Kanwar Pal Singh Gill reported in (1996) CRLJ 381, the Hon'ble Supreme Court has held as follows:

“- It is thus settled law that the exercise of inherent power of the High Court is an exceptional one. Great care should be taken by the High Court before embarking to scrutinize the FIR/charge-sheet/complaint. In deciding

whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the brief of the matter whether the allegations constitute the offence. It must be remembered that FIR is only an initiation to move the machinery and to investigate into cognizable offence. After the investigation is concluded and the charge-sheet is laid, the prosecution produces the statement of the witnesses recorded under Section 161 of the code in support of the charge-sheet. At that stage, it is not the function of the Court to weigh the pros and cons of the prosecution case or to consider necessity of strict compliance of the provision which are considered mandatory and its affect of non-compliance. It would be done after the trial is concluded. The court has to prima facie consider from the averments in the charge-sheet and the statements of witnesses on the record in support thereof whether court to take cognizance of the offence, on that evidence and proceed further with the trial.....”

The same views have been reiterated in the case of State of Bihar vs Rajendra Agarwala reported in 1996 CrI.J 1372 (SC).

It is to be borne in mind that in a warrant procedure case instituted on a police report and tailable by the Magistrate, which is applicable in the present case, the trial commences after summons are issued to the accused for their appearance and once they appear, papers/copies are supplied to them as provided under the provision of the Code. After supplying papers to the accused, he can disclose his defence either in his petition for discharge or at the time of framing of charge. At that stage, he may urge before the court that the allegations made against him are the result of some vengeance or malafide. It is true, that if the allegations made in the complaint petition or in the FIR do not

make out a prima facie case, the High Court in its inherent jurisdiction can quash this proceeding to prevent abuse of the process of the court. But in the instant case, when the Investigating Agency after spending considerable time collected the evidence and placed the charge-sheet before the court and the Magistrate has taken cognizance of the offence, their further action should not be short-circuited by resorting to exercise inherent power to quash the order taking cognizance. If eventually the learned Magistrate comes to a conclusion that no offence was made out against the petitioners, it will be open to the Magistrate to discharge or acquit them as the case may be.

In the present case, on the other hand, except the argument of the counsel, there is no averment in the petition that in a Departmental proceeding for the same charges, the petitioners were exonerated. Moreover, it appears from the order of the trial court the case is at the stage of appearance of the accused before the trial court and as such, in my view, they can raise all their issues at an appropriate stage before the trial court.

In the result I find no merit in this criminal petition which is accordingly dismissed and disposed of at the admission stage.

JUDGE

Comparing Assistant