

GAHC010131472013



2024:GAU-AS:11414

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

Case No. : Crl.Pet./810/2013

MD. ASLAM KHAN and 17 ORS
S/O LT. RAFIQUE KHAN

2: MD IMTIAZ KHAN
S/O LT. RAFIQUE KHAN

3: IMRAN KHAN
S/O ISTIYAK KHAN

4: SIRAJ KHAN
S/O ABDUL MUNAF KHAN PETITIONERS 1 TO 4 ARE R/O MANIK
HAZARIKA ROAD
TINSUKIA.

5: MD NASIR KHAN
S/O LT. MASTER KHAN R/O JYOTI PD. AGARWALA ROAD
TINSUKIA.

6: MD KANJU
S/O MD ISLAM

7: MD IMRAN
S/O MD ISLAM

8: MD ISHMILE
S/O MD ISLAM PETITIONERS 6 TO 8 ARE R/O LAL BANGLA ROAD
TINSUKIA.

9: MD MANSUR
S/O UNKNOWN R/O BENG PUKHURI
TINSUKIA.

10: MD SAHADULLA BHOLA
S/O LT. SANAULLAH STATION ROAD

TINSUKIA.

11: BABU
S/O LT. ABDUL AZIZ WORKER OF MUNICIPAL BOARD
TINSUKIA.

12: MD GYASUDDIN
S/O ABDUL AZIZ BABU PATTY TINSUKIA.

13: MD SARIF
S/O LT. ABDUL SATTAR NEAR LAL BANGLA MASZID
TINSUKIA.

14: MD RAFIQUE
S/O LT. ABDUL SATTAR NEAR LAL BANGLA MASZID
TINSUKIA.

15: MD ABDUL
S/O MD ISLAM LAL BANGLA
TINSUKIA.

16: MD RASID
S/O LT. PAJU KHALIFA AZAM PIR COLONY T S K.

17: MUBSIR HUSSAIN
S/O ANWAR HUSSAIN TINSUKIA DEVELOPMENT AUTHORITY.

18: PALTU
S/O UNKNOWN. TULSI RAM ROAD
TINSUKIA.

19: ABDUL RAHMAN @ MUZIBUR RAHMAN
S/O UNKNOWN BABU PATTY ROAD
TINSUKIA

VERSUS

THE STATE OF ASSAM AND ANR

2:MOFIZUL HAQUE
S/O LT. DIL MOHAMMED R/O TULSIRAM ROAD NEAR LAL BUNGLOW
MASJID P.O. and P.S. TINSUKIA DIST. TINSUKIA
ASSAM
PIN-786125

Advocate for the Petitioner : MR.N Z AHMED, MR.S K SAHARIA,DR.B U AHMED,MR.J B
SAIKIA

Advocate for the Respondent : , MR.R S MISHRA,MR.A K GUPTA,PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

Date : 22-11-2024

1. None appears for the petitioner on call. Accordingly, this court has requested Mr. D Talukdar, learned counsel to assist this court as an Amicus Curiae.

2. Mr. Talukdar, learned counsel has gone through the records and assisted this court.

3. The present application under section 482 Cr.P.C is filed against the judgment and order dated 22.07.2013, passed in Criminal Revision No.43(3)/2010 by learned Additional Sessions Judge (FTC) No.2, Tinsukia.

4. The brief facts leading to the filing of the present case are summarized as under.

I. An FIR was registered by the respondent No.2 i.e Mofizul Hoque before the Officer In Charge, Tinsukia Police station against the petitioners which was registered as Tinsukia PS Case No.534/2005 dated 14.10.2005 under sections 143/448/427/380/323 IPC.

II. After completion of the investigation, the Investigating Officer submitted final report in the form of Closure Report. Notices were issued to the respondent No.2 and accordingly the respondent No.2 filed his Narazi

petition dated 23.11.2006 in GR Case No.952/2005 before the learned CJM, Tinsukia.

III. On receipt of such Narazi petition, the matter was transferred to the court of JMFC, Tinsukia who in turn by order dated 30.11.2006 issued notice to the informant for appearance.

IV. On 16.03.2006, the informant appeared along with four witnesses and they were examined under sections 200/202 Cr.P.C and cognizance of offence under sections 448/427/323/380 IPC was taken.

V. While the matter was proceeding, the complainant/respondent No.2 filed an application on 22.10.2009 before the learned JMFC, Tinsukia seeking to lead additional evidence with a list of witnesses and list of documents, which the complainant proposed to rely on.

VI. Such application was rejected by the learned JMFC, Tinsukia by its order dated 01.07.2010 inter alia on the ground that the complaint did not file the names of the proposed witnesses and were not examined by the court upon an enquiry conducted under section 202 Cr.P.C.

VII. Being aggrieved, the respondent No.2 approached the court of the learned Addl. Sessions Judge, FTC No.2, Tinsukia against such order dated 01.07.2010. The learned Addl. Sessions Judge after hearing the parties had allowed such revision petition, thus allowing the respondent No.2 to adduce additional witnesses as well as

to adduce documentary evidence.

5. The learned Addl. Sessions Judge while reversing the decision of the learned JMFC, Tinsukia held that the learned JMFC has failed to exercise its power under section 244(2) and section 246 Cr.P.C, inasmuch as it was held that it was an appropriate case to exercise such power.

6. It was further opined by the learned Addl. Sessions Judge that it is quite possible that sometimes when the complainant fails to substantiate the allegation, he may resort to dilatory tactics and thereby harass the accused by giving supplementary list of witnesses to prolong the continuance of the case, however, present is not such a case and accordingly, the petition was allowed. The learned Sessions Judge also placed reliance on the determination made by the hon'ble Bombay High Court in the case of ***State of Bombay Vs. Janardhan (AIR 1960 Bombay 513)***, and opined that section 244 Cr.P.C and section 246 Cr.P.C should not have any limitation so far the same relates to examination of witnesses as long as the same is required for ends of justice.

7. This court after perusal of the materials available on record is of the view that the learned Addl. Sessions Judge has not committed any patent defect or any error of jurisdiction or of law, inasmuch as the learned Sessions Judge has passed an appropriate order, which is reasonable and which was passed for ends of justice.

8. In view of the aforesaid, this court finds no merits in this criminal petition and same stands closed.

9. While parting with the record, this court appreciates the

assistance rendered by Mr. D Talukdar, learned counsel as Amicus Curiae. Accordingly registry shall ensure that Mr. D Talukdar, learned counsel be paid the legal fee, as payable to a Legal Aid Counsel as per the norms fixed by the Legal Services Authority.

JUDGE

Comparing Assistant