

GAHC010135012023



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

Case No. : Crl.Pet./604/2023

ABDUL HASIB @ ABDUL HASIB LASKAR
S/OLT. AJOL MIA,
R/O HARINAGAR, PART-III,
P.O. RAJARTILLA
P.S. KATIGORAH, DIST. CACHAR, ASSAM , ASSAM

VERSUS

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

2:SRI ASHU RAM DAS
S/O LATE DIGENDRA CH. DAS
VILL- KARAIKANDI PT.I
P.O. RAJARTILLA P.S. KATIGORAH
DIST. CACHAR
ASSA

Advocate for the Petitioner : MRS. C. Biswas

Advocate for the Respondent : Mr. B. B. Gogoi, PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

Date of hearing : 06.03.2024
Date of Judgment & Order: 31.05.2024

JUDGMENT & ORDER (CAV)

Heard Mr. S. C. Biswas, learned counsel for the petitioner. Also heard Mr. B. B. Gogoi, learned Additional Public Prosecutor for the State respondent No.1.

2. This application filed under Section 482 of the Code of Criminal Procedure, 1973 praying for quashing of the impugned charge-sheet No.94 dated 30.04.2019 as well as the proceedings in G. R. Case No. 3012/2016, registered under Sections 120-B/302/34 of IPC in respect of the petitioner.

3. The brief facts of the case is that, the informant Shri Ashu Ram Das had lodged the FIR on 19.06.2016 before the Katigorah Police Station alleging *inter alia* that on 18.06.2016 at about 8:00 P.M. the accused No.2, Hasina Begum Laskar/wife of the petitioner called the victim Moni Ram Das to her house and took him with her. Then, suddenly the informant heard “bachao” “bachao” and rushed to the house of the accused and found that the accused persons had kept the door closed, but, somehow, the informant opened the door of the house and found his nephew was lying dead on the floor with several injuries. Thereafter he lodged the FIR. On receipt of the FIR, the Katigorah P. S. Case No.368/2016 under Sections 302/34 of IPC was registered and investigated the case accordingly. After completion of the investigation of the case, the charge-sheet was filed against the accused/petitioner along with the other co-accused under Sections 120B/302/34 of IPC.

4. It is submitted by the learned counsel for the petitioner, Mr. Biswas that from the statements of the informant as well as other witnesses, it is seen that the present petitioner was not present at the time of occurrence and he was not involved in the alleged offence, but, the I.O. had falsely implicated his name and filed the charge-sheet against him along with the other co-accused. The actual fact of the case is that on 18.06.2016 at about 8.30 P.M., when the petitioner was in Mosque for performing 'Tarabi' namaas, the victim/deceased entered into his house by breaking the door when his wife/co-accused namely Hasina Begum was at home along with their three minor children. The deceased tried to commit rape on her, but somehow, she released herself from the grip of the deceased and finding a dao to save herself, she hit the deceased with the said dao for which he failed down on the ground. Thereafter, the co-accused immediately raised alarm and hearing her human cry the neighboring people as well as the present petitioner came from the Mosque and arrived at the place of occurrence.

5. Subsequently, in the next morning i.e. on 19.06.2016 at about 7.30 A. M., the wife of the petitioner/co-accused lodged an FIR before the Katigorah Police Station narrating the whole incident. On receipt of the said FIR, the case has been registered as Katigorah P.S. Case No.367/2016, under Sections 457/354 (B) of IPC and started the investigation. But, during the investigation, the deceased died on 19.06.2016 and hence, the final report was submitted in the FIR lodged by the co-accused, namely Hasina Begum.

6. He further submitted that the aforesaid case and the charge under Sections 120B/302/34 of IPC are not attracted against the present petitioner. Upon perusal of the statements of the witnesses under Section 161 of Cr. P.C as

well as the FIR dated 19.06.2016, it has been revealed that the accused/petitioner was not present in the place of occurrence and at the relevant time of the incident he was in the Mosque offering 'Tarabi' namaas. He also submitted that the accused/petitioner is a teacher by profession and for the said incident he already lost his prestige in society, locality and also amongst his student. He further submitted that the I.O during the investigation of this case did not consider the fact that the accused/petitioner was not present at the place of occurrence and it was his wife, who assaulted the deceased only to save herself in her private defence who was alone along with her three children at the relevant time of incident.

7. In support of his submission, he relied on the decision passed by the Apex Court in the Case of **State of Haryana & Ors. Vs. Bhajan Lal & Ors.**, reported in **1992 Supp (1) SCC 335**, and emphasized on paragraph No.102, whereby, the Apex Court had given some guidelines while considering the application under Section 482 of Cr. P.C.

8. On the other hand, Mr. Gogoi, the learned Additional Public Prosecutor has submitted that during the investigation, the IO found sufficient materials in the statements made by the witnesses and based on which finding a *prima facie* case, the chargesheet was filed against the present accused/petitioner. The petitioner was also involved in committing murder of the deceased and thus, considering the nature of offence, the present petition under Section 482 of Cr. P.C. is not at all maintainable to quash the criminal proceeding, wherein, the heinous offence's like murder is involved. Accordingly, he raised objection and further submitted that the petition is liable to be dismissed.

9. After hearing the submissions made by the learned counsels for both

sides, I have perused the Case Record. As per the FIR, the allegations were brought against the present accused/petitioner along with his wife i.e. the co-accused stating that both the accused in pre-planned manner had killed the nephew of the informant by assaulting him on his head, face, and on various parts of the body with sharp object such as dao and spade etc., and when he entered in the house of the accused, he also saw the accused person with dao and spade etc. Thus, a clear allegation of murder has been brought against the accused/petitioner along with the co-accused. Further, it is also seen that the case has been charge-sheet against the accused/petitioner under Sections 120B/302/34 of IPC and the charge was accordingly framed by the learned Additional Sessions Judge, FTC, Cachar, Silchar considering the sufficient materials available in the Case Diary.

10. But, from the order passed by the learned Court below, it is seen that the accused/petitioner did not file any petition before the learned Court below praying for his discharge and charge was accordingly framed and explained, wherein, the accused/petitioner along with other co-accused were pleaded not guilty and thereafter, the case was fixed for evidence. Thus, it is seen that the accused/petitioner did not take the plea of his innocence and did not file any petition for his discharge before the Trial Court and thus, he did not avail the opportunity praying for his discharge before the learned Trial Court. The accused/petitioner will get the ample opportunity to prove his innocence by rebutting the evidence of PWs as well as by producing proper defence evidence before the learned Trial Court. Further, it is seen that the learned counsel for the petitioner relied on the decision passed by the Apex Court in the case of *Bhajan Lal (Supra)* and emphasized the paragraph No.102 of the said judgment, wherein, the Apex Court had given some guidelines while entertaining the

application under Section 482 of Cr. P.C. which read as under;

"102. *In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases 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 channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

- (1) 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.*
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR 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.*
- (3) 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.*
- (4) 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.*

- (5) *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.*
- (6) *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.*
- (7) *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."*

11. But it is not a case, where the *prima facie* does not constitute any offence to make out the case against the accused/petitioner nor it is case where the FIR does not disclose a cognizance offence, rather, from the FIR itself, it is seen that a clear allegation of murder has been brought against the accused/petitioner along with the other co-accused.

12. In the case of **State of Madhya Pradesh vs. Laxmi Narayan**, reported in **2019 (5) SCC 688**, the Apex Court has held as under:

"15. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

15.1. That the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

15.2. Such power is not to be exercised in those prosecutions which involved heinous

and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

15.3. Similarly, such power is not to be exercised for the offences under the special statutes like [Prevention of Corruption Act](#) or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

15.4. Offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under [Section 307](#) IPC and/or the [Arms Act](#) etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of [Section 307](#) IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of [Section 307](#) IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under [Section 307](#) IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of [Narinder Singh](#) (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

15.5. While exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc.”

13. As per the clause 15.2 of **Laxmi Narayan** (Supra), the power under Section 482 of Cr.P.C. cannot be exercised in those cases wherein, heinous, and serious nature of offences are involved like murder, rape, dacoity, etc. and the cases which are not private in nature and have a serious impact on society. Thus, the allegation of murder is considered to be a heinous crime and hence,

the Court generally should restrain exercising the power under Section 482 of Cr.P.C. for quashing the FIR or the Chargesheet.

14. So, from the above facts and circumstances of this case, I am of the considered opinion that this is not a fit case, where, the extra-ordinary power under Section 482 Cr.P.C. can be invoked to quash the criminal proceeding. Thus, in the result, I find no merit in this petition and accordingly, the same stands dismissed.

JUDGE

Comparing Assistant