

GAHC010015402024



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

Case No: I.A.(Crl.)/674/2024

BHUPEN BORO

S/O LATE RAGENDRANATH BORO
R/O NARAKASUR NAGAR
P.S. DISPUR
GUWAHATI-6
DIST. KAMRUP (M)
ASSAM

VERSUS

JAGAT KONWAR AND 4 ORS
S/O LATE TAMULI KONWAR R/O NARAKASUR NAGAR
P.S. DISPUR
GUWAHATI-6
DIST. KAMRUP (M)
ASSAM

2:SRI NAGEN BHUYAN
S/O LT. CHAYARAM BHUYAN
R/O NARAKASUR NAGAR

P.S. DISPUR
GUWAHATI-6

DIST. KAMRUP (M)
ASSAM

3:SRI NARAYAN KALITA
S/O BHABIT KALITA
R/O NARAKASUR NAGAR

P.S. DISPUR
GUWAHATI-6

DIST. KAMRUP (M)
ASSAM

4:SRI GAJENDRA RABHA
S/O LT. KAYENCHHA RAM RABHA
R/O NARAKASUR NAGAR

P.S. DISPUR
GUWAHATI-6

DIST. KAMRUP (M)
ASSAM

5:THE STATE OF ASSAM
REP. BY THE PP
ASSAM

Advocate for : MR. K D CHETRI
Advocate for : PP
ASSAM appearing for JAGAT KONWAR AND 4 ORS

Linked Case : I.A.(Crl.)/675/2024

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Advocate for : MR. K D CHETRI
Advocate for : PP
ASSAM appearing for JAGAT KONWAR AND 4 ORS

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 13.09.2024

Heard Mr. K.D. Chetri, learned counsel for the applicant. Also heard Mr. R. De, learned counsel for the opposite parties.

2. The opposite parties are the petitioners in the connected Crl.Pet. 85/2024.
3. By filing I.A.(Crl.) 674/2024, the applicant, who is the son of respondent no.1 in the connected Crl.Pet. 85/2024 has prayed for being substituted as the respondent no.1 upon death of the sole respondent on 21.04.2024. The deceased respondent was the complainant, on whose complaint, Complaint Case No. 3518/2017 was registered before the Court of Chief Judicial Magistrate, Kamrup (M), Guwahati. The respondents have filed the connected criminal petition, praying for quashing of the complaint case.
4. I.A.(Crl.) 675/2024 contains prayer for vacating the order dated 10.04.2024, passed by this Court in Crl.Pet. 85/2024, thereby staying the proceedings of the complaint case.
5. I.A.(Crl.) 674/2024 has been filed under provisions of Order XXII Rule 1 CPC for substitution.
6. In order to examine as to whether the applicant can be substituted or not, it would be appropriate to examine the contents of the complaint petition. The paragraph nos. 1 to 10 and prayer of the complaint petition (except the cause title) are quoted below:

“1. That the petitioner is a local people of Narakasur Nagar Guwahati-6, under P.S. Dispur, in the district of Kamrup(M)Assam.

2. That the Complainant submitted written complainant against the accused No.1 Sri Jagat Konwar on 26/05/2017 stating Sri Jagat Known has illegally taking water supply connection from Narakasur Water supply project.

3. That the authority after receiving the written complainant and take necessary action against Sri Jagat known and removable the illegal connection of water in the residence of Sri Jagat Konwar.

4. That the complainant states that the accused persons illegally convent a general meeting was sitting on 11/6/2017 in the Narakasur Namghar premises and at the time

of meeting the accused persons physically attract the complainant and also threaten him not disturb them in the earlier course of time of this project.

5. *That the accused persons practically danger in nature and they formed a illegal committee Narakasur PWSS through a general member included inspite of S.C. member which is mandatory in this project.*

6. *That the complainant states the commission of illegally connecting water pipe are evidenced from the report of PHE authority when they after verification found the illegal activities of the accused disconnected the connection as per letter No. AEE/PHE/Ghy/56-34/2017/8/77/dtd. 26/07/2017 issued by the Assistant Executive Engineer, PHE, Guwahati, Sub-Division in this connection, a Photostat copy of the said letter copy of which was endorsed to complainant's Advocate in the light of his notice 16/06/2017 is annexed hereto and marked jointly as Annexure I.*

7. *That the complainant further states at the behest of the accused the committee was formed to fulfill his evil design in the formation of the committee.*

8. *That under the circumstances it is crystal clear that the accuseds (sic.) have committed offence as mentioned above.*

9. *That the statement mentioned above will prove the case in due course trial.*

10. *That this petition made bonafide for the interest of justice.*

It is therefore prayed that Your Honour would be pleased to take cognizance of the matter and issue process against the accuseds (sic.) under appropriate provision of law for justice."

7. From the above, it is seen that the complaint petition does not contain any averment that the respondents/opposite parties had committed any offence whatsoever against the applicant, namely, Bhupen Boro.

8. The learned counsel for the applicant has only submitted that the High Court of Orissa in the case of *Sanjit Kumar Mishra & Ors. v. Ranjit Mishra*, Crl.Rev. No. 579/2011, decided on 06.09.2022, after discussing the case of *Chand Devi Daga v. Manju K. Humatani*, (2018) 1 SCC 71, *Ashwin Nanubhai Vyas v. State of Maharashtra*, AIR 1967 SC 983, *Balasaheb K. Thackeray & Anr. v. Venkat*, (2006) 5 SCC 530, and *J.K. International v. State (Govt. of NCT of Delhi) & Ors.*, (2001) 3 SCC 462 had allowed substitution.

9. In the case of *Chand Devi Daga (supra)*, the Supreme Court of India had referred to Section 249 Cr.P.C. and has held that the accused can be discharged in the absence of the complainant only when the offence can be lawfully compounded or is not cognizable, but not in respect of non-compoundable offence, such as one under Section 426/506 IPC.

10. The case of *Ashwin Nanubhai Vyas (supra)* involve offences under Section 417/493/496 IPC and the complaint was by the wife against the husband, accusing him of going through a sham marriage with her, made her pregnant and caused abortion. It is after the complaint was filed, the wife had died and her mother applied for substitution. Under such facts, it was held that the mother could continue the prosecution herself.

11. In the case of *Balasaheb K. Thackeray (supra)*, the offence that was committed was punishable under Section 302 IPC. Such an offence is an offence against the State and can be continued by the Public Prosecutor and under such circumstances, it was held that the legal heirs can continue prosecution.

12. From the contents of the complaint petition, it *ex facie* does not disclose commission of any cognizable offence. In the accusation made in paragraph-4 of the complaint petition, the words used are "the accused persons physically attract the complainant" and "also threatened him not to disturb them in the earlier course of time of this project".

13. The scanned copy of the trial court records, which was called for has been examined. The complaint case was filed on 16.08.2017 and except for the incidents which had occurred on 26.05.2017 and 11.06.2017, no other incident is narrated. There is only a reference to Advocate's notice dated 16.06.2017 and letter dated 26.07.2017.

14. The text of the complaint case as extracted above cannot be read to mean or construe that any non-compoundable offence is *prima facie* made out. It would be now relevant to quote the provisions of Section 249 and 256 Cr.P.C.

15. Paragraph 8 of the case of *Ashwin Nanubhai Vyas (supra)* is quoted below:

“..... The later view is distinctly in favour of allowing the prosecution to continue except in those cases where the Code itself says that on the absence of the complainant the accused must be either acquitted or discharged. The present is not one of those cases and in our judgment the Presidency Magistrate was right in proceeding with the inquiry by allowing the mother to carry on the prosecution, and under S. 495 the mother may continue the prosecution herself or through a pleader. We see no reason why we should be astute to find a lacuna in the procedural law by which the trial of such important cases would be stultified by the death of a complainant when all that the S. 198 requires is the removal of the bar. The appeal fails and it will be dismissed.”

16. Having regard to the decision of the Supreme Court of India in the case of *Ashwin Nanubhai Vyas (supra)* cited by the learned counsel for the applicant, the Court is of the considered opinion that as the complaint petition does not disclose commission of any offence which is non-compoundable, the prayer for substitution of the applicant as substituted respondent no.1 in the connected Crl.Pet. 85/2024 is rejected.

17. The other cases cited by the learned counsel for the petitioner has not overruled the decision of the Supreme Court of India in the case of *Ashwin Nanubhai Vyas (supra)* and therefore, those cases need not be discussed.

18. Moreover, it may also be stated that the provision of Order XXII Rule 1 CPC cannot be made applicable in respect of a criminal petition filed under Section 482 Cr.P.C.

19. Resultantly, the applicant has not been able to make out any case for

vacating out the interim order dated 10.04.2024 passed in the connected criminal petition.

20. Thus, I.A.(Crl.) No. 674/2024 and I.A.(Crl.) No. 675/2024 are both dismissed.

JUDGE

Comparing Assistant