

GAHC010168832008



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

Case No. : RSA/9/2008

TARUN CH. DAS
SUB INSPECTOR OF POLICE, PRESENTLY POSTED AT OFFICE OF THE
SUPERINTENDENT OF POLICE, NAGAON, ASSAM.

VERSUS

MADHAB DAS @ TINGTING and ORS
S/O KACHARI DAS, VILL. SENGLIMARA, PO/PS. JAMUGURI, DIST.
SONITPUR, ASSAM.

2:THE STATE OF ASSAM

REP. BY THE DY. COMMISSIONER
SONITPUR DISTRICT
TEZPUR

3:D. KAKOTI
OFFICER INCHARGE
JAMUGURI P.S.
JAMUGURIHAT
DIST. SONITPUR
ASSA

For the Petitioner(s) : Mr. R. Sarma, Advocate

For the Respondent(s) : None appears.

Date of Hearing : **25.04.2024**

Date of Judgment : **25.04.2024**

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Heard Mr. R. Sarma, the learned counsel appearing on behalf of the Appellant. None appears on behalf of the Respondents.

2. This is an appeal under Section 100 of the Code of Civil Procedure, 1908 challenging the judgment and decree dated 09.10.2007 passed in Money Appeal No.2/2007 by the learned District Judge, Sonitpur thereby affirming the judgment and decree dated 21.04.2004 passed in Money Suit No.36/2000 by the Court of the Civil Judge (Senior Division) Sonitpur at Tezpur.

3. This Court vide an order dated 11.01.2008 admitted the instant appeal by formulating two substantial questions of law which read as under:

“1. Whether the learned courts below were justified in holding the appellant liable to pay the compensation in an action for damage for the alleged tortuous Act of the appellant, because the act complained of was submission of a charge sheet in discharge of his official duty in the capacity of an investigation officer.

2. Whether the findings of the learned courts below that the appellant is responsible for illegal detention of the plaintiff suffers from perversity for non-consideration of material evidence that the name of the accused (except his nick name) and that of his father were correctly written in the charge sheet (Ext.16) and the plaintiff was arrested by respondent No.3/defendant No.2 more than 2 years after filing of the charge sheet and the transfer of the appellant to a different police station.”

4. For the purpose of deciding as to whether the said substantial

questions of law which have been formulated involved in the instant appeal, this Court finds it relevant to take note of briefly the facts leading to the filing of the instant appeal.

5. The Respondent No.1 herein as plaintiff had instituted a suit against the State of Assam as well as two other Officials who have been arrayed as the defendant Nos. 2 and 3. The case of the plaintiff is that the defendant Nos. 2 and 3 wrongly arrested the petitioner inasmuch as the said defendants ought to have arrested one Shri Madhab Das @ Tinting of Khaliyamari. It was the further case that of the plaintiff that the defendant Nos. 2 and 3 have also falsely implicated the plaintiff in respect to Jamguri P.S. Case No.41/97 dated 23.03.1997. On account of the above, the plaintiff sought for a decree for damages for wrongful and false confinement of the plaintiff from 03.09.1999 to 10.11.1999 and thereby claimed an amount of Rs.1,00,000/- each from the defendant Nos. 2 and 3 and from the defendant No.1 another amount of Rs.2,00,000/-.

6. Pursuant to the filing of the said suit which was registered and numbered as Money Suit No.36/2000, the defendants jointly filed a written statement stating inter alia that on completion of the investigation, the case was charge sheeted against one Shri Madhab Das @ Tinting showing his name as an absconder. It was also mentioned that the Investigating Officer i.e. the Defendant No.3 who is the appellant herein made all attempts to arrest the main accused and also enquired about the whereabouts of the said person and he came to know that the accused was a man of dangerous character who has no particular place of business as well as place of stay. It was further mentioned that as per the process register of Jamguri P.S.

1999/2000, a non-bailable warrant of arrest was received from the learned CJM, Tezpur issued against Shri Madhab Das @ Tinting, son of Someswar Das fixing 17.09.1999.

7. In pursuance to the Court's order, the Officer-in-Charge of Jamguri Police Station who was the defendant No.2 executed the non-bailable warrant of arrest against Shri Madhab Das @ Tinting on 05.09.1999 and produced the warrantee before the learned CJM, Tezpur on the same day. It was mentioned that the arrest of the plaintiff must have been made wrongfully on a probable presumption that the name of the father of Shri Madhab Das @ Tinting was Kachari Das and not Someswar Das. On the basis of the above, it was submitted that the case set out by the plaintiff for compensation did not arise as the same was done in discharge of their official duties.

8. On the basis of the pleadings, as many as 6 issues were framed of which Issue No.4 related to as to whether the defendant Nos. 2 and 3 being employees of the defendant No. 1 acted irresponsibly in implicating falsely and arresting and wrongfully detaining the plaintiff from 03.09.1999 to 10.11.1999 and the Issue No.5 was as to whether the plaintiff was entitled to the decree as prayed for.

9. The learned Trial Court decided the Issue Nos. 4 and 5 together and after taking into account the evidence on record, came to a finding that the Defendant Nos. 2 and 3 being the employees of the defendant No. 1 acted irresponsibly in implicating falsely and arresting and wrongfully detaining the plaintiff from 05.09.1999 to 10.11.1999. Accordingly, an amount of Rs.30,000/- was imposed as damages which was to be paid jointly by the

defendants as compensation.

10. Being aggrieved, an appeal was filed by the appellant herein challenging the said judgment and decree which was registered and numbered as Money Appeal No.2/2007. The learned First Appellate Court after duly taking note of the materials on record and in consonance with the provisions of Order XLI Rule 31 of the Code dismissed the said appeal by affirming the said judgment. At this stage, this Court finds it very relevant to take note of that the State of Assam who was also equally responsible to abide by the decree did not file any appeal against the same. Be that as it may, the suit having been decreed which have been affirmed in the appeal, the present appeal has been filed which has been admitted by this Court by formulating the two substantial questions of law which have already been quoted hereinabove.

11. This Court had heard Mr. R. Sarma, the learned counsel appearing on behalf of the appellant. None appears on behalf of the respondents. Let this Court therefore take note of as to whether the two substantial question of law which have been formulated arises in the instant appeal. The first substantial question of law relates to as to whether the learned Courts below were justified in holding the appellant liable to pay the compensation in an action for damages for the alleged tortuous Act of the appellant, because the act complained of was submission of a charge sheet in discharge of his official duty in the capacity of an investigating officer. This Court had duly taken note of the written statement filed by the defendants wherein at paragraph No.8 it was categorically mentioned that the appellant who was the Investigating Officer made all attempts to arrest the main accused and

also enquired about the whereabouts of the said person. This Court further takes note of that the basis on which the instant substantial question of law has been proposed and accordingly formulated, there is no foundation of the same in the pleadings. Apart from that, this Court is also of the view that the learned Trial Court as well as the learned First Appellate Court have duly considered the very aspect of the matter in the proper perspective and categorically held that the appellant as well as the Officer-in-Charge who was the defendant No.2 had acted irresponsibly. The same being findings of fact in the opinion of this Court cannot be disturbed in a proceedings under Section 100 of the Code.

12. The second substantial question of law is pertaining to perversity for non-consideration of the material evidence that the name of the accused except his nick name and that of his father's name was correctly written in the charge sheet and the plaintiff was arrested by the respondent No.3/defendant No.2 after more than two years of filing of the charge sheet and the transfer of the appellant to a different station. In the opinion of this Court, the said question of law does not arise in view of the fact that there is no such pleadings in the written statement.

13. Be that as it may, this Court also finds it very relevant to take note of that the defendant Nos. 2 and 3 are the Officers in the Police Department and as such they have to be responsible in their conduct and if they are not responsible, the same has the effect of taking away the liberty of a person which have been done in the instant case. In the opinion of this Court, the learned Trial Court or the learned First Appellate Court ought to have awarded a much higher amount than what had been decreed. Be that as it

may, as there is no cross appeal filed against that, this Court is not in a position to enhance the amount. The second substantial question of law so formulated in the opinion of this Court also does not arise in the instant appeal.

14. Accordingly, the instant appeal stands dismissed with costs quantified at Rs.11,000/- for the present proceedings. Further to that, the plaintiff would be entitled to the costs throughout the proceedings.

15. The Registry is directed to forthwith return the LCR to the Court below.

JUDGE

Comparing Assistant