

GAHC010176202023



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

Case No. : Crl.Pet./840/2023

SHER MOHAMMAD ALI
S/O NAFIL ALI
R/O VILL- LAOTOLA
P.S. MUKALMUA
DIST. NALBARI, ASSAM

VERSUS

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

2:MD. MUSLIM ALI
S/O AMIR ALI
R/O ADABARI
P.S. MUKALMUA
DIST. NALBARI
ASSA

Advocate for the Petitioner : MR F HAQUE, MR A ISLAM
Advocate for the Respondent : PP, ASSAM, S I AKAND (R-2),MR. R Deka (R-2)

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

01.08.2024

1. Heard Mr. F. Hoque, learned counsel for the petitioner. Also heard Mr. B. Sarma, learned Additional Public Prosecutor appearing for State respondent

No.1 and Mr. S. I. Akand, learned counsel appearing for respondent No.2.

2. By this application under Section 482 Cr.P.C., the petitioner has prayed for quashing of the charge-sheet and subsequent proceedings of PRC Case No. 353/2023 pending before the court of learned Chief Judicial Magistrate, Nalbari in connection with Nalbari PS Case No. 72/2020 under Section 167/177/182/191/218/420/506 IPC.

3. The brief fact of the case is that the respondent No.2 filed a complaint case before the court of learned Chief Judicial Magistrate (hereinafter CJM), Nalbari stating that the petitioner who is a government employee working as a Lat Mandal and he by misusing his official power used to harass not only the respondent No.2 but also the nearby people of the locality. In terms of the order dated 13.09.2021 passed by the learned Munsiff No.1, Nalbari in Title Suit No. 106/2014, the direction was given to the accused petitioner to submit report but he submitted a false report before the court that the informant occupied a plot of land measuring 2B-2K covered by Patta No. 70, Dag No. 597 situated at Pub Barkhetri Mouza by constructing a dwelling house and also cultivating therein. But the informant i.e. the respondent No.2 has never occupied the said land. The said land is under the possession of one Motiur Rahman.

4. On receipt of the complaint, the same was forwarded to the Mukalmua police station for registering a case and accordingly a case was registered vide Mukalmua PS Case No. 72/2020 under Section 164/177/182/192/218/420/506 IPC. Subsequently, charge-sheet has been laid against the petitioner under the aforesaid Sections of law. On receipt of the charge-sheet, the learned Magistrate took cognizance of the case and issued summons to the petitioner.

5. Learned counsel for the petitioner has submitted that at the relevant time the petitioner was a Lat Mandal of Barkhetri Revenue Circle, Nalbari, Mouza Pub Barkhetri. One Motiur Rahman filed a title suit before the court of Munsiff No.1, Nalbari being TS No. 106/2014 as a plaintiff against one Abdullah Ali Ahmed and the case is pending in the court for disposal. The court of Munsiff, Nalbari passed an order with a direction to the Deputy Commissioner to ascertain the physical status and possession of the suit land. On the basis of the said order, the Circle Officer, Barkhetri Revenue Circle, Narayanpur, Mukalmua passed an order dated 05.09.2019 stating that in pursuance of TS No. 106/2014, the petitioner along with four other Lat Mandals were deputed to ascertain the boundary of the disputed land. Accordingly, they submitted the report. The present petitioner is not solely responsible for the report as alleged in the case.

6. It is further submitted by the learned counsel for the petitioner that the petitioner and the informant i.e. respondent No.2 belong to the same locality and there is a family dispute between them since long. As such, the respondent No.2 out of grudge and enmity has lodged a false case against the accused petitioner. Whereas the complainant is silent about mutation, partition of the suit land and as such the penal Sections put by the Investigating Officer in the charge-sheet for trial is not appropriate herein this case. Accordingly, learned counsel for the petitioner submits that there is no possibility of conviction of the petitioner upon conclusion of the trial and as such the continuance of the instant criminal proceeding against the petitioner is nothing but an abuse of the process of the court.

7. Learned Additional Public Prosecutor, on the other hand submits that

from the documents available in the record, it reveals that the actual owner of the dispute land is one Motiur Rahman and Amzad Ali and during investigation it reveals that the present petitioner submitted a report by misleading the court as well as Circle Officer. At the time of investigation, notice under Section 41(A) Cr.P.C. was issued to the petitioner for the purpose of interrogation. During interrogation, the accused/petitioner also confessed his guilt. According to learned Additional Public Prosecutor, this is not a case to quash the proceeding against the petitioner. Trial is required to prove the allegation and prayed to dismiss the criminal petition.

8. The learned counsel for the informant also argued in the same tune by stating that the petitioner being the Lat Mandal of the concerned area has submitted a false report before the court that the informant occupied the land by constructing a dwelling house therein. But the informant has never occupied the said land and the said land is still under the possession of one Motiur Rahman.

9. I have considered the submission of learned counsel for the parties and also perused the trial court record and the documents available therein.

10. The limits of the inherent power granted to the High Court under [Section 482](#) Cr.P.C has been defined by Hon'ble Supreme Court from time to time in catena of authorities. In [Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi](#), (1976) 3 SCC 736, while discussing the scope of [Section 202](#) and [204](#) of the Code of Criminal Procedure, Hon'ble Supreme Court laid down the guidelines and the grounds on which proceedings could be quashed under [Section 482](#) Cr.P.C, by observing as follows: -

"(1) where the allegations made in the complaint or the statements of the

witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused; (2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and (4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like. The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings."

11. Taking similar view, it has been held in [Sharda Prasad Sinha Vs. State of Bihar](#), (1977) 1 SCC 505, as under: -

"It is now settled law that where the allegations set out in the complaint or the charge-sheet do not constitute any offence, it is competent to the High Court exercising its inherent jurisdiction under [Section 482](#) of the Code of Criminal Procedure, 1973 to quash the order passed by the Magistrate taking cognizance of the offence.

10. It is, therefore, manifestly clear that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers under [Section 482](#) of the present Code."

12. In [Vineet Kumar and others vs. State of Uttar Pradesh and others](#) (2017) 13 SCC 369, it was held by Hon'ble Supreme Court as under:-

23. This Court time and again has examined the scope of jurisdiction of the High Court under [Section 482](#) CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under [Section 482](#) CrPC. A three-Judge Bench of this Court in [State of Karnataka vs. L.](#)

Muniswamy, held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated:

'7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.'

13. Reverting to the case in hand, it appears that there is an allegation against the petitioner that he submitted a false report before the Munsiff No.1, Nalbari which was called for in connection with Title Suit No.106/2014 that the respondent No.2 occupied a plot of land measuring 2B 2K covered by Patta No. 70 Dag No. 597 situated at Pub Bar Khetri Mouza by constructing a dwelling house therein and also cultivating the said land which is palpably false. It also appears that at the time of submitting the report, the said land was under the possession of one Motiur Rahman.

14. Though the learned counsel for the petitioner contended that the matter is purely civil in nature, however, considering the fact that to prove the

allegation against the petitioner, examination of witnesses are required which is possible only during trial.

15. In view of the above, this criminal petition is dismissed and disposed of accordingly.

JUDGE

Comparing Assistant