

GAHC010183952023



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

Case No. : Crl.Pet./888/2023

SAMSUL HAQUE AND ANR
S/O KASEM ALI
R/O VILL AND P.O. SANDAHKHAITY
P.S. MAYONG
DIST. MORIGAON, ASSAM

2: MD. GIYAS UDDIN
S/O LT. MANSUR ALI
R/O VILL AND P.O. SANDAHKHAITY
P.S. MAYONG
DIST. MORIGAON
ASSA

VERSUS

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

2:MD. ASHADUL ISLAM
S/O LT. ABDUL KHALEK
VILL- PAKARIGURI
P.O. SANDAHKHAITY
P.S. MAYONG
DIST. MORIGAON
ASSAM
PIN-78212

Advocate for the Petitioner : MD B ISLAM, MR A ALAM,MR S HUSSAIN,MR. A A MONDAL

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 16.08.2024

1. Heard Md. B. Islam, learned counsel for the petitioners and Mr. D. P. Goswami, learned Additional Public Prosecutor.
2. By this application under Section 482 Cr.P.C., the petitioners have prayed to quash the proceeding of PRC Case No. 193/2020 arising out of Mayong PS Case No. 147/2016 under Section 417/406/420/34 IPC and charge-sheet vide No. 44/2019 dated 30.04.2019.
3. The prosecution case in brief is that an FIR has been lodged on 21.08.2016 before the Officer in-charge Mayong Police Station stating *inter alia* that the petitioners were the members of Lehphati Gaon Panchayat. The said members by making conspiracy deleted the names of many persons from PMAYG list of Lehphati Gaon Panchayat showing them benefited which caused irreparable loss to the poor people of the village. When the public came to know about the fact and inquire the matter, the accused petitioners failed to answer to the same.
4. On receipt of the complaint, a case was registered vide Mayang PS Case No. 147/2016 under Section 417/406/420/34 IPC.
5. It was urged by the learned counsel for the petitioners that the petitioners are no way connected with the alleged offence as stated in the FIR. The actual fact of the case is completely different from that of the story narrated in the FIR. It is further submitted that the informant is a beneficiary of PMAYG household at Lehphati Gaon Panchayat. The petitioner No.1 was a Ward

member of Ward No.5 and the petitioner No.2 was a ward Member of Ward No.4 and both of them belong to Sandahkhaiti Village under Lehphati Gaon Panchayat. The informant belongs to Pakariguri village under Ward No.3 under Lehphati Gaon Panchayat.

6. The learned counsel for the petitioners has further submitted that the petitioners had no power either to select or delete any name in the PMAYG household list. The selection authority is the secretary of Gaon Panchayat coordinator and accordingly, the name of the respondent No.2 was selected in SL No. 562 of the Lehphati Gaon Panchayat under PMAYG list.

7. According to learned counsel for the petitioner, the house was allotted jointly in the name of the respondent No.2 and his wife and got the payment for the PMAYG house in three installments amounting to Rs.32,500/-, Rs.48,750/- and Rs.48,750/- respectively and the house was completed by 14.12.2021. In spite of that the informant/respondent No.2 with the instigation of some other people lodged the FIR only to harass the petitioners. Hence, this criminal petition to quash the FIR in Mayang PS Case No. 147/2016 and charge-sheet vide No.44/2019 and the entire proceeding of PRC Case No. 193/2020 under Section 417/406/420/34 IPC, pending in the court of CJM, Morigaon.

8. In response, learned Additional Public Prosecutor for the State has submitted that there is presence of ample evidence to implicate the petitioners in this case. The trial is yet to begin and therefore, the instant criminal petition quashing the entire proceeding of PRC Case No.193/2020 is too premature and should not be allowed.

9. At the outset, the following question of law require determination of the

present petition:

- (a) Whether the petition preferred by the petitioners under Section 482 Cr.P.C. for quashing of FIR, Charge-sheet and the entire proceeding of Criminal case be entertained when the trial has not yet started and the evidence of the witnesses have not been recorded before the trial court.
- (b) Whether any ground is available for quashing of the FIR, charge-sheet and the criminal proceeding as aforesaid in view of the facts and circumstances of the case.

10. The observation in the judgment of the Hon'ble Supreme Court in the matter of ***Joseph Salvaraj Vs. State of Gujarat & Ors. Reported in (2011) 7 SCC 59*** states that :

"the inherent powers of the High Court under Section 482 of the Code of Criminal Procedure can be issued at any stage to prevent abuse of process of any Court in order to secure the ends of justice, disregarding the fact as to whether trial has been initiated or not and whether any evidence has been recorded before the trial court or not. Therefore, this question is answered affirmatively in favour of the petitioner."

11. Section 482 of the Cr.P.C. provides:

" 482. Saving of inherent powers of High Court - Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

12. Though the High Court under Section 482 of the Code of Criminal Procedure has inherent power to interfere with criminal proceedings, however, the same has to be exercised sparingly and in exceptional cases.

13. ***In Monica Kumar (Dr.) V. State of U.P. reported in (2008)8 SCC 781*** it was held that:

"inherent jurisdiction under Section 482 of the Cr.P.C. has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself."

14. In ***Mrs. Dhanalakshmi v. R. Prasanna Kumar*** reported in ***AIR 1990 SC 494*** it has been observed by the Hon'ble Supreme Court that:

"interference by the High Court in exercising its inherent powers under Section 482 of the Code of Criminal Procedure to quash the criminal proceedings would only be justified when complaint did not disclose any offence or was patently frivolous, vexatious or oppressive."

15. In ***Municipal Corporation of Delhi v. Ram Kishan Rohtagi and Ors.*** Reported in ***(1983) 1 SCC 1***, a three-Judge Bench of the Hon'ble Supreme Court held that:

"6. It may be noticed that Section 482 of the present Code is the ad verbatim copy of Section 561-A of the old Code. This provision confers a separate and independent power on the High Court alone to pass orders ex debito justitiae in cases where grave and substantial injustice has been done or where the process of the court has been seriously abused. It is not merely a revisional power meant to be exercised against the orders passed by subordinate courts. It was under this section that in the old Code, the High Courts used to quash the proceedings or expunge uncalled for remarks against witnesses or other persons or subordinate courts. Thus, the scope, ambit and range of Section 561-A (which is now Section 482) is quite different from the powers conferred by the present Code under the provisions of Section 397. It may be that in some cases there may be overlapping but such cases would be few and far between. It is well settled that the inherent powers under Section 482 of the present Code can be exercised only when no other remedy is available to the litigant and not where a specific remedy is provided by the statute. Further, the power being an extraordinary one, it has to be exercised sparingly. If these considerations are kept in mind, there will be no inconsistency between Sections 482 and 397(2) of the present Code."

7. The limits of the power under Section 482 were clearly defined by this Court in Raj Kapoor v. State (1980) 1 SCC 43" Even so, a general principle pervades this branch of law when a specific provision is made: easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same Code".

16. Another important consideration which is to be kept in mind is as to when the High Court acting under the provisions of Section 482 should exercise the inherent power insofar as quashing of criminal proceedings are concerned. This matter was gone into in greater detail in Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi reported in (1976) 3 SCC 736(2) where the scope of Sections 202 and 204 of the present Code was considered and while laying down the guidelines and the grounds on which proceedings could be quashed Hon'ble Supreme Court observed as follows:

" Thus it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside.

(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."

17. Same view was taken in a later decision of the Hon'ble Supreme Court in ***Sharda Prasad Sinha v. State of Bihar (1977) 1 SCC 505***: Court observed as follows:

"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 to quash the order passed by the Magistrate taking cognizance of the offence."

18. 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.

19. ***In Paramjeet Batra v. State of Uttrakhand*** reported in **(2013) 11 SCC 673**, the Hon'ble Supreme Court held:

"12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High court...."

20. In ***Madhavrao Jiwajirao Scindia v. Sambhajirao Chandojirao Angre*** reported in **(1988) 1 SCC 692** a three-judge Bench of the Hon'ble Supreme Court summarized the law with regard to quashing of criminal

proceedings under Section 482 of the Cr.P.C. The Apex Court held:

"The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

21. In ***State of Haryana & Ors. v. Bhajan Lal & Ors.*** reported in **1992 Suppl (1) Scc 335**, the Hon'ble Supreme Court held:

"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 channelised 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.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whims or caprice."

22. In view of the aforesaid observations and the settled principle of law that if the FIR does not disclose the commission of an offence in order to prevent the abuse of process of law the court would be justified in quashing the proceedings.

23. Thus, from the aforesaid judgments of the apex court it stands well settled that if the facts stated in the complaint petition or the FIR would make out the ingredients of the offence alleged therein and there was no fundamental legal defects such as want of sanction etc., the High court in exercise of its power under Section 482 Cr.P.C. can quash the criminal proceeding.

24. In the case in hand, the allegation against the petitioners is that they deleted the names of some persons from the PMAYG list of Lehphati Gaon Panchayat showing them as benefited. At the stage of taking cognizance by the learned Magistrate or its judicial review by the High Court under Section 482 Cr.P.C., there would be no requirement to see as to whether there is proof of such allegation or as to what would be the ultimate outcome in the trial. The High court in fact while exercising power under Section 482 Cr.P.C. is not expected to conduct mini trial. That being so, once the trial court is satisfied that the complaint makes out a prima facie case of criminal breach of trust, cheating and other alleged offence, there would be no scope of interfering with the impugned order taking cognizance.

25. For the reasons indicated above, this Court does not find any merit in this application and the same is dismissed accordingly.

26. The trial court is directed to proceed with the case in accordance with law. Criminal petition is disposed of accordingly.

JUDGE

Comparing Assistant