

GAHC010192502013



2024:GAU-AS:10763

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

Case No. : Crl.Pet./290/2013

SMT. SAJANTI GUPTA and 5 ORS
W/O SRI AMIT GUPTA

2: SHRI JATA GUPTA
HUSBAND OF SUMESH PRASAD GUPTA BOTH OF THEM ARE RESIDENT
OF WARDN O. 5
BISWANATH GHAT PATH.

3: SMT. KUSUM SAHU
S/O SHRI RANJIT SAHU VILL-KHUSU MISSION.

4: SMT. MEERA DEVI
H/O SHANKAR LAL BHAGAT

5: SMT. MADHURI KUMARI BHAGAWAT
D/O SHANKARALAL BHAGAWAT BOTH OF THEM ARE RESIDENT OF
VILL- AMBARI
WARD NO. 3

6: SHRI BAPAN SAHA
S/O MAHADEV SAHA VILL- SHASTIUR
ALL OF THEM ARE RESIDENT UNDER P.S. BISWANATH CHARIALI
DIST. SONITPUR
ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY P.P.

2:SMT. JYOTSNAMOYI BARDHAN
W/O SRI BINOY BHUSAN BARDHAN OF VILL- PAWAI PATH
WARD NO 2

BISWANATH CHARIALI DIST. CACHAR
ASSAM

Advocate for the Petitioner : MR.P MAJUMDAR, MR.I A TALUKDAR

Advocate for the Respondent : , PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 05.11.2024

1. None appears for the petitioner on call, although Mr. B Sarma learned Addl. PP is present representing the State of Assam.
2. The present application under section 482 Cr.P.C is filed assailing the order dated 09.04.2023 passed by the learned SDJM (M), Biswanath Chariali, Sonitpur in CR Case No.49/2013.
3. The fundamental ground of challenge is that the learned SDJM issued a summon dated 09.04.2013 in CR Case No.49/2013 to the petitioners who are not named in the complaint itself and in the evidence in chief.
4. The complaint case was filed by the respondent No.2 alleging that on 07.04.2013 at around 1.45 PM, the accused, namely, Uma Shankar Jaiswal, Ajanti Jaiswal, Abinash Jaiwal, Abishek Jaiswal, Sanjay Jaiswal, Smt. Aruna Bora, Smt. Sajanti Gupta, (the petitioner No.1), Smti. Rita Gupta (petitioner No.2), Smti Kusum Sahu (petitioner No.3), Smti. Meera Devi (Petitioner No.4) and Smti Madhuri Kumari Bhagawat (petitioner No.5) and some unknown persons entered into the house of the informant and asked her to vacate her tenanted premises

immediately and also threatened her, otherwise she will be forcefully thrown out and the possession of the house will be taken over.

5. It is also alleged that when she resisted, the accused persons went away from the place and then entered into the shop of the complainant situated at Pavoi Road, Biswanath Chariali and forcefully entered into the house and took away different valuable properties which cost Rs.1,65,000/- and also took away an amount of Rs.1,61,000 and locked the premises.

6. On the basis of such complaint, a CR case was registered and the complainant was examined. The complainant in her statement recorded under section 200 Cr.P.C has reiterated her stand as taken in the complaint petition and named one Uma Shankar Jaiswal, his wife Ajanti Jaiswal, Abinash Jaiwal, Abishek Jaiswal, Sanjay Jaiswal and other 15-20 members from the local Mahila Samiti.

7. The complainant also examined one Mritunjoy Vardhan and during his examination he deposed that some female person came to her house and asked them to vacate their rented premises and thereafter the aforesaid ladies entered into the room and vacated the premises. He specifically named Uma Shankar Jaiswal, Ajanti Jaiswal, Abinash Jaiwal, Abishek Jaiswal, Sanjay Jaiswal, and one Aruna Bora, Kusum Sahu and one person with Gupta title and also ascertained that an amount of Rs.1,60,000/- was taken. Thereafter, the Magistrate by order dated 09.04.2013 took cognizance under sections 448/380/427 IPC.

8. From the aforesaid, it is seen that though the present petitioners are specifically named in the complaint petition, no specific

role has been attributed either in the complaint or in the statement recorded under section 200 Cr.P.C. There is also no other materials to suggests either in the complaint or in the deposition under section 200 Cr.P.C to even remotely that the present petitioners are the members of the Mahila Samiti or the member of the ladies group though, their name specifically finds place in the list of the accused persons but in the body of the complaint does not disclose their role though specific roles are admitted in respect of some of the accused persons who are not before this court.

9. The names of Uma Shankar Jaiswal, Ajanti Jaiswal Abinash Jaiwal, Abishek Jaiswal, Sanjay Jaiswal and Aruna Bora specifically appear in the complaint but not the names of the present petitioner.

10. The Hon'ble Apex Court in ***Mohammad Wajid vs State of U.P.*** reported in ***2023 INSC*** after dealing elaborately with the power of revision so far same relates to the quashing of FIR and charge sheet has laid down the following principles.

i. It will not be just enough for the court to look into the averments made in the FIR/ complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not.

ii. In frivolous or vexatious proceedings, the court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments made.

iii. The overall circumstances leading to the initiation/ registration of the case as well as the materials collected in the course of investigation is to be looked into.

11. Therefore, in the considered opinion of this court the complaint as well as on the basis of the materials available on record including the statement of the witnesses recorded under section 200 Cr.P.C do not disclose any offence under section 448/373/380/427 IPC even if the aforesaid complaint as well as the statement recorded under section 200 Cr.P.C in its face value are taken to be correct. Therefore, the petitioners have been able to make out a case of interference under section 482 Cr.P.C.

12. Accordingly, the present application stands allowed by setting aside and quashing the order dated 09.04.2013 passed in CR Case No.49/2013 pending in the court of learned Sub Divisional Judicial Magistrate, Biswanath Chariali, so far the same relates to the present petitioner.

JUDGE

Comparing Assistant