

GAHC010194092016



2024:GAU-AS:11524

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

**Case No. : Crl.Pet./55/2016**

MANOJ KUMAR DAS @ RANOJ DAS and ANR.  
S/O MAYA RAM DAS JAMARTAL, MIRZ, KAMURP RURAL, P.S.  
PALASHBARI, PIN - 781125, ASSAM.

2: SRI SANJAY KUMAR DUTTA @ SANJOY KUMAR DUTTA.  
S/O MURARI MOHAN DUTTA 2B  
ANUSUYA AKASH APARTMENT  
NH-37 LANKESWAR  
GUWAHATI-14  
P.S. JALUKBARI  
KAMRUP  
ASSAM

VERSUS

THE STATE OF ASSAM AND ANR

2:DR. TARINI KR. DUTTA  
PROFESSOR OF GAUHATI UNIVERSITY MATHEMATICS DEPARTMENT  
JALUKBARI  
GUWAHATI P.S. JALUKBARI  
DIST. KAMRUP M  
ASSAM

**Advocate for the Petitioner** : MS.M GOSWAMI, MR.S BHARALI,MR.B M  
CHOUDHURY,MR.N K NEOG,MR.M DAS

**Advocate for the Respondent** : MRV K BAROOAHR-2, PP, ASSAM,,,MR.K K DEY(R-2)

**BEFORE  
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

**ORDER**

25.11.2024

1. Heard Mr. B. M. Choudhury, learned counsel for the petitioners. Also heard Mr. K. K. Dey, learned counsel for the respondent No. 2 and Mr. B. Sharma, learned Additional Public Prosecutor for the State respondent.
2. The present application under Section 482 of the Code of Criminal Procedure, 1973 is filed for quashing the proceedings of G.R. Case No. 7702/2010 under Section 500/34 of IPC pending in the Court of learned Additional Chief Judicial Magistrate, Kamrup (M) at Guwahati. The further challenge is an order dated 17.12.2015 passed by the learned Additional Chief Judicial Magistrate, Kamrup (M) at Guwahati in the aforesaid G.R. Case whereby, the charges under Section 500/34 of IPC has been framed against the accused petitioner.
3. The prosecution was launched by the respondent No. 2 by filing an FIR, which is quoted herein below:-

*“To,*

*Dated: 28.09.2010.*

*The Special Superintendent of Police,*

*CID, Ulubari, Guwahati, Assam.*

*Sub: F.I.R. against a cyber crime.*

*Sir,*

*With due respect and humble submissions I beg to state the following few lines for your kind perusal and needful action.*

*That Sir, last few days one Mr. Ranoj Das is posting emails to my employer, persons in different administrative capacity where I work and my departmental colleagues alleging something derogatory against me.*

*I am in full doubt in the real existence of this Mr. Das, I doubt it to be the handy work of one sadist non-teaching staff member of the Gauhati University where I work as a Professor in the department of Mathematics. By his misdeeds he has not only blamed me but has given a bad reputation to the whole teaching community of the University.*

*In support of my doubt I have enclosed tow letters along with this application, one written by the said person in his name to someone in the University and the other one the email of Mr. Ranoj Das whose real existence is in doubt.*

*See the word by word and line by line similarity in the complain of both of them. I have provided the letters so that it might give you some clue to trap the culprit during the process of investigation. Further, I have not mentioned the names for the sake of your investigation.*

*Sir, looking all the seriousness of the crime, I think you will given priority to the process of investigation and let me know your findings when the investigation is complete to help me take legal action against the culprit.*

*Yours faithfully*

*(Dr Tarini Kumar Dutta)*

*Professor Dept. of Mathematics,*

*Gauhati University".*

4. On the basis of the aforesaid FIR, the CID PS Case No. 52/2010 under Section 66A of the Information Technology Act, 2000 was registered. Subsequently, after completion of the investigation charge sheet being CS No. 27 dated 31.12.2011 under Section 66A of Information Technology Act,

2000 was filed by the Investigating Officer.

5. Thereafter, processes were issued. The petitioners appeared before the learned Magistrate and filed a petition which was registered as Petition No.376 dated 30.04.2016 inter alia raising a plea that the investigating officer submitted the charge sheet against the accused persons under Section 66A of the Information Technology Act, 2000 though the Hon'ble Apex Court in its judgment dated 24.03.2015 had struck down the Section 66A of the Information Technology Act, 2000 in **Shreya Singhal –Vs- Union of India & ors** reported in **2015 (5) SCC 1**.
6. Accordingly, though no cognizance under Section 66A of the Information Technology Act, 2000 was taken, however, the learned Magistrate went ahead and considering the material available on record, the accused were charged under Section 500/34 of IPC. Being aggrieved, the present petition is filed.
7. This Court has given anxious consideration to the submissions advanced by the learned counsel for the parties. Also perused the material available on record.
8. Section 500/499 of IPC relates to an offence for defamation and said offence is enumerated under Chapter-XXI of the IPC.
9. Section 199 of Cr.P.C. mandates that no Court shall take cognizance of offence punishable under Chapter XXI of the IPC except upon a complaint made by some person aggrieved by the offence.
10. Therefore, in view of the aforesaid, the Magistrate could not have framed charges for commission of the offences under Section 500/34 of IPC on the basis of a charge sheet filed under section 173 of Cr.P.C.

11. In the aforesaid backdrop, this Court is of the view that the order dated 17.12.2015 passed by the learned Additional Chief Judicial Magistrate, Kamrup (M) at Guwahati is an order which can be termed as patently defective order inasmuch as the learned court below has exceeded his jurisdiction while framing charges under Section 500 of IPC in complete derogation of the provision of 199 of Cr.P.C.
12. Accordingly, the present criminal petition stands allowed by setting aside and quashing the proceedings of G.R. Case No. 7702/2010 under Section 500/34 of IPC pending in the Court of learned Additional Chief Judicial Magistrate, Kamrup (M) at Guwahati and the order dated 17.12.2015 passed in the aforesaid G.R. Case whereby, the charges under Section 500/34 of IPC has been framed against the accused petitioner.
13. Accordingly, this criminal petition stands disposed of.

**JUDGE**

**Comparing Assistant**