

GAHC010205672016



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

Case No. : Crl.Rev.P./226/2016

MADANLAL AGARWAL
S/O- LT. GAURI SANKAR AGARWAL, R/O- G.N.B. ROAD, TINSUKIA TOWN,
P.S. and DIST.- TINSUKIA, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PUBLIC PROSECUTOR.

2:LAXMIPAT DUGGAR
S/O- LT. SUMERMAL DUGGAR
TULSIRAM ROAD
TINSUKIA
P.S. and DIST.- TINSUKIA
ASSAM- 786125

Advocate for the Petitioner : MR.D SARMAH

Advocate for the Respondent : MS.L SRIVASTAVR-2

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 13.02.2024

Heard Mr. S. Chamaria, learned counsel for the petitioner; Mr. P.S. Lahkar, learned Additional Public Prosecutor for the State respondent No. 1; and Mr.

D.K. Kothari, learned counsel for the respondent No. 2.

2. In this petition, under Sections 397 read with Section 401 of the Cr.P.C., the petitioner, Sri Madanlal Agarwal has put to challenge the correctness or otherwise of the order dated 02.06.2016, passed by the learned CJM, Tinsukia, in G.R. Case No. 131/2010, arising out of Tinsukia P.S. Case No. 81/2010, registered under Sections 468/471/420/34 of the IPC.

3. It is to be noted here that vide impugned order dated 02.06.2016, the learned court below had framed charges against the petitioner, under Section 468/471/34 of the IPC.

4. Mr. Chamaria, learned counsel for the petitioner submits that on the basis of an FIR lodged by one Sri Laxmipat Duggar, on 04.02.2010, the Officer In-Charge of Tinsukia P.S. has registered a case, being Tinsukia P.S. Case No. 81/2010, under Sections 468/471/420/34 of the IPC. The essence of allegations made in the FIR is that his land lord namely, Sri Gauri Shankar Agarwal along with two others forged his signature and fraudulently made an agreement regarding vacating the rented land premises. After registering the case the investigation was carried out, which culminated in returning a Final Report, being F.R. No. 274/2012, dated 23.09.2012, as the report of Hand Writing Expert negated the allegation.

4.1. Mr. Chamaria, further submits that the informant has raised objection before the learned court below, upon which the learned court below has directed for re-investigation of the case and thereafter, re-investigation was carried out and the same culminated in the submission of Charge Sheet, being C.S. No. 120/2015, dated 25.03.2015, against the present petitioner and

another person namely, Samir Bhowal, and upon the said charge sheet the learned court below had taken cognizance of the offence and issued process to the petitioner to appear before the learned court below to stand trial.

4.2. Mr. Chamaria, further submits that during the investigation the IO had collected the alleged forged deed and forwarded the same to the FSL examination and the FSL report indicates that the signature in the agreement is similar with the signature of the informant, for which the IO has returned the case in final report. Thereafter, without considering the FSL report, the learned court below had taken cognizance of the offence, on the charge sheet submitted by the I.O. after re-investigation, without there being any prima-facie case made out against the present petitioner. Mr. Chamaria, also submits that the order of taking cognizance so passed by the learned court below is cryptic and no reason has been assigned for the same and as such, the impugned order is liable to be set aside and therefore, it is contended to allow the petition.

4.3. Mr. Chamaria, learned counsel for the petitioner has also referred one decision of the Hon'ble Supreme Court in the case of **Soma Chakravarty vs. The State through CBI**, in Criminal Appeal No. 710/2007, arising out of Special Leave Petition [Crl.] No. 552/2006 to bolster his submission.

5. Per contra, Mr. Kothari, learned counsel for the respondent No. 2 submits that while framing charge against the petitioner, the court is not required to assign any reason and the said legal proposition has already been settled by Hon'ble Supreme Court in the case of **Munna Devi vs. The State of Rajasthan and Anr.**, in Criminal Appeal No. 1138/2001. Referring to another case law of Hon'ble Supreme Court in the case of **Captain Manjit Singh Virdi [Retd.] vs. Hussain Mohammed Shattaf and Ors.**, reported in **2023**

LiveLaw [SC] 462, Mr. Kothari submits that at the stage of framing charge, the court has to consider, at that stage, only the prima-facie case, on the basis of truthfulness, sufficiency and acceptability of the material produced before the court. Referring to the materials collected in the charge sheet, at Page No. 18 of the petition, Mr. Kothari submits that in the charge sheet the IO has clearly indicated that though it was proved in the earlier investigation that the signature of the informant on the agreement was genuine but, it came to light that the opposite party had taken the advantage of illiteracy of the informant and forged the contents of the agreement and as such, a prima-facie case is made out against the petitioner and therefore, it is contended to dismiss the petition.

6. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record and the impugned order dated 02.06.2016, and also perused the charge sheet along with the case laws referred by learned counsel for both the parties.

7. It appears from the Final Report and also from the FSL report that the signature of the respondent No. 2 matched with the alleged signature in the agreement. But, during re-investigation the I.O. found that the signature of the informant was obtained by taking the advantage of illiteracy and the agreement was prepared fraudulently and as such, it cannot be said that no prima-facie case is made out against the petitioner.

8. There is a series of cases, wherein, Hon'ble Supreme Court while dealing with the provisions of Sections 227, 228, 239, 240, 241, 242 and 245 CrPC, has consistently held that the court at the stage of framing of the charge has to

apply its mind to the question whether or not there is any ground for presuming the commission of an offence by the accused. The court has to see as to whether the material brought on record reasonably connects the accused with the offence. Nothing more is required to be enquired into. While dealing with the aforesaid provisions, the test of prima facie case is to be applied. The court has to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient for the court to proceed against the accused further. **(Vide *State of Karnataka v. L. Muniswamy* reported in (1977) 2 SCC 699, *All India Bank Officers' Confederation v. Union of India* reported in (1989) 4 SCC 90, *Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia* reported in (1989) 1 SCC 715, *State of M.P. v. Krishna Chandra Saksena* reported in (1996) 11 SCC 439, and *State of M.P. v. Mohanlal Soni* reported in (2000) 6 SCC 338.**

9. In the case of **Captain Manjit Singh Viridi [Supra]**, referred by Mr. Kothari, the learned counsel for the respondent, also it has been held that at the stage of framing of charge, the court has to consider, at the stage, only the prima-facie case, on the basis of truthfulness, sufficiency and acceptability of the material produced before the court and at that stage only the evidence produced by the prosecution is to be believed. In the case of **Munna Devi [Supra]** referred by Mr. Kothari, Hon'ble Supreme Court has held that at the time of framing of charge the court is not required to write a reasoned or lengthy order and there is no such legal requirement and only the FIR and the facts mentioned therein has to be taken into consideration.

10. It is well settled that while exercising the revisional jurisdiction, this Court has no authority to appreciate the evidence in the manner as the trial court and

the appellate court are required to do. The revisional power could be exercised only when it is shown that there is legal bar against the continuance of the criminal proceeding order or framing charge or the fact as stated in the FIR.

11. I have also carefully gone through case law - **Soma Chakravarty [Supra]** referred by Mr. Chamaria, the learned counsel for the petitioner, wherein it has been held that there must be a prima-facie case against the accused and I find that the ratio, so laid down in the aforesaid case, would not advance the case of the petitioner, in as much as a bare perusal of the materials placed on record reveals a prima-facie case against the accused.

12. Thus, having examined the impugned order in the light of the facts and circumstances on the record and discussed herein above, and also the light observed by the Hon'ble Supreme Court in the above referred cases, this Court finds no merit in this petition and accordingly, the same stands **dismissed**. Interim order passed earlier stands **vacated**.

13. Send down the record of the learned court below forthwith. The parties have to bear their own cost.

JUDGE

Comparing Assistant