

GAHC010233022012



2024:GAU-AS:11266

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

Case No. : Crl.Pet./239/2012

HABUL DEV and 4 ORS
SON OF LATE BANINDRA DEV R/O TARUN NAGAR MUKHAYA PATH H/NO
36, A.B.C. P.S. BHANGAGARH, GUWAHATI-6, DIST. KAMRUP M, ASSAM.

2: SRI BABUL DEV
SON OF LATE BANINDRA DEV R/O TARUN NAGAR P.S. BHANGAGARH
GUWAHATI-6
DIST. KAMRUP M
ASSAM.

3: SMTI. MAMONI DEV
W/O SRI BABUL DEV R/O TARUN NAGAR P.S. BHANGAGARH
GUWAHATI-6
DIST. KAMRUP M
ASSAM.

4: SMTI SOMA SEN
WIFE OF LATE SIVA KUMAR SEN R/O SRIMANTAPUR P.S. BHANGAGARH
GUWAHATI-6
DIST. KAMRUP M
ASSAM.

5: SMTI. JAYA NANDY
WIFE OF SRI PRASANTA R/O SITLABARI
BAMUNIMAIDAM GUWAHATI
P.S. CHANDMARI DIST. KAMRUP M
ASSAM

VERSUS

THE STATE OF ASSAM AND ANR

2:SMT. ELA DEV ROY

D/O RAJENDRA CH. ROY R/O GOLAGHATBASTI
RAYPARA P.S. HOJAI
DIST. NAGAON
ASSAM

Advocate for the Petitioner : MR.T J MAHANTA, MR.A BHATTACHARYA,MRK K DAS

Advocate for the Respondent : MR.R K DEY, MR.R DEV,PP, ASSAM

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
O R D E R

20.11.2024

1. Heard Mrs. P Bhattacharyya, learned counsel for the petitioners. Also heard Mr. P Borthakur, learned Additional Public Prosecutor, Assam.
2. The present application is filed assailing a complaint case being CR case No. 669/2011 filed by the respondent No. 2. The respondent No. 2 is the husband of the petitioner No. 1. Petitioner No. 2 is the brother of petitioner No. 1. Petitioner No. 3 is the wife of petitioner No. 2. Petitioner No. 4 is the sister of petitioner No. 1 and petitioner No. 5 is daughter of petitioner No. 4. The aforesaid CR case was lodged primarily alleging misappropriation of stridhan.
3. A reading of the complaint discloses that the primary allegation is against the accused petitioner i.e. the husband of the complainant/ respondent No. 2. It is the case of the complainant that she married to the petitioner No. 1 on 20.06.2011 and at the time of marriage, her family members gave her different articles, detailed in the list pleaded in the said complaint petition.
4. An omnibus statement has been made that the accused persons have used and misappropriated those articles of the complainant and it is apprehended that they might sell the articles thereby causing damage to those

articles.

5. 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.

6. After receipt of the complaint, the learned Magistrate recorded the statement of the complainant under Section 200 Cr.P.C., which also reflects that the allegation so far relating to misappropriation of stridhan is against the accused No. 1 and not against the other accused.

7. In the considered opinion of this court, if the aforesaid complaint and the statement recorded under Section 200 Cr.P.C. are accepted and taken to be correct in its face value, in the considered opinion of this court, no case under Section 406/506 IPC is made out against the petitioner Nos. 2,3,4 and 5. Against them there are only omnibus statements and on the basis of such statements, the learned Magistrate could not have taken cognizance of commission of offence under Section 406/506 IPC against the aforesaid accused i.e. accused Nos. 2,3,4 and 5. It is also on record that prior to the lodging of the complaint, the brother of the complainant filed an FIR before the Bhangagarh

PS, which was registered as Bhangagarh PS case No. 20/2011 under Section 498(A) IPC. However, the learned counsel for the petitioners is not aware of the fate of the aforesaid case.

8. Be that as it may, for the reason recorded hereinabove, this court is of the view that this is a fit case where the complaint is required to be quashed so far the same relates to accused No. 2,3,4 and 5 in CR case No. 669/2011.

9. Accordingly, the present criminal petition stands allowed by setting aside and quashing the CR case No. 669/2011 and the order of cognizance dated 27.02.2012 against the petitioner No. 2, Sri Babul Dev, petitioner No. 3, Smt. Mamoni Dev, petitioner No. 4, Smt. Soma Sen and petitioner No. 5, Smt. Jaya Nandy, is set aside and quashed. However, it is made clear that this court has not interfered with the complaint so far the same relates to the petitioner No. 1, Sri Habul Dev. LCR be returned back.

JUDGE

Comparing Assistant