

GAHC010236222023



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

Case No. : Crl.Pet./1152/2023

MD. JAKIR HUSSAIN AND ANR
S/O LATE TARUN ALI
R/O VILL- SONAPUR
P.S. MUKALMUA
DIST. NALBARI, ASSAM

2: DR. MANJUR ALAM
S/O LATE LALMAMUD ALI
R/O VILL- RAMPUR
P.S. MUKALMUA
DIST. NALBARI
ASSA

VERSUS

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

2:SRI LIMUMONI SARMA
D/O RATNESWAR SARMA
P.S. BELSO
DIST. NALBARI
ASSA

Advocate for the Petitioner : MR. R GOSWAMI

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
JUDGMENT**

06.03.2024

Heard Mr. R. Goswami, the learned counsel for the petitioners. Also heard Mr. R. J. Barua, learned Addl. P. P. for the State respondent No.1 and Mr. C. S. Sarkar, learned counsel for respondent No.2.

2. In this petition, under section 482 of the Cr.P.C. two petitioners, namely, (i) Md. Jakir Hussain and (ii) Dr. Manjur Alam has prayed for quashing the FIR and charge sheet No. 434/2022, dated 30.12.2022, of Mukalmua P.S. Case No. 237/2022, u/s 120(B)/468/471/420 IPC, registered on the basis of one FIR lodged by S.I. Litumani Sarma of Belsor P.S. on 27.4.2022.

3. The back ground facts leading to filing of the present petition are adumbrated herein below:-

“Smt. Aparna Sarma, Circle Officer, West Nalbari, Chamata, had lodged an FIR with the Belsar P.S. on 28.02.2022, against Lat Mandal Zakir Hussain, upon which Belsar P.S. Case No. 40/2022, u/s 120(B)/468 /471/420/472/474/466/34 IPC, was registered. And during investigation of the said case it has been found that Lat Mandal Zakir Hussain had applied for leave enclosing one Medical Certificate, issued by a Doctor Manjur Alam of Mukalmua Civil Hospital on 23.4.2022, against OPD Serial No. 10114, wherein, it was stated that accused Md. Zakir Hussain had been suffering from his right leg injury, and therefore, from 23.4.2022 to 24.5.2022, he has been advised to take bed rest. But, during investigation, from the Register provided by the SDM & HO of Mukalmua Civil Hospital,

Dr. Chakradhar Barman, it has been found that on 23.4.2022, accused Md. Zakir Hussain had not undertaken any treatment there. Instead of 23.04.2022, against OPD Serial No. 10114, one lady, namely, Jele Khatun, had undertaken treatment in the Mukalmua Civil Hospital on 19.4.2022. And therefore, a prayer was made to take necessary action against Dr. Manjur Alam of Mukalmua Civil Hospital along with accused Zakir Hussain, who had conspired to interrupt the investigation of Mukalmua P.S. Case and also misguided the administration by issuing forged document. Upon the said FIR the Officer-in-Charge, Mukalmua P.S. registered a case being Mukalmua P.S. Case No. 237/2022, u/s 120(B)/468/471/420 IPC, and carried out the investigation, which culminated in submission of charge sheet against the present petitioners, being Charge sheet No. 434/2022, dated 30.12.2022, to stand trial in the court u/s 120(B)/468/471/420 IPC."

4. Being aggrieved, the petitioners have approached this court, by filing the present petition, for quashing the Charge sheet No. 434/2022, dated 30.12.2022, on the following grounds:

(i) That, the petitioners are Government servant, while petitioner No. 1 is a Lat Mandal, serving in the West Nalbari Circle, Chamata and petitioner No. 2 is a Government Doctor working in the capacity as M & HO-I in Mukalmua BPHC, and that a bare perusal of the FIR and the charge sheet fails to disclose any of the offences under sections of 120 (B) /468/471/420 IPC against the present petitioners.

(iii) That the OPD Registers of Mukalmua BPHC (being annexed with the petition as Annexure No. 3 and 4) clearly reveals that on 23.4.2022, against OPD Serial No. 10114, the name of petitioner No. 1 finds mentioned and as such there is no question of hampering investigation of Belsor Police Station case and misguiding the administration.

(iv) That, the petitioners have no intention to forge any document for the purpose of cheating anybody and only to harass the petitioners', Charge sheet No. 434/2022, dated 30.12.2022 has been filed.

(v) That, the petitioner No.2 had genuinely issued Medical Certificate against OPD Serial No. 10114 on 23.04.2022, in favour of petitioner No.1 who was suffering from right leg injury and needed bed rest and as such there is no question of forging of any document.

(v) That the I.O. has not properly investigated the fact that the OPD Serial No. 10114 was genuinely issued on 23.4.2022.

(vi) That, there is no question of commission of any cheating by the petitioners against anybody and that filing of charge sheet against the present petitioners are abuse of the process of the Court, and therefore, it is contended to allow the petition.

5. It is to be noted herein that the respondent No. 2 had filed one affidavit-in-opposition, stating that the petitioners are trying to mislead the Court by making different statement with regard to the registration and referring to the OPD No.10114, entered in the register on 19.4.2022 against some other person, whereas against the same registration number, Certificate was issued in respect of petitioner No. 1 on subsequent date i.e. on 23.4.2022,

and it is also doubtful as to how the petitioner could sign the leave application on one day ahead i.e. on 22.4.2022, if he had genuinely taken treatment under petitioner No.2 on 23.4.2022. It is also stated that the Medical Certificate enclosed by the petitioner No. 1 with his leave application was also issued by the petitioner No. 2 on 23.4.2022, which simply reminds that the case of Cart running before the horse. Further it is stated that the petitioner No. 1 had applied for extension of leave on 22.04. 2023 for the period of 01.05.2022 to 30.06.2022, but, in the Medical Certificate the period has been mentioned as 23.4.2022 to 24.5.2022 and these discrepancies have raised serious doubt about the veracity of the claim of the petitioner and that the correctness of averment made in the petition are subject matter of trial and as such, this instant petition is not maintainable and therefore, it is contended to dismiss the same with cost.

6. Mr. R. Goswami, learned counsel for the petitioners submits that none of the sections mentioned in the charge sheet are applicable in the present case and that both the petitioners are Government servant and they hail from respectable families and serving the public with utmost sincerity. Mr. Goswami further submitted that during investigation the I.O. had seized the OPD register of Mukalmua BPH and perusal of the same indicates that on 23.4.2022 against OPD Serial No. 10114, the petitioner No. 1 was treated by petitioner No. 2, on account of right leg injury and as such, the same was issued genuinely. Mr. Goswami, further submits that the OPD Register was maintained by staff of the Hospital and kept in the proper custody of the In-charge, and as such, there is no occasion for the petitioners Nos. 1 and 2 for forging the same and issuing fake Medical Certificate and on the basis of which the petitioner No. 1 has applied for granting him leave. Mr. Goswami, also submits that the charge sheet

filed before the learned Court below is an abuse of the process of the Court and therefore it is contended to quash the same invoking the power u/s 482 Cr.P.C.

7. On the other hand, Mr. R. J. Barua, learned Addl. P.P. for the respondent No. 1 submits that the petitioner No.2 had issued a Medical Certificate to the petitioner No.1, purportedly on 23.04.2022, against OPD Serial No. 10114. Referring to the Annexure No. 'C', the copy of OPD Register, which is enclosed with the petition at Page No.45, Mr. Barua submits that in fact against the OPD Serial No. 10114, one Jele Khatun had taken treatment on 19.4.2022, and as such, against the said serial number, the question of taking treatment by the petitioner No. 1 on 23.4.2022 does not arise and as such there is material in support of allegation made in the FIR as well as in the Charge sheet and these fact can be ascertained only during trial and therefore, it is contended to dismiss the petition.

8. Whereas, Mr. C. S. Sarkar, learned counsel for respondent No. 2 also adopted the submission of Mr. R. J. Barua, learned Addl. P.P. and submits that there is manipulation and extrapolation in the OPD Register on the relevant date and therefore, it is contended to dismiss the petition.

9. It is to be noted here that Mr. R. Goswami, learned counsel for the petitioners, in reply to the submission advanced by the learned Addl. P.P for respondent No. 1 and Mr. C.S. Sarkar, learned counsel for the respondent No. 2, submits that the question of forging of OPD Register is not possible in view of the fact that the same remain in custody of in-charge of the Civil Hospital and the same was not maintained by the petitioner No. 2 instead, it was maintained by one assistant of the said Hospital and as such, the contention of learned counsel for the respondents are not at all believable.

10. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and documents placed on record and also perused the case diary and the scanned copy of the record received from the learned Court below.

11. It appears from the documents placed on record and also from the scanned copy of the record received from the learned court below that while carrying out investigation in Belsor P.S. Case No. 40/2022, u/s 120(B)/468/471/420/472/474/466/34 IPC, the respondent No. 2 found that on 23.4.2022, Dr. Manjur Alam, petitioner No. 2, who was serving as M & HO-I in the Mukalmua Civil Hospital, had issued a Medical Certificate against OPD Serial No. 10114 and on the basis of the said certificate, the petitioner No. 1 has filed a leave application seeking leave w.e.f. 23.2.2022 till 30.04.2022, as he was advised for bed rest on account of injury, allegedly sustained by him over his leg. But, having checked the OPD register, on 23.04.2022 it has been found that petitioner No. 1 never took treatment in Mukalmua Civil Hospital against the said OPD serial number. Instead, it has been found that on 19.04.2022, against the said OPD Serial number, one Jele Khatun took treatment in Mukalmua Civil Hospital and the testament of this fact is Annexure-‘C’ of the affidavit in opposition filed by respondent No.2.

12. Also it appears that on 22.4.2022, the petitioner No. 1 has applied for leave to the Deputy Commissioner, Nalbari seeking leave from 23.2.2022 to 30.4.2022, on account of injury sustained by him over his right leg and again he applied for leave w.e.f. 1.5.2022 till 30.6.2022, vide Annexure-‘A’, as he has not been recovering from the same and he had enclosed one Medical Certificate i.e. Annexure ‘B’, the affidavit -in-opposition, issued by the petitioner No.2, dated 23.4.2022. And perusal of the same indicates that the petitioner No.2 had

certified that Zakir Hussain, petitioner No.1 is suffering from traumatic (R) leg injury from 23.2.2022 and he is advised for bed rest from 23.4.2022 to 24.5.2022. Further, perusal of Annexure-'C' the OPD Register indicates that against OPD Serial No. 10114, one Jele Khatun had taken treatment on 19.4.2022. But, Annexure 'B' indicates that on 23.4.2022, against the Serial No.10114, the petitioner No. 1 had taken treatment.

13. Thus, it appears that if against the OPD serial No. 10114, one Jele Khatun has taken treatment as per OPD register of Mukalmua BPHC on 19.4.2022, then there is no question of taking treatment on 23.4.2022 against the said Serial number by the petitioner No.1. These are disputed question of fact, in view of the pleadings of the parties as well as submissions of learned Advocates of the respective counsels.

14. Now, the question is whether this Court, while exercising the power u/s 482 Cr.P.C., can adjudicate the disputed question of facts. It is to be noted here that it is well settled proposition of law through a string of judgments delivered by Hon'ble Supreme Court in the case of **R. P. Kapur vs. State of Punjab** reported in **AIR 1960 SC 866** and the **State of Bihar and Anr. vs. P.P. Sharma, IAS and Anr.** reported in **1992 Suppl. (1) SCC 222** and in the case of **Zandu Pharmaceutical Works Ltd. and Ors. vs. Md. Saraful Haque and Anr.** reported in **(2005) 1 SCC 122**, where it has been categorically held that the disputed question of facts cannot be adjudicated by the Court by exercising power u/s 482 Cr.P.C.

15. It is also to be mentioned here in that in the case of **Ramveer Upadhayay and another vs. State of U.P. and Another, Special Leave Petition (Crl.) No. 2953/2022**, Hon'ble Supreme Court has held as under:-

“39. In our considered opinion, criminal proceedings cannot be nipped in the bud by exercising jurisdiction u/s 482 Cr.P.C. only because that the complainant has been lodged by a political rival. It is possible that the false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference u/s 482 Cr.P.C. to quash the Criminal proceeding. As observed above, the possibility of retaliation on the part of the petitioners, by the act alleged, after closure of earlier Criminal case cannot be rolled out. The allegation in the complaint constitutes offence under the Atrocities Act. Whether the allegations are true or untrue would have to be decided in trial. In exercise of power u/s 482 Cr.P.C , the Court does not examine the correctness of allegation in a complaint except in a exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence.”

16. In the case of **Mohd. Akram Siddiqui v. State of Bihar and Anr, reported in (2019) 13 SCC 350**, Hon'ble Supreme Court has held as under :-

"5. Ordinarily and in the normal course, the High Court when approached for quashing of a criminal proceeding will not appreciate the defence of the accused; neither would it consider the veracity of the document(s) on which the accused relies. However an exception has been carved out by this Court in Yin Cheng Hsiung v. Essem Chemical Industries; State of Haryana v. Bhajan Lal and Harshendra Kumar D. v. Rebatilata Koley to the effect that in an appropriate case where the document relied upon is a public document or where veracity thereof is not disputed by the complainant, the same can be considered."

17. Again in the case of **CBI vs. Arvind Khanna**, reported in **(2019) 10 SCC 686**, Hon'ble Supreme Court has held as under:

“17. After perusing the impugned order and hearing on the submission made by learned Senior Counsel of both side we are of

the view that the impugned order passed by the High Court is not sustainable. In a petition u/s 482 Cr.P.C. and the High Court has recorded finding on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating of the evidence during trial, the very fact that the High Court, in this case, went into the most minute details of the allegation made by the appellant CBI and the Defence put forth by the respondent, led us to a conclusion that the High Court has exceeded its power while exercising its inherent jurisdiction u/s 482 Cr.P.C.

18. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance of by the competent Court is completely incorrect and uncalled for”.

18. The proposition of law, which can be crystallized from the discussion made herein above, is that this Court cannot embark upon an enquiry as to the reliability or genuines or otherwise of the allegations made in the complaint. Therefore, it cannot be said that the impugned charge sheet No. 434/2022, dated 30.12.2022, arising out of Mukalmua P.S. Case No. 237/2022, u/s 120(B)/468/471/420 IPC did not disclose the commission of said offences at this stage, while the facts are hazy and also disputed.

19. The petitioners also could not make out any exceptional circumstances to interfere with the case at the very threshold as held in the case of **State of Haryana and Ors. vs. Bhajanlal and Ors.** reported in **1992 Suppl. (1) SCC 335** and in the case of **Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and others** reported in **2021 SCC Online SC 315**. Whether the factual foundation of the offences mentioned herein above are sufficient to disclose the ingredients of the offence against the petitioners have to be considered at the stage of trial, such an enquiry cannot be embarked upon at this stage, as held by Hon’ble Supreme Court in the case of **Neeharika**

Infrastructure (supra), **Ramveer Upadhayay** (supra), **Md. Akram Siddiqui** (supra) and **Arvind Khanna** (supra).

20. Thus, in view of above discussion and finding and also in view of the submission advanced at the bar, I find this petition devoid of merit and accordingly, the same stands **dismissed**. The parties have to bear their own cost.

Comparing Assistant

JUDGE