

GAHC010239502013



2024:GAU-AS:11522

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

Case No. : Crl.Pet./614/2013

AKON BORA

S/O LT. DHARMESWAR BORA R/O SEUJ NAGAR, BELTOLA TINIALI
GUWAHATI, IN THE DIST. OF KAMRUP, ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS

2:SRI DULAL BORA

S/O DEBEN BORAH R/O KOINADHARA
TINIALI HOUSE NO. 118
KHANAPARA
BASISTHA
GUWAHATI-22

3:THE SUPERINTENDENT

CERTIFICATE BRANCH
GAUHATI UNIVERSITY

Advocate for the Petitioner : MR.P GOSWAMI, MR.D GOGOI,MS.C CHOUDHURY,MR.A M
BORA,MR.S R BORUAH

Advocate for the Respondent : MR.L K BORAH, „PP, ASSAM,MR.J C DAS

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

ORDER

Date : 25-11-2024

1. Heard Mr. A. M. Bora, learned Senior Counsel assisted by Mr. M. S. Hussain, learned counsel for the petitioner. Also heard Mr. L. K. Borah, learned counsel for the respondent No. 2 and Mr. K. K. Das, learned Additional Public Prosecutor for the State respondents.
2. The present application under Section 482 of the Code of Criminal Procedure, 1973 is filed for quashing of F.I.R. being registered as Basistha P.S. Case No. 499/2013 under Sections 468/420/471 of IPC.
3. The FIR lodged by the respondent No. 2 before the Officer-in-Charge of Basistha Police Station is quoted hereinbelow:-

“To,

Dated: 10.07.2013.

The Officer-in-Charge

Basistha Police Station

Basistha Chariali, Guwahati -781029

Sub: First Information Report regarding submission of false information before the Election Returning Officer, Kamrup (Metro) District at the time of submission of nation papers.

Sir,

With due respondent I beg to state that I Dulal Bora S/o Sri Deban Bora R/o Rajib Gandhi Path, Kainadhara Tiniali Khanapara Gauhati 781022, Assam. As I being a citizen of India I would like to inform you

about a criminal antecedent and a fraud person who is a Cabinet Minister of Assam for the second time (First time at the year of 2006), He is Sri Akon Bora, Son of Late Dharmeswar Bora, the present MLA of 52 Dispur constituency of the present ruling Government of Assam (Congress) and the present Minister of Department Jail and Social Welfare, Government of Assam, he has committed fraud before the authority of Chief Election Commission, I have come to know that all the documentary are false. Akon Bora had submitted the following false information before the returning officer, Kamrup (Metro) District, Assam for two time (two terms) Assembly Elections of Assam i.e. for the year 2006 and 2011 and the elections were held on April, 2006 and on April, 2011. The details information of fraud committed by the said Sri Akon Bora is given below:-

- 1. In the Assam State Legislative Assembly Election held in the year 2006 the said Akon Bora submitted his false Affidavit dated 16.03.2006 before the Returning Officer, Kamrup (M) District which is mandatory rule under Article 324 of the constitution of India and the guideline of the Honorable Supreme Court of India by Judgment and order dated 13.03.2003 relating to Right to information of electors regarding criminal antecedents, assets, liabilities and educational qualification of the candidates. The said Akon Bora stated in his Affidavit that there is no criminal case pending against him to imprisonment for one year or more. But in the year 2006 there was a criminal case pending against him at the time of filling his nomination paper as a candidate of MLA from 52 Dispur constituency of Assam PS Case No. 130/99 via, Basistha under Section 448/365/511/342/506/34 of IPC and accordingly, he was arrested on 20.05.99 and the police from Basistha Police Station submitted charge sheet against him being CS No. 27 dated 22.05.2000 (GR Case No. 2254/99).*

2. *In the Assam State Legislative Assembly Election held in the year 2006 and said Akon Bora submitted his false Affidavit dated 16.03.2006 but he had released from the Court on 11.01.2007. Assembly Election held on April 2011 also submitted another affidavit before the returning Officer, Kamrup (M) District that the qualification of Sri Akon Bora is BA (Bachelor of Arts) and the said Degree was obtained from Gauhati University of Assam. But from the documentary evidences from the Gauhati University it is clear that the said akon Bora had not obtained any Bachelor Degree under Gauhati University, the said Akon Bora had not obtained any Bachelor Degree under Gauhati University.*

3. *From 16.03.13 the properties he and his family had earned is illegal because the person who can provide false affidavit to Election Commission then his properties are of our public's right, money for their development. So, I humbly request you to seal his properties.*

From the aforesaid facts and circumstances it is established that Akon Bora has mislead the Election Commission by committing fraud (by submitting false documents) and violating the electoral norms and accordingly he become two times Minister in the State Government of Assam.

Therefore, I hereby inform and request you to make an enquiry about the fraud committed by Sri Akon Bora and also register a case against him.

I hope after making enquiry you will take necessary action against him for ends of justice".

4. In the present case, the offences registered against the petitioner are for the

offences punishable under Sections 468/420/471 IPC.

5. In this context, let this Court consider the ingredients of forgery, cheating inasmuch as this Court is also to look whether it is prima facie established existence of ingredients of such offences, if the FIR is accepted to be correct at its face value.

6. Section 420 IPC provides that whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy, the whole or any part of valuable security or anything, which is signed or sealed, and which is capable of being converted into valuable security, shall be liable to be punished for a term which may extend to seven years and shall also be liable to fine.

7. Section 415 IPC defines the term 'cheating' and brings under its fold an act which is done by fraudulent or with dishonest intentions. The reading of the aforesaid provision shall clarify that there must be an inducement to deceive and to deliver any property to any person, or to consent that any person shall retain any property, causing damage or harm to that person. There must be prima facie material as regards dishonest or fraudulent inducement to deliver property. Thus, what is required is deception of a person, fraudulent or dishonest inducement leading to delivery of any property to any person and dishonest intention of the accused at the time of making such inducement. Such dishonest intention must be there from the inception when the promise and representation was made.

8. It is equally well settled that every deceitful act is not unlawful inasmuch as every unlawful act is not deceitful. Those acts, which can be termed as unlawful and at the same time deceitful, shall come within the purview of Section 420 IPC.

9. It is well settled propositions of law that a statement of fact is deemed 'deceitful' when it is false, and is knowingly or recklessly made with the intent that it shall be acted upon by another person, resulting in damage or loss. Cheating generally involves a preceding deceitful act that dishonestly induces to a person to deliver any

property or any part of a valuable security, prompting the induced person to undertake the said act, which they would not have done but for the inducement.

10. In the present case what is alleged is that the accused was aware of certain criminal proceeding pending against him and he had many properties and that he is not a graduate, however, not only he had concealed the fact of pendency of such criminal prosecution against him and his actual property, he had also made a wrong declaration that he is graduate, which he is not. Such an allegation cannot be brought, by any stretch of imagination, under the fold of cheating, in the considered opinion of this court inasmuch as cheating requires that the act is done by fraudulent or dishonest intention and there is an inducement to deceive and delivery of any property to any person. Such act as disclosed in the FIR cannot also be brought under forgery, which requires two primary components i.e. that the accused has fabricated an instrument and that it was done with the intention that the forged document could be used for purpose of cheating inasmuch as offence of forgery requires the preparation of a false document with dishonest intention of causing damage or injury. In the case in hand, the allegation is not any inducement of cheating resulting in deliver any property etc. and it is also not alleged fabrication of the affidavit (instrument). What is alleged is that in the affidavit (instrument) the facts required to be disclosed under law were concealed.

11. In the aforesaid backdrop, if the facts described in the FIR are taken at its face value, at best the allegation may be relatable to an offence under Section 125 A of the Representation of People Act, 1951. However, in the aforesaid backdrop, the police shall not have any authority to carry out an investigation in terms of the prescription made under Section 125A of the Representation of People Act, 1951 for the reason that such offence is non-cognizable and therefore, a complaint is to be filed even if, the respondent no. 2 is having any grievance as regards concealment of material facts in the affidavit filed during submission of nomination.

12. Though Mr. Bora relying on document tried to impress upon this court that no facts were concealed, this court while considering the present case would not like to comment on the merit of the defence of the accused inasmuch as this court is to look into the allegation made in the FIR and accept the same to be correct on its face value.

13. Accordingly, the present criminal petition stands allowed by setting aside and quashing the F.I.R. being registered as Basistha P.S. Case No. 499/2013 under Sections 468/420/471 of IPC.

JUDGE

Comparing Assistant