

GAHC010239932023



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

Case No. : WP(C)/6418/2023

ABDUL KAYUM AND ANR.
SON OF LATE MONAF ALI,
PERMANENT RESIDENT OF VILLAGE- KAPILIPAR,
P.O.- KARIKHANA, P.S.- LANKA,
DIST- HOJAI, ASSAM,
PIN- 782446.

2: DILWAR HUSSAIN @ DILUWAR HUSSAIN MIRZA
SON OF ABDUL MALIK

PERMANENT RESIDENT OF VILLAGE- KAPILIPAR

P.O.- KARIKHANA
P.S.- LANKA

DIST- HOJAI
ASSAM

PIN- 782446

VERSUS

THE UNION OF INDIA AND 15 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF HOME AFFAIRS,
NEW DELHI- 110001.

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6.

3:THE DIRECTOR GENERAL OF POLICE

ULUBARI
GUWAHATI
PIN- 781007.

4:THE DEPUTY SECRETARY TO THE GOVERNMENT OF ASSAM
POLITICAL(B) DEPARTMENT
DISPUR
GUWAHATI-6.

5:THE SPECIAL DIRECTOR GENERAL OF POLICE (BORDER)
ASSAM
SRIMANTAPUR
BHANGAGHAR

GUWAHATI- 781032.

6:THE SUPERINTENDENT OF POLICE (B)
SRIMANTAPUR
BHANGAGARH
GUWAHATI- 781032.

7:THE SUPERINTENDENT OF POLICE
HOJAI
SANKARDEV NAGAR
HOJAI

DISTRICT- HOJAI
ASSAM
PIN- 782435.

8:THE SUPERINTENDENT OF POLICE(B)
HOJAI
DISTRICT- HOJAI
ASSAM

PIN- 782435.

9:THE OFFICER-IN-CHARGE
LANKA POLICE STATION
DISTRICT- HOJAI
ASSAM

PIN- 783446.

10:ABUL KALAM AZAD
THE INSPECTOR OF POLICE (BORDER)

HOJAI

DIST.- HOJAI
ASSAM
PIN- 782446

THE INFORMANT AND ENQUIRY OFFICER IN THE CASE.

11:SYEDA MAJONI HAQUE
SUB-INSPECTOR OF POLICE

C/O- OFFICER-IN-CHARGE
LANKA POLICE STATION

LANKA
DISTRICT- HOJAI
(THE INVESTIGATING OFFICER
OF LANKA PS CASE NO. 512/2022).

12:SAIFUR RAHMAN TALUKDAR @ SOFIUR RAHMAN TALUKDAR @ MD.
SAYFUR RAHMAN TALUKDAR
S/O- LT. SANU MIYA TALUKDAR @ CHONI MIAH TALUKDAR

RESIDENT OF VILLAGE- KAPILIPAR

P.O.- KARIKHANA
P.S.- LANKA

DIST.- HOJAI
ASSAM
PIN- 782446.

13:THE OFFICE OF THE ASSISTANT HIGH COMMISSION OF BANGLADESH
C/O- THE ASSISTANT HIGH COMMISSIONER OF BANGLADESH

SITUATED AT GREEN VALLEY TOWER

OLD POST OFFICE LANE (NEAR DOMINOS)

MONIRAM DEWAN ROAD
SILPUKHURI

ASSAM
GUWAHATI- 781003.
(ISSUING AUTHORITY OF ANNEXURE-9).

14:THE ELECTION COMMISSIONER
BANGLADESH ELECTION COMMISSION
NATIONAL IDENTITY REGISTRATION DEPARTMENT

GOPALGONJ
DISTRICT- SHYLET
BANGLADESH

PIN- 3160
(ISSUING AUTHORITY OF ANNEXURE-5
17 SERIES).

15:MOULANA TARIKUL ISLAM
CHAIRMAN
14 NO. EAST GOURIPUR UNION PARISHAD (U/P)

BALAGONJ
P.O.- MUSLIMABAD

P.S.- BALAGONJ
DISTRICT- SHYLET

BANGLADESH
PIN- 3116
(ISSUING AUTHORITY OF ANNEXURE-2
3 AND 4).

16:ROWGESH KUMAR DAS
SECRETARY 14 NO. EAST GOURIPUR UNION PARISHAD (U/P)
BALAGONG

P.O.- MUSLIMABAD
P.S.- BALAGONJ
DISTRICT- SHYLET
BANGLADESH
PIN- 3116
(ISSUING AUTHORITY ALONG WITH RESPONDENT NO. 15 OF ANNEXURE-
3 AND 4)

Advocate for the Petitioner : MR. S K TALUKDAR

Advocate for the Respondent : DY.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 23.04.2024

Heard Mr. S. K. Talukder, learned counsel for the petitioner. Ms. R. Devi, learned CGC appearing for respondent no.1 and Mr. P. S. Lahkar, learned APP appearing for respondent nos.2 to 9.

2. This Court by order dated 18.01.2024 has issued notice only to the respondent nos.2 to 9 who are authorities under the State of Assam. Therefore, notices have not been issued to the respondent no.1 or to respondent nos.10 to 16.

3. By filing this writ petition under Article 226 of the Constitution of India, petitioners have prayed for quashing of the criminal proceeding being PRC No.727/2023 arising out of Lanka P. S. Case No.512/2022.

4. Brief background of the case is that the petitioner no.1, Md. Abdul Kayum had submitted a complaint against one Safure Rahman Talukdar before the Office of the Superintendent of Police, Hojai alleging him to be a Bangladesh citizen who had illegally migrated into India and some documents in support of the allegation were also submitted, which is quoted below:

1. *Birth Certificate issued by one Moulana Tarikul Islam, Chairman of 14 No. Gouripur Union Parishad, Sub-Div. Balangonj, Dist- Sylhet, Bangladesh. Date of Issue 18/04/2012. Containing Regd. Book No.02, Registration No.004799 dated 28/11/2007 and personal Identification No.19479110870 004799. (Bengali & English)*

2. *Nationality Certificate issued by one Moulana Tarikul Islam, Chairman of 14 No. Gouripur Union Parishad, Sub-Div. Balagonj, Dist- Sylhet, Bangladesh. Date of Issue 18/04/2012.*

3. *Final Electoral Roll of Pachim Muslimabad dated 15/04/2010 & Code*

No.3116.

5. The Superintendent of Police (B), Hojai vide letter no.HJI/B/2022/402 dated 13.10.2022 requested the Bangladesh Assistant High Commission, Guwahati to verify the authenticity of the said three documents and to furnish his report. The Assistant High Commission of Bangladesh, Guwahati vide letter no.00.03.9105.04.65.01.20/8-22 dated 15.12.2022 stated as follows:

The Assistant High Commission of Government of the People's Republic of Bangladesh in Guwahati presents its compliments to the Office of the Superintendent of Police of Hojai District, Government of Assam and with reference to the letter bearing no.HJI/B/2022/402, dated 13/10/2022 regarding authenticity verification of the documents of a suspected Bangladeshi national namely Safure Rahman Talukdar, S/o- Late Sonumiah Talukdar, Vill- West Muslimabad, P.O. Muslimabad, P.S. Balagonj, Dist- Sylhet, Bangladesh, has the honor to inform that the documents of Safure Rahman Talukdar could not be traced, hence all documents including his birth certificate, National ID etc. are found to be fake or fabricated.

The Assistant High Commission of Government of the People's Republic of Bangladesh in Guwahati avails itself of this opportunity to renew to the esteemed Office of the Superintendent of Police of Hojai District, Government of Assam the assurances of its highest consideration.

6. Consequently, the Inspector of Police (Border), Hojai lodged an FIR before the Superintendent of Police, Hojai on 20.12.2022, stating that the Office of the Assistant High Commission of Bangladesh at Guwahati had opined that the documents produced by the petitioner no.1 was found to be fake or fabricated and accordingly, it is alleged in the FIR that the two petitioners including one Haji Abdul Noor were suspected to be involved in making forged documents and for conducting an thorough investigation and taking lawful action against them. The said FIR was forwarded by the Superintendent of Police (B), Hojai to the Office-in-charge of Lanka Police Station, Hojai vide forwarding letter dated 20.12.2022. Accordingly, Lanka Police Station Case

No.512/2022 was registered on 21.12.2022. Upon conclusion of investigation, charge sheet no.44/2023 dated 28.02.2023 was submitted and consequently, the PRC No.727/2023 case is ready for trial.

7. In brief, the submission of the learned counsel for the petitioner is that if any investigation is to be carried out in Country or place outside in India, the provisions of Section 166A of the Cr.P.C. is mandatorily required to be followed. It is submitted that the request for such investigation outside the Country is mandatorily required to be transmitted in a manner as the Central Govt. may specify in this regard. Referring to the Comprehensive Guidelines for Investigation abroad and issue of Letters Rogatory (LRs)/Mutual Legal Assistance (MLA) Request and service of Summons /Notices /Judicial documents in respect of Criminal Matters, the Govt. of India has issued the notification bearing F. no.25016/52/2019-LC dated 04.12.2019, which is annexed to this application as Annexure-20 (series) and it is submitted that under guideline B point 1.5, the Letter of Request is required to be sent through the competent Court on the request of the Investigating Officer. Accordingly, it is submitted that the manner in which the investigation was carried out is contrary to the said comprehensive guidelines. Accordingly, it is submitted that the evidence which was collected against the petitioner was not lawfully obtained. Reference is also made to the step-by-step procedure for making Letters Rogatory Request under Section 166A Cr.P.C. which forms part of the said comprehensive guidelines. In this regard, it is submitted that such request must be routed through the authorized Officer of the State Government and it is required to be routed through the Central Authority of India and with due approval from the respective Ministries/Head of the Departments. Accordingly, the submission is that the manner in which the request letter dated 30.10.2022 was issued by the

Superintendent of Police, (B), Hojai directly to the Assistant High Commission of Bangladesh does not have the sanction of law.

8. By referring to the provisions of sub-section 3 of Section 166A of the Cr.P.C. It is submitted that only on the compliance of the procedure prescribed under Section 166A (1) and 166A (2) Cr.P.C., every statement recorded or document or thing received under sub-section (1) shall be deemed to be the evidence collected during the course of the investigation under Chapter XII of the Cr.P.C.

9. Accordingly, it is submitted that the reply dated 15.12.2022 by the Bangladesh Assistant High Commission is the sole basis of submitting the charge-sheet against the petitioner and that the said document collected, is not an evidence. In support of his submission, the learned counsel for the petitioner places reliance on sub-paragraph 1 and 3 of para 102 of the case of *State of Haryana vs Ch. Bhajan Lal, (1992) supp (1) SCC 335*.

10. It is submitted that charge-sheet against the petitioner has been submitted alleging commission of offence punishable under Section 468 and 471 of the IPC. In this regard, it is submitted that there is no allegation of committing forgery for the purpose of cheating and accordingly, it is submitted that no ingredients are present for maintaining prosecution against the petitioner for committing offence punishable under Section 468 IPC.

11. It is submitted that the documents that were produced by the petitioner no.1 were supported by Notarial Certificate from Bangladesh which includes documents issued by the Bangladesh Election Commission like Voters List which discloses the basis of the petitioners to alleged that the concerned person is a

citizen of Bangladesh. It is submitted that under the Citizenship Act, 1955 dual citizenship is not recognized in respect of citizen of Bangladesh. Moreover, it is submitted that the charge-sheet does not contain the satisfaction of the Investigating Officer that the petitioners were instrumental in forging the documents. Accordingly, by referring to the case of *Sheila Sebastian vs R. Jawaharaj and Anr., (2018) 7 SCC 581*, it is submitted that the genesis of making out the case of forgery under Section 471 Cr.P.C. lie in the provisions of Section 463 relating to forgery and 464 IPC relating to making of a false document. Accordingly, it is submitted that the charge-sheet does not attribute those ingredients against the petitioner and therefore, charges under Section 471 of the IPC has not been made out against the petitioners.

12. Per contra, the learned APP has submitted at the outset that the perusal of the case diary would be necessary for the Court to arrive at a satisfaction of inspection in the manner in which the investigation was carried out. It is submitted that the charge-sheet does not contain the statement of witnesses recorded under Section 161 Cr.P.C. In this connection it is submitted that in the FIR lodged by the Inspector of Police (Border), Hojai, it was clearly mentioned that the investigation was to be carried out against three accused including the petitioners and one other person who were suspected to be involved in making false documents and therefore, request was made for conducting a thorough investigation. Hence, it is submitted that unless the statement of witnesses are read, the evidence available against the petitioners cannot be ascertained only from the charge sheet as to whether there are materials against the petitioners of being involved in making forged documents.

13. It is further submitted that all the three documents produced by the

petitioner no.1 before the Superintendent of Police, Hojai were all sent to the Bangladesh Assistant High Commission for their authenticity verification and the said authority had confirmed that all the documents including Birth Certificate, National ID, etc. were found to be fake or fabricated. Accordingly, it is submitted that case has been made out against the petitioners of producing false and fabricated documents for the purpose of getting the concerned person to be declared as a foreigner which would have further consequences. Accordingly, it is submitted that no case for quashing is made out and that trial be allowed to reach its logical conclusion.

14. Before examining the case as projected by the learned counsel for the petitioners as well as the objection raised by the learned APP, it would be appropriate to first referred to paragraph 102 of the case of *Bhajan Lal (supra)* which would be relevant for deciding the issue of maintainability of the writ petition for quashing where alternative provision of Section 482 Cr.P.C. is available for exercising the power of quashing the charge sheet or the FIR. In paragraph 102 in the case of *Bhajan Lal (supra)* empowers the Court to exercise extraordinary power under Article 226 as well as union power under Section 482 of the Cr.P.C. and on plain reading of sub-paragraph 1 and 3 of paragraph 102 of the said judgment, it can be understood that the FIR can be quashed by exercising the power available under Article 226 of the Constitution of India.

15. In this case in hand, the petitioners has annexed to this application the hereinbefore referred notification dated 04.12.2019, issued by the Govt. of India, Ministry of Home Affairs, IS-II Division/Legal Cell-I by which Comprehensive Guidelines for investigation abroad and issue of Letters Rogatory and Mutual Legal Assistance Request was enclosed and circulated. The

statement regarding issuance of the comprehensive guidelines is stated in paragraph 19 of this application and the notification issued in respect of the said guidelines are annexed as Annexure 20 (series). The State has not denied the correctness and the authenticity of the said comprehensive guidelines. Therefore, the said comprehensive guidelines being not denied, the Court is inclined to accept the same as the correct projection by the petitioners.

16. Under the said guidelines, it is clearly stated that the People's Republic of Bangladesh has Bilateral Agreement with India and the manner of issuance of Letters Rogatory (LR) and Mutual Legal Assistant (MLA) requests are provided therein. It appears that, the said guidelines were not followed by the Superintendent of Police, (B), Hojai while sending a request dated 13.10.2022 to the Bangladesh Assistant High Commission at Guwahati. No material produced by the state to show that any request was made by the Superintendent of Police, (B), Hojai seeking examination of witnesses by the Bangladesh Assistant High Commission for ascertaining whether the 3 documents produced by the petitioners were correct or forged. The reply dated 15.12.2022 by the Bangladesh Assistant High Commission indicates that the documents produced by the petitioner no.1 could not be traced and hence, opinion was expressed that the documents of Birth certificate, National ID etc. were found to be fake. The said letter does not disclose the evidence gathered by the Bangladesh Assistant High Commission to arrive at such finding. In any case, the investigating agency i.e. the Superintendent of Police, (B), Hojai did not make a request to investigate the matter. The Bangladesh Assistant High Commission was merely requested to verify the authenticity of the documents. On a perusal of the materials available, it is noted that specific Voters list which also includes Photo Voter ID, the copy which is duly notarized in Bangladesh

were provided to the police. In the reply, the Bangladesh Assistant High Commission has not denied that specific voter serial number is not against the alleged Bangladesh citizen. For example at page 88 of this application, the

National Identity

Registration of the concerned person is mentioned with identity card no.7751683454 bearing voter no.911447651771 with voter area as Muslimabad West. Therefore, it is ordinarily expected that an enquiry will reveal either that both the numbers does not match or does not exist. Those evidences were not collected and appended to the response dated 15.12.2022 sent by the Bangladesh Assistant High Commission. Moreover, the opinion of document being fake is also not supported by any expert report.

17. On a perusal of the Diplomatic Relations (Vienna Convention) Act, 1972 which was published in the Gazette of India on 29.08.1972 as Act No.43/1972 contains the schedule containing definition of "Head of the Mission", "Members of the Mission", "Diplomatic Agent" and under clause 2 of Article 31 of the schedule of the said Act, it is provided that a Diplomatic Agent is not obliged to give evidence as witness. Moreover, in the charge-sheet no.44/2023 dated 28.02.2023, perhaps because of the said immunity, no persons in the office of the Bangladesh Assistant High Commission, Guwahati are made witnesses. The 5 (Five) listed witnesses in the said charge-sheet, being ordinary residence of India cannot be expected to vouch for the correctness or otherwise of the authenticity of the voters list or voter Id card or citizenship document purportedly issued by the Govt. of People's Republic of Bangladesh. The charge-sheet therefore, heavily relies on the report submitted by the Assistant High Commission of Bangladesh vide letter dated 15.12.2022 to implicate the petitioners.

18. In order to declare a document to be fake, forged or fabricated, ordinarily forensic examination of a document is made. No authority on the point has been placed to convince the Court that the forgery of the document or whether a document is fake can be determined by examining 5 (five) witnesses. The letter dated 15.12.2022, issued by the Bangladesh Assistant High Commission, Guwahati cannot be said to be a report of scientific expert within the meaning of Section 293 of the Cr.P.C. The said certificate also does not fall within the meaning of certified copy of foreign judicial records as provided under Section 86 of the Evidence Act, 1872.

19. Therefore, it appears that the State respondents have not been able to show as to how and in what manner the letter of the Bangladesh Assistant High Commission, Guwahati can become an evidence without the author of the said document being examined.

20. In this context, it is reiterated that a Diplomatic Agent is immune to judicial process and cannot be compelled to become a witness in a proceedings. Even otherwise, the name of the staff or the representative of the Bangladesh Assistant High Commission, Guwahati is not included as witnesses in the present case and no evidence of scientific expert is also available to find out whether there was a forgery of any document produced by the petitioner no.1 or whether those documents are fake.

21. In view of above discussions, the Court is of the considered opinion that the present case in hand is squarely covered by the parameters prescribed by the Supreme Court of India in sub-paragraph 1 and 3 of paragraph 102 of the case of *Bhajan Lal (supra)*.

22. It may be mentioned that on a query of the Court, the learned counsel for the petitioner as well as the learned APP have both submitted that the FIR in this case was lodged by the Inspector of Police, (B), Hojai. Therefore, the complainant in this case is a police officer and not any of the private respondent nos.1 and 10 to 16. Therefore, the non issuance of notice on the said respondents by order dated 18.01.2024, would not come in the way of the Court to quash the impugned FIR dated 21.12.2022, giving rise to registration of Lanka P. S. Case no.412/2022, which is being tried as PRC no.727/2023 as well as charge-sheet no.44/2023 dated 28.02.2023.

23. Accordingly, the said FIR dated 21.12.2022 and the consequent charge-sheet no.44/ 2023 dated 28.02.2023 in connection with PRC no.727/2023 are both hereby quashed.

24. The petition stands allowed.

25. Before parting with the records, the Court directs that the learned APP shall send a downloaded copy of this judgment to the Director General of Police, Assam so as to enable him to examine as to whether there is a need to bring the Diplomatic Relations (Vienna Convention) Act, 1972 and the Comprehensive Guidelines for investigation abroad and issue of Letters Rogatory (LRs)/Mutual Legal Assistance (MLA) Request and Service of Summons/Notices/Judicial documents in respect of Criminal Matters to the notice of all Commissioner of Police/ Superintendent of Police of all the districts in Assam.

JUDGE

Comparing Assistant