

GAHC010269612022



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

Case No. : Crl.Pet./92/2023

KAMAL HUSSAIN
S/O- ABDUL KHALIK, VILL.- MAIZGRAM (NANDANBOND), P.O.
MAIZGRAM, P.S. AND DIST. KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE P.P. ASSAM

2:MOJNU AHMED
S/O- LATE KHURSHID ALI
R/O- VILL.- NANDANBAND
P.O. MAIZGRAM
P.S. AND DIST. KARIMGANJ
ASSAM

3:NAZIM UDDIN
S/O- LATE KHURSHID ALI
R/O- VILL.- NANDANBAND
P.O. MAIZGRAM
P.S. AND DIST. KARIMGANJ
ASSAM

4:ABDUL AHAD
S/O- LATE KHURSHID ALI
R/O- VILL.- NANDANBAND
P.O. MAIZGRAM
P.S. AND DIST. KARIMGANJ
ASSAM

5:HUSSAIN AHMED
S/O- LATE KUTUB ALI

R/O- VILL.- NANDANBAND
P.O. MAIZGRAM
P.S. AND DIST. KARIMGANJ
ASSA

Advocate for the Petitioner : MR H R CHOUDHURY

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 31.05.2024

Heard Mr. H. R. Choudhury, learned counsel for the petitioner. Also heard Ms. S. Jahan, learned Additional Public Prosecutor for the State respondent.

2. It reveals from the record that the notices on the private respondents were duly served through the jurisdictional police station, but no one has represented the private respondents.

3. This is an application under Section 482 *read with* Section 401 of the Code of Criminal Procedure, 1973 for setting aside and quashing the Order dated 13.10.2022, passed by the learned Additional District Magistrate, Karimganj in Case No. 35(M)/2021.

4. Mr. Choudhury, learned counsel for the petitioner, has submitted that the petitioner filed a complaint before the District Magistrate, Karimganj with the allegation that the respondent/ second party blocked the only path for ingress

and egress of the present petitioner from their house. He further submitted that the schedule land is the path connecting the Longai River and then to Panaraghar-Supnargul PWD Road, which is using by the present petitioner along with other villagers since long. But, during his absence from the house since 2012-2018, as he was in Dubai to earn his livelihood, the respondents tried to block the road and for which, he had to file a complaint before the Executive Magistrate. Accordingly, the learned Executive Magistrate directed the Officer-In-Charge, Karimganj Police Station to make an enquiry in that regard and accordingly, after enquiry, the Officer-In-Charge submitted a report before the learned Executive Magistrate with an observation that the land was used as a path by the present accused/petitioner since long back and he also produced photocopy of the land document, whereas the other party/respondent could not produce any land document though it was claimed by them that the schedule path is the purchased land of the second party/respondent.

5. After considering the report of the police, the learned Executive Magistrate drawn up a proceeding under Section 133 Cr.P.C. and asked the Officer-In-Charge, Karimganj Police Station to remove the obstructions from the scheduled path. Thereafter, against the said order of the learned Executive Magistrate, the respondent moved an application for revision before the Court of learned Sessions Judge, Karimganj, which was registered as Criminal Revision Petition No. 09(1)/2021, and vide order dated 31.07.2021, the said revision petition was dismissed by the learned Sessions Judge with an observation that the revision petitioner (respondent) failed to comply with the direction and the order of the learned Executive Magistrate and did not appear before the Executive Magistrate in accordance with the said order. After the dismissal of the said revision

petition, the learned Executive Magistrate passed another order, whereby the Circle Officer was asked to remove the obstruction from the said road and the next date was fixed for appearance and objection for the second party/respondent. But the respondent did not appear before the learned Executive Magistrate and filed a revision petition before this Court against the dismissal order of the revision petition by the learned Session Judge, which was numbered as Criminal Petition No. 444/2022, wherein this Court interfered with the order dated 10.08.2021, passed by the learned Executive Magistrate in Case No. 35(M)/2021, and asked the parties to file their written statement before the learned Court below within 3 (three) weeks from the date of order. Accordingly, both the parties appeared before the learned Executive Magistrate on 13.06.2022 and the learned Executive Magistrate asked both the parties to file their written statement etc. as per procedure. However, on 25.07.2022, the respondent filed a petition before the learned Executive Magistrate for dropping the instant case that was fixed for hearing on 05.09.2022. But, surprisingly, on 13.10.2023, in absence of the present petitioner, the learned Court below passed an order and dropped the proceeding with the observation that the case does not fall under Section 133 Cr.P.C. because the public at large is not affected in the instant case.

6. It is further submitted by the learned counsel for the petitioner that the learned Executive Magistrate dropped the proceeding without giving any chance of hearing to the present petitioner and did not consider the fact that the path was used not only by the present petitioner but also by the other villagers as it was also connected with the PWD Road. More so, the respondent did not comply with the order of this Court where both the parties were directed to

submit their written statement before the learned Executive Magistrate. Accordingly, it is submitted that the learned Executive Magistrate passed the order dated 13.10.2022 illegally and arbitrarily and hence, the same is liable to be set aside and quashed by exercising the power under Section 482 Cr.P.C.

7. In this context, Ms. Jahan, learned Additional Public Prosecutor, has submitted that as per Section 133 Cr.P.C., the proceeding can be drawn up only when the public at large is affected. But, from the police report, it is seen that it is the case between the 2 (two) private parties wherein the present petitioner is mainly affected and hence, Section 133 Cr.P.C. may not be attracted. However, she further submitted that from the petition filed by the present petitioner and the other observation of the learned Executive Magistrate, it is seen that path was also used by some of the villagers though they may have some any other alternative path. Accordingly, she submitted that one chance may be given to both the parties to file their written statement/objection or any relevant documents before the learned Court below.

8. After hearing the submission made by the learned counsels for both sides and also on perusal of the materials available on case record as well as the orders which were annexed along with the petition, it is seen that the respondent moved 2 (two) applications, one for revision against the order of Executive Magistrate and another for setting aside and quashing of the order of the Revisional Court whereby the revision petition was dismissed by the learned Session Judge, Karimganj. But, from the order dated 23.05.2022, passed by this Court in Criminal Petition No. 444/2022, it is seen that both the parties were directed to appear before the learned Court below and to file their written

objection/statement. It is further seen that in pursuant to the said order of this Court, both the parties accordingly appeared before the learned Court below on 13.06.2022. But, surprisingly, on 25.07.2022, the respondent filed a petition to drop the proceeding and without hearing the petitioner side, the learned Executive Magistrate dropped the petition with an observation that it only affect the petitioner. But, from the report of the I.O. as well as from the other materials available in the record, it is seen that the path was not only used by the petitioner, but also stated to be used by the other villagers since long back.

9. In view of above and also considering all above aspects of the case, I find that the both the parties should be given a chance to appear before the learned Court below to raise their issues and grievances. Accordingly, the impugned Order dated 13.10.2022, passed by the learned Additional District Magistrate, Karimganj in Case No. 35(M)/2021 stands set aside and quashed directing both the parties to appear before the learned Court below within 30 (thirty) days from the date of this order and to file their written statement/objection, if any.

10. In terms of above, this criminal petition stands disposed of.

JUDGE

Comparing Assistant