

GAHC010273642023



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

Case No. : Crl.Pet./15/2024

NOOR ZAMAN
S/O SAMNUR ALI
R/O BARNAGAR, BANEKUCHI
P.S. NALBARI
DIST. NALBARI, ASSAM
PIN-781340

VERSUS

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

2:MISS. HAZERA BEGUM
W/O AYUB ALI
R/O VILL- DANGUAPARA
P.O. BANEKUCHI
P.S. NALBARI
DIST. NALBARI
ASSAM
PIN-78134

Advocate for the Petitioner : MR M ISLAM, MS I PATAR

Advocate for the Respondent : PP, ASSAM, B ALI SK(R-2)

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

31-07-2024

Heard Mr. M. Islam, learned counsel for the petitioner and Ms. S. Jahan, learned Additional Public Prosecutor, Assam for the respondent No.1. Also heard Mr. B. Ali Sk, learned counsel for the respondent No.2.

2) The petitioner Noor Zaman filed this criminal petition under Section 482 CrPC praying for quashing PRC No. 128/2023 under Section 294/420/506/34 IPC, arising out of Nalbari P.S. Case No. 340/2022, pending before the Court of learned Additional Chief Judicial Magistrate, Nalbari.

3) Perused the records of PRC Case No. 128/2023 that was requisitioned by the Court by order dated 13.02.2024 from the Court of learned Additional Chief Judicial Magistrate, Nalbari.

4) The brief facts of the case is that on 26.07.2022 the respondent No.2 Miss Hazera Begum, wife of Ayub Ali resident of village – Danguapara, Banekuchi, Nalbari under 40 No. Dakhin Notun Dehar Gaon Panchayat of Madhupur Development Block, Kaithalkuchi, Nalbari Zilla Parishad as a complainant filed a complaint before the Chief Judicial Magistrate, Nalbari against the petitioner, who was serving as Secretary Pradhan of 40 No. Dakhin Notun Dehar Gaon Panchayat and two others alleging that in the years 2020, 2021 and 2022 a Government house under Pradhan Mantri Awas Yojana was allotted in the name of her husband vide ID No. AS-01-79357 and in the said ID name of her husband figured at Srl. No.19.

5) On her approach, the petitioner informed her that the said house can be given to her and her husband only when both of them approach together and no other person shall be able to take the said house.

6) On 22.07.2022, when she went to said 40 No. Dakhin Notun Dehar Gaon Panchayat to enquire about the said allotted house, the petitioner and an employee of the said Gaon Panchayat Fazul Ali rebuked her with foul language and drove her out stating that she will not get the house. Further in the evening the third accused namely, Ashraf Ali came to her house not only rebuked her but also threatened her indicating that she will not get the house.

7) Apprehending that those accused persons have misappropriated the said house allotted to her husband by committing fraud as on earlier occasion also they misappropriated such house allotted to a lady of her village that was not given to her, the respondent No.2 in her said complaint prayed before the Court to register a criminal case under Section 294/420/506/34 IPC against those three accused persons, to enquire into the matter through the Nalbari Police Station and to punish those accused persons in accordance with law.

8) The learned CJM, Nalbari on 26.07.2022 forwarded the said complaint of the respondent No.2 dated 26.07.2022 to the Officer-in-Charge of Nalbari Police Station pursuant to which the said complaint was registered as Nalbari P.S. Case No. 340/2022 under Section 294/420/506/34 IPC, corresponding to G.R. No. 1038/2022.

9) After enquiring the matter, the concerned Investigating Officer of said Nalbari P.S. Case No. 340/2022 on completion of the investigation submitted the charge-sheet on 31.10.2022 vide Charge-Sheet No. 333/2022 against the accused persons, the petitioner and Md. Samnur Ali under Sections 294/420/506/34 IPC and did not forward the name of the other accused Md. Ashraf Ali as during investigation no such incriminating material was found against said Md. Ashraf Ali.

10) Said Charge-Sheet No. 333/2022 dated 31.10.2022 filed in said Nalbari P.S. Case No. 340/2022 was registered as PRC Case No. 128/2023. The learned CJM, Nalbari by order dated 23.02.2023 transferred the said PRC Case No. 128/2023 to the Court of learned Addl. CJM, Nalbari for disposal.

11) On finding prima facie materials in the said Charge Sheet filed in said Nalbari P.S. Case No. 340/2022 the learned Addl. CJM, Nalbari by order dated 23.02.2023, took cognizance of the offence punishable under Section 294/420/506/34 IPC against the petitioner and the other accused namely Faizul Ali and issued summons to those accused including the petitioner.

12) On receipt of summons in said PRC Case No. 128/2023 the petitioner on 01.12.2023 and 15.02.2024 through his counsel appeared in the said matter and sought time for his appearance in it.

13) On 02.12.2023 the petitioner filed this criminal petition; however, it was defective and the defects were cured by the petitioner on 04.12.2023. Accordingly, this criminal petition was registered on 06.01.2024.

14) Earlier, the petitioner and the other accused Faizul Ali approached this Court for their anticipatory bail in said Nalbari P.S. Case No. 340/2022 in AB No. 2411/2022 and a Co-ordinate Bench of this Court on 26.08.2022 granted interim bail to the petitioner and the other accused in said Nalbari P.S. Case No. 340/2022. Subsequently, by order 21.10.2022 passed in said AB No. 2411/2022 the interim granted to them in said Nalbari P.S. Case No. 340/2022 was made absolute.

15) The petitioner by placing the enquiry report under Memo No.MDB-110/PMAY-G/2021-22/5849 dated 22.11.2022 submitted by the Block Development Officer of Madhupur Development Block of Kaithalkuchi before the Chief Executive Officer, Nalbari Zilla Parishad, Nalbari, regarding construction of PMA-Y House of Ayub Ali, husband of the respondent No.2 submitted that during such enquiry and the statement of the mother of said Ayub Ali as well as the concerned Ward Member of the concerned Gaon Panchayat it was found that said Ayub Ali was missing for last 10-12 years and he was out of the said place for such a long period. As such, in the meeting held on 25.03.2021 at 40 No. Dakhin Notun Dehar Gaon Panchayat under the President of the said Gaon Panchayat a resolution was adopted pertaining to allotment of said PMAY-G of said Ayub Ali to another beneficiary namely Kashim Ali of village – Barnagar Banekuchi under the same Gram Panchayat using the PWL ID of said Ayub Ali AS-01-79357. On verification it was found that construction of said PMAY-G house issued in the name of Kashim Ali that was allotted to Ayub Ali was going on and first and second installment of fund was also released to the said beneficiary (Kashim Ali) where verification was done by Mobile Application of the officials of the concerned Gram Panchayat.

16) Petitioner submitted that he is no way connected with the allotment of said PMAY-G House allotted in favour of Ayub Ali giving the benefit to another beneficiary namely Kashim Ali, he being the Secretary of said 40 No. Dakhin Notun Dehar Gaon Panchayat.

17) The respondent No.2 by filing an affidavit on 15.06.2024 submitted that dispute raised in her complaint petition on 26.07.2022 filed before the learned CJM, Nalbari pursuant to which Nalbari P.S. Case No. 340/2022 was registered and PRC No. 128/2023 under Section 294/420/506/34 IPC pending before learned Addl. CJM, Nalbari has been settled in the office of the 40 No. Dakhin Notun Dehar Gaon Panchayat and that she does not have any objection regarding quashing of the said PRC No. 128/2023, presently pending before the Court of learned Additional CJM, Nalbari.

18) During the deliberation of the matter, Mr. B. Ali Sk, counsel for the respondent No.2 on instruction of the petitioner submitted that during pendency of this criminal petition, the authorities in the No.40 Dakhin Natun Dehar Gaon Panchayat have allotted a house under the Pradhan Mantri Awas Yojana in the name of her husband Sri Ayub Ali.

19) It is seen that the complaint petition filed by the respondent No.2 before the learned CJM, Nalbari on 26.07.2022 involved in this proceeding, though not stated or mentioned was under Section 156(3) CrPC. In the said complaint petition, the respondent No.2 did not state as to whether she had approached the Nalbari Police Station by filing an FIR or not or whether, her such FIR was not registered by the Nalbari Police Station. Moreover, the respondent No.2 in her said complaint petition dated 26.07.2022 also did not state as to whether, she thereafter, approached the Superintendent of Police, Nalbari for non registration of her FIR by the Nalbari Police Station. She has merely asked in her said complaint the CJM, Nalbari to register a case under Section 294/420/506/34 IPC against the petitioner and other two accused persons named in the said complaint making an enquiry to the Nalbari Police Station and to punish them for their guilt.

20) The Hon'ble Supreme Court in the case of *Sakiri Vasu -Vs- State of Uttar Pradesh*, reported in (2008) 2 SCC 409 have held that —*as there are remedies available under Section 154(1) CrPC, informant/complainant first approach the Police Station for lodging the FIR and if the same is registered by Police, then the alternate remedy is under Section 154(3) and Section 36 CrPC before the Police Officers concerned. If that is of no avail, then by approaching the Magistrate concerned under Section 156(3)CrPC.*

21) In the case of *Priyanka Srivastava-Vs- State of Uttar Pradesh* reported in (2015) 6 SCC 287 the Hon'ble Supreme Court have held that—*Learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind and the said authority has also to bear in mind that sending the matter would be conducive to justice and then it may pass the requisite order. The learned Magistrate should take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out. Issuing a direction stating "as per the application" to lodge an FIR creates a very unhealthy situation in society and also reflects the erroneous approach of the learned Magistrate. It also encourages unscrupulous and unprincipled litigantsto take adventurous steps with courts to bring the other side on their knees. Power under Section*

156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the Code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations take this route to harass their fellow citizens, efforts are to be made to scuttle and curb the same. Under Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. The affidavit with such application can make the applicant more responsible. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, the applicant will be liable for prosecution in accordance with law. This will deter the applicant to casually invoke the authority of the Magistrate under Section 156(3). Such kind of applications are being filed before the Magistrate in a routine manner without taking any responsibility whatsoever only to harass certain persons. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores. Prior applications under Sections 154(1) and 154(3) of CrPC are must while filing a petition under Section 156(3) CrPC. Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed.

22) Besides that, a house under PMAY-G have already been allotted to the husband of the respondent No.2 as noted above.

23) From the above and considering the fact that there is already a compromise between the disputants relating to the incidents involved in this case, the Court is of the view that the possibility of a conviction of the petitioner in said PRC No. 128/2023 is remote and the continuation of a criminal proceeding would cause oppression and prejudice to the petitioner.

24) For the reasons above and to prevent the abuse of the process of Court, the proceeding of PRC No. 128/2023 under Section 294/420/506/34 IPC, arising out of Nalbari Police Station Case No. 340/2022, corresponding to G.R. No. 1038/2022 presently pending before the Court of learned Additional Chief Judicial Magistrate at Nalbari, with regard to the petitioner, Noor Zaman, son of Samnur Ali, Barnagar, Banekuchi, Nalbari is quashed.

25) Consequently, the FIR relating to the Nalbari Police Station Case No. 340/2022, charge-sheet No. 333/2022 dated 31.10.2022 filed in said Nalbari P.S. Case, the cognizance of the offence punishable under Section 294/420/506/34 IPC taken by the learned Addl. CJM, Nalbari in said PRC No. 128/2023 on 23.02.2023 with regard to the petitioner are also set aside and quashed.

26) With the above observation this Criminal Petition is allowed.

JUDGE

Comparing Assistant