

GAHC010284562019



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

Case No. : Crl.Pet./1383/2019

SHARADINDU BISWAS
S/O LATE HARAKANTA BISWAS, R/O VILL-CHURADIGIRPAR, P.O.-
GIRISHGANJ BAZAR, P.S.-NILAMBAZAR, DIST-KARIMGANJ, ASSAM-
788711

VERSUS

SMTI. NIRUPAMA DAS (BISWAS) AND ANR.
D/O LATE NARESH DAS, R/O VILL-BOHADALANI, P.S.-MAYANG, P.O.-
BARPAK, DIST-MORIGAON, ASSAM-782411

2:STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR
ASSA

Advocate for the Petitioner : MR. N DHAR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 29.05.2024

Heard Mr. N.Dhar, learned counsel assisted by Ms. S.Dasgupta, learned counsel for the petitioner. Also heard Mr. S.Islam, learned counsel for the

opposite party No.1.

2. The petitioner has preferred this application under section 482 CrPC for quashing the criminal proceeding in CR Case No. 929/2015 under Section 498-A IPC which was pending in the court of learned JMFC, Morigaon.

3. The background of the case is that opposite party No. 1 initially lodged an FIR against the petitioner and his family members before the Officer-In-Charge of Nilambazar Police Station in Karimganj district. On receipt of the FIR, a case was registered as Nilambazar P.S. Case No. 185/2015 (GR Case No.2006/2015) against the petitioner under Section 498-A IPC which is pending in the court of learned JMFC, Karimganj.

4. The opposite party No. 1 subsequently filed a complaint petition before the court of Judicial Magistrate, Morigaon against the petitioner and his family members. During the pendency of GR Case No. 2006/2015 under Section 498-A IPC, the learned Magistrate, Morigaon on receipt of the said complaint took cognizance against the petitioner under Section 498-A IPC and thereafter, charge was also framed. The witnesses were examined in the case. After closure of evidence of the witnesses, statement of the petitioner was recorded under Section 313 CrPC. Subsequently, a petition was filed before the learned JMFC, Morigaon stating that relating to the same subject matter, another case is pending in the court of learned JMFC, Karimganj and a report was called for.

5. According to learned counsel for the petitioner, the matter being infructuous as the complaint case being CR Case No. 929/2015 under Section 498-A IPC was dismissed for non-prosecution due to absence of the complainant as per order dated 15.11.2022.

6. On the other hand, learned counsel for the opposite party No. 1 has

submitted that though the petitioner had preferred for quashing of the criminal proceeding vide CR Case No. 929/2015 against the petitioner, however, this court on 07.01.2020, stayed further proceeding of CR Case No. 929/2015 pending in the court of JMFC, Morigaon. The stay order dated 07.01.2020 has been extended from time to time and is still in force.

7. It is further submitted that the fact of Nilambazar PS Case No. 185/2015 and matter relating to CR Case No. 929/2015 are totally different. As there was stay order of this court, how the trial court passed the order dismissing the proceeding of CR Case No. 929/2015.

8. I have heard learned counsel for the parties and also perused the trial court records.

9. It appears from the record that as per order dated 07.01.2020 passed by this court, further proceeding of CR Case No. 929/2015 pending in the court of learned Additional CJM, Morigaon was stayed till returnable date. Subsequently, the interim order was extended from time to time.

10. Now, the question comes whether the order of Magistrate was justified in dismissing the complaint case where there was an interim order of stay of the proceeding of the case passed by this court.

11. On perusal of the case record vide CR Case No. 929/2015, it reveals that the case was fixed for judgment. On that day, the complainant/ opposite party No. 1 has filed a petition before the trial court stating that another case of similar nature is pending before the court of learned JMFC, Karimganj and accordingly a report was called for. The order dated 30.04.2021 is reproduced as follows:

“Complainant is present.

Accused person is absent vide petition No. 794/2021 stating that he is busy with training on counting duty relating to election.

Heard. Perused. Allowed.

Record also reveals that there is a criminal petition pending before the Hon'ble Gauhati High Court but no any order of the Hon'ble Gauhati High Court has been submitted.

Hence, the accused person is strictly directed to submit copy of the order of the Hon'ble Gauhati High Court on the next date fixed positively without fail.

*Fix **03.07.2021** for submission of copy of the order of Hon'ble Gauhati High Court."*

12. Subsequently, accused was absent before the trial court and warrant of arrest was issued against him. Order sheets show that the complainant was present before the trial court in the entire period of trial. She was absent in the court without any steps on 08.08.2022 and 22.09.2022 and ultimately on 15.11.2022, the case was dismissed for non-prosecution.

13. On perusal of the record, it cannot be ascertained whether the learned Magistrate has any knowledge regarding passing of interim order dated 07.01.2020. However, the order dated 30.04.2021 indicates that the Magistrate has knowledge regarding pendency of criminal proceeding before this Court. Hence, the trial court should be slow in passing of such dismissal order. It appears that no such enquiry was made by the learned Magistrate regarding status of the criminal petition pending in this court.

13. In view of the above, the order passed by the learned Magistrate dated 15.11.2022 is hereby set aside. CR Case No. 929/2015 is restored to file. Learned trial court is directed to call for a report regarding present status of Nilambazar PS Case No.185/2014 and then proceed with the case in accordance

with law.

With the above direction, the criminal petition is disposed of.

JUDGE

Comparing Assistant