

GAHC010285242019



2024:GAU-AS:12245

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

Case No. : Crl.Pet./1387/2019

RANJIT BARUAH AND 2 ORS.
S/O SRI NAREN CHANDRA BARUAH, R/O TEOK PORBOTIA GAON, P.O.
AND P.S.-TEOK, DIST-JORHAT, ASSAM

2: DIGANTA BARUA
S/O LATE CHANDRA KANTA BARUAH
R/O TEOK CHOUDHURY GAON
P.S.-TEOK DIST-JORHAT ASSAM

3: DIMBESWAR DUARA
S/O LATE KANAKESWAR DUARA
R/O SEUJPUR
JAIL ROAD IN FRONT OF JORHAT MEDICAL COLLEGE
P.S. AND DIST-JORHAT ASSA

VERSUS

THE STATE OF ASSAM AND ANR.
(NOTICE THROUGH THE PUBLIC PROSECUTOR, ASSAM)

2:SMTI BARNALI BORUAH
S/O SRI BIREN BORUAH
R/O VILL-BORUAH PUKHURI GAON
P.S.-BHOGDOI
DIST-JORHAT ASSA

Advocate for the Petitioner : MR G N SAHEWALLA, MR. A CHETIA,MR. P BORA,MR. P DEKA

Advocate for the Respondent : PP, ASSAM, MR. K K HANDIQUE,MR. J SINGH

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. G. N. Sahewalla, Sr. Advocate.

For the Respondents : Mr. P. Borthakur, APP.

Date of Hearing : 04.12.2024

Date of Judgement : 04.12.2024

JUDGMENT & ORDER (ORAL)

1. Heard Mr. G. N. Sahewalla, learned Senior Counsel assisted by Ms. K. Sarma, learned counsel for the petitioners. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent.
2. The present application is filed under Section 482 Cr.P.C., 1973, for quashing of proceeding of G.R. Case No. 2657/2016 pending in the Court of learned Chief Judicial Magistrate, Jorhat as well as the Charge Sheet No. 46/2017 dated 31.01.2017 submitted by the Investigating Officer in connection with Jorhat P.S. Case No. 1915/16 under Section 406/420 of IPC.
3. The basic ground of challenge is that the aforesaid prosecution is nothing but an abuse of the process of the Court inasmuch as on the same fact, in the earlier prosecution launched on the basis of G.R. Case No. 2738/2016 under Section 420 IPC, the petitioners, had already been acquitted.
4. It is also argued by Mr. Sahewalla, learned Senior Counsel for the petitioners that multiple FIRs were lodged on the same incident and yet in another case i.e. G.R. Case No. 1207/2016 arising out of Jorhat P.S. Case

No. 859/2016 under Section 468/471 of IPC, the petitioners had already been acquitted by Judgment and Order dated 31.03.2023 passed by the learned Court of Sub Divisional Judicial Magistrate (S), Jorhat.

5. In the aforesaid backdrop, let this Court first consider the allegation made in the FIR.
6. The FIR was lodged by one Bornali Boruah & Ors inter alia alleging the following:-

“To,

Officer in Charge, Jorhat Police Station,

Dist- Jorhat, Assam.

Sub: Ejahar,

Sir,

Most respectfully we students beg to stage that Sri Ranjit Baruah and Sri Diganta Baruah of Central Institute of Para Medical Technology had damaged with our education life for the past three years. Since 2013, we are around 160 students who have been pursuing theory class in the said institute by paying Rs. 3000/-. They showed false certificate and promised job. From 17.07.2015 to 15.02.2016, all the 160 students have paid Rs. 6500/- per month for our practical classes. On 09.09.2016, at around 12 o clock, when we went to the house of Sri Ranjit Baruah at Bordoloi Nagar asking for certificate, no one came out of the house to tell us in spite of the fact that there were people in his house. Since we believe that Sri Ranjit Baruah is a cheater, we have filed this ejahar in writing. They are collecting money from students like us and are destroying our career. The house of Ranjit Baruah is always under lock and key from the inside and we always return back.

Therefore, I humbly request you to investigate the matter and take necessary steps as per laws and regulations.

Name of the other workers of the institute:-

- 1. Sri Dimbeswar Duwara, Head Master.*
- 2. Ilimoni Bora,*
- 3. Gitimoni Goswami.*
- 4. Sushanka Bordoloi.*

Thanking your

Name of the students

- 1. Bornali Boruah D/o Sri Biren Boruah.*

Vill- Boruah Pukhuri Gaon.

P.S.- Bhogdoi, District- Jorhat.

Ph- 84862-57391". & Ors".

7. Similar FIRs were also lodged by some other students with a similar allegation which is quoted herein below:-

“To,

Officer in Charge

Jorhat Police Station

Dist- Jorhat, Assam.

Sub: Ejahar regarding issuance of fake certificate.

Sir,

Most respectfully I beg to state that M.D.- Ranjit Baruah, Principal- Dimbeswar Duwarah, Clerk- Diganta and Dhiraj of Central Institute of Para-Medical Technology have been playing with the life of students through issuing fake certificate to the students, As such, I am informing you for this

illegal act of the said persons.

Therefore, I humbly request you to investigate the matter and take necessary steps as per laws and regulations.

With regards

Thanking you

Sri Jintu Borah & ors”.

8. The FIR dated 04.05.2016 was registered as Jorhat P.S. Case No. 859/2016 under Section 468/471 of IPC and subsequently, Charge Sheet was filed and the present petitioners were sent for trial. In the trial, the informant in Jorhat P.S. Case No. 1915/2016 under Section 406/420 of IPC, namely, Bornali Boruah was also examined as PW-2.
9. After consideration of the aforesaid evidence, the learned trial Court acquitted the present petitioners from charges under Section 420 of IPC holding that the prosecution has failed to drive home the guilt of the accused person. The evidence recorded by the learned trial Court in its judgment dated 29.05.2019 passed in G.R. Case No. 2738/2016 under Section 420 of IPC is quoted herein below:-

“Prosecution Version:-

PW-1, Sri Tulumoni Bora stated that you being the Managing Director of CIPMT have falsely and fraudulently opened an institution and cheated people. The institution had no registration number. Ext-1 is the ejahar.

PW-2 Smti Barnali Baruah stated that she was a student at CIPMT. She alleged that the institution was fake. The institution took fees for admission at the above institution. They also took examination fees but after completion of course, the institution did not issue certificate.

PW-3 Smti. Papori Saikia stated that she was a student at CIPMT. She alleged

that the institution was fake. The institution took fees for admission at the above institution”.

10. Out of the same incident, which is under challenge, another prosecution was launched on the basis of Jorhat P.S. Case No. 859/2016 under Section 468/471 of IPC corresponding to G.R. Case No. 1207/2016 against the present accused petitioner.
11. The aforesaid case was tried by the learned Court of Sub Divisional Judicial Magistrate (S) Jorhat and the learned Magistrate under its Judgment and Order dated 31.03.2023 acquitted the present petitioner No. 1 and 2 from the charges under Section 468/34 of IPC on the ground that the prosecution has not able to establish the guilt of the accused persons beyond reasonable doubt under Section 468/34 of IPC.
12. From the aforesaid judgment, it is seen that allegation of the prosecution in the aforesaid case was that the accused persons being the staff/members of Central Institute of Paramedical Technology issued fake certificates to 500 students and played with their future.
13. In the aforesaid backdrop, let this Court consider the present case. The present case is also relatable to the same incident of issuance of fake certificate and cheating the students. What remains is that the allegation was levelled by different students at the relevant point of time by filing different FIRs,. The investigating authority instead of clubbing all those FIRs together and trying the accused persons, has independently investigated each case, filed separate charge sheets and in two of such cases, the accused persons have been acquitted by the learned trial Court below.

14. From the aforesaid, it is clear that the offence alleged to be committed by the petitioners, charge framed in G.R. Case No. 2738/2016 under Section 420 IPC and G.R. Case No. 1207/2016 under Section 468/471 IPC are on the same background facts. At the same time, this Court is also of the unhesitant view from the materials available on record and as recorded hereinabove, the present FIR also arises out of the same act alleged to have been by the petitioners in those G.R. Cases. When it is an admitted fact that in both the G.R. cases after full trial, the petitioners are acquitted, there cannot any ground to once again allow the petitioners to be prosecuted for the same offences, more particularly, when the informants were the witnesses in the earlier prosecution.
15. In view of the aforesaid and in the given facts of the present case, this Court is of the view that if the present prosecution is allowed to be persuaded, same will amount to double jeopardy inasmuch as same will be an abuse of the process of the Court resulting in miscarriage of justice.
16. Accordingly, the present criminal petition is allowed by setting aside and quashing the proceeding of G.R. Case No. 2657/2016 pending in the Court of learned Chief Judicial Magistrate, Jorhat as well as the Charge Sheet No. 46/2017 dated 31.01.2017 submitted by the Investigating Officer in connection with Jorhat P.S. Case No. 1915/16 under Section 406/420 of IPC.
17. LCR be returned back.

JUDGE

Comparing Assistant