

GAHC010288192023



2024:GAU-AS:13149

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

Case No. : Crl.Pet./1378/2023

RAMJI CHAUDHURY
S/O LATE TOFANI CHAUDHURY
R/O BORDOLONG, NEPALI BASTI, P.O.KHARIKHANA
P.S. LANKA
DIST. HOJAI, ASSAM

VERSUS

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

2:ASHOK KUMAR YADAV
S/O- LATE UDAY NARAYAN YADAV
R/O- RAILWAY COLONY
DIPHU
P.S- DIPHU
PIN- 782460
DIST- KARBI ANGLONG
ASSAM
TEMP ADDRESS DIPHU JUDICIAL COURT CAMPUS
P.O- DIPHU
PIN- 782460
DIST- KARBI ANGLONG
ASSA

Advocate for the Petitioner : MR. R BORA,

Advocate for the Respondent : PP, ASSAM, MS J RAJKUMARI (r-2),MR. S BORA (r-2)

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

22/08/2024

Heard Mr. Rituparna Bora, learned counsel for the petitioner and Ms. Shamima Jahan, learned Additional Public Prosecutor, Assam for the State, opposite party No.1. Also heard Mr. Santanu Bora, learned counsel for the opposite party No.2/informant.

2) Petitioner, namely, Ramji Chaudhury, son of Late Tofani Chaudhury, resident of Bordolong Nepali Basti, Post Office-Kharikhana, Police Station-Lanka, District-Hojai, Assam is a practicing advocate and member of the Hamren Bar Association, West Karbi Anglong, Assam. His practice is mainly before the Court of learned District and Sessions Judge, West Karbi Anglong and its subordinate Courts.

3) Petitioner herein is an FIR named as well as charge sheeted accused in Diphu Police Station Case No.343/2021 under Section 294 IPC corresponding to Police Report Case (PRC) No. 112/2023 in which the learned Judicial Magistrate First Class (JMFC), Karbi Anglong, Diphu on 17.08.2023 took cognizance of offence under Section 294 IPC and issued summons to the petitioner for his appearance in the matter.

4) Aggrieved with that the petitioner has filed this criminal petition praying amongst others to set aside and quash the proceeding of said PRC No.112/2023 corresponding to G. R. No. 635/2021 arising out of the charge sheet No.46 dated 30.06.2023 submitted in Diphu Police Station Case No. 343/2021 under Section 294 IPC, pending before the Court of learned JMFC, Karbi Anglong at Diphu.

5) The Court on 22.12.2023 issued notice in the case and called for the records of said PRC No.112/2023 from the Court of learned JMFC, Karbi Anglong, Diphu along with the records of said Diphu P.S. Case No. 343/2021.

6) In the interlocutory application I.A. (Criminal) No. 1284/2023 filed by the petitioner in the present petition, after hearing the parties, including the petitioner and the two opposite parties and considering the Judgments of the Hon'ble Supreme Court in the cases of (i) *State of Haryana & Others -Vs- Bhajan Lal & Others* reported in 1992 Suppl (1) SCC 335 and (ii) *M/S. Neeharika Infrastructure Private Limited -Vs- State of Maharashtra & Others* reported in (2021) 19 SCC 401,

the Court by its order dated 08.02.2024 passed in said I.A. (Criminal) No. 1284/2023 stayed the further proceeding of said PRC No. 112/2023 arising out of said Diphu P.S. Case No. 343/2021, pending before the Court of learned JMFC, Diphu and the said stay order dated 08.02.2024 is still in force.

7) Brief facts of the case is that the opposite party No.2 on 25.11.2021 lodged a written Ejahar before the In-charge of Diphu Town Out Post under Diphu Police Station against the petitioner stating that on 22.11.2021 around 07:55 pm, he got a phone call from an unknown mobile number 9085556257 over which the accused person suddenly misbehaved with him and over telephone threatened him to withdraw the Diphu Police Station Case No. 28/2021, GD Entry No. 133 under Sections 354/325/34 IPC of which informant's elder sister Smti. Taru Yadav was the complainant that was filed against one Mona Yadav @ Shivshankar Yadav and his family members who are the client of the accused petitioner. In his said Ejahar, the informant alleged that the accused person over phone scolded him with slang language and threatened him that he will come on 15.12.2021 and shall slap him in front of the District and Sessions Judge, Diphu and the Additional District and Sessions Judge at Diphu and also threatened him that he will not only assault him but also assault his family members as and when he gets an opportunity. The informant in the said Ejahar further alleged that the accused person forced him to withdraw the said Diphu P.S. Case No. 28/2021 under Sections 354/325/34 IPC of which informant's elder sister Smti. Taru Yadav was the victim and complainant, threatened him that he will close down the informant's canteen, he abused his aged parents and because of such threatening of the accused person the informant and his sister are petrified and he along with his family members suffered from mental agony as their lives are in danger due to such threatening. As such, by the said Ejahar, the informant/opposite party No.2 requested the concerned police officer to take necessary steps against the accused person and to provide him and his family justice.

8) Said written Ejahar dated 25.11.2021 was initially registered as Diphu Town Out Post G D Entry No. 395 dated 25.11.2021 and then it was transferred to the Diphu Police Station wherein it was registered as Diphu Police Station Case No. 343/2021 under Sections 294/506 IPC against the petitioner corresponding to G. R. No.635/2021.

9) After completion of investigation of said Diphu PS Case, the concerned Investigating Officer vide No. 239 dated 30.12.2021 submitted Final Report in said Diphu P.S. Case No. 343/2021 corresponding to G.R. No. 635/2021, observing that at the end of the investigation of the case it

was found by the said officer that there was a lack of evidence and witnesses to corroborate the charge made in the FIR against the FIR named accused person, i.e., petitioner herein, sending a Notice to the informant of said Diphu PS Case/opposite party No. 2 herein.

10) After submission of the said Final Report, the learned Chief Judicial Magistrate, Karbi Anglong, Diphu by its order dated 20.12.2021 transferred the said G. R. No. 635/2021 arising out of Diphu P.S. Case No. 343/2021 to the Court of learned JMFC, Karbi Anglong, Diphu for its disposal. On receipt of the records of the case on transfer, the learned JMFC, Karbi Anglong, Diphu on 20.12.2022 issued notice to the informant/opposite party No.2, to submit his objection, if any, as to why the Final Report submitted by the Investigating Officer of the case should not be accepted.

11) The informant/opposite party No.2 on 22.03.2023 submitted a Protest Petition (Narazi petition)/objection vide Petition No. 189/2023 before the learned JMFC, Karbi Anglong, Diphu in said G. R. No. 635/2021 arising out of Diphu P.S. Case No. 343/2021 submitting that he has strong objection for filing the Final Report by police in said Diphu P. S. Case and that his case is true and that he wants to contest the case; as such, prayed before the learned Magistrate, Karbi Anglong, Diphu not to accept the said Final Report submitted by Police and also prayed before the said Magistrate for an order of re-investigation of the case by the Officer-in-Charge of Diphu Police Station and that he is ready to prove the case by producing witnesses before the Court.

12) learned JMFC, Karbi Anglong, Diphu in said G. R. No. 635/2021 arising out of Diphu P.S. Case No. 343/2021 after hearing the informant/opposite party No.2 and perusing the case record came to a finding that further investigation of the case by a different Investigating Officer is necessary and by order dated 22.03.2023 directed the Officer-in-Charge of Diphu Police Station for further investigation of said Diphu P.S. Case No. 343/2021 with intimation to the learned Superintendent of Police, Karbi Anglong.

13) On completion of further investigation, the concerned Investigating Officer vide No.46/2023 dated 30.06.2023 submitted the Charge sheet in Diphu P.S. Case No. 343/2021 under Section 294 IPC against the petitioner. The learned CJM, Karbi Anglong, Diphu on 17.08.2023 acknowledged the receipt of said charge sheet in the case along with the Notice under section 41(A) CrPC issued to the petitioner and copy of CDR. Learned CJM, Diphu by order dated 17.08.2023 directed to register the said Diphu PS Case as Police Report Case (PRC) and transferred the said case record

to the Court of learned JMFC, Karbi Anglong, Diphu for trial and disposal. Accordingly, said Diphu P.S. Case No. 343/2021 was registered as PRC No.112/2023.

14) On receipt of the record of said PRC No. 112/2023 on transfer, learned JMFC, Karbi Anglong, Diphu by Order dated 17.08.2023 took cognizance of the offence under Section 294 IPC against the petitioner and issued summons to him, fixing the matter for his appearance in the said PRC No. 112/2023.

15) Hence, this criminal petition by the petitioner.

16) Perused the records of said PRC No. 112/2023 as well as Diphu P.S. Case No. 343/2021. It is seen that the informant/opposite party No.2 is an employee in the Office of the District Legal Services Authority, Karbi Anglong at Diphu. Smti. Taru Yadav, elder sister of informant/opposite party No.2 lodged a police complaint against her husband Mona Yadav @ Shivshankar Yadav and members of her in-laws that was registered as Diphu Police Station Case No. 28/2021 under Sections 354/325/34 against her said husband and other members of her in-laws. Said Mona Yadav @ Shivshankar Yadav, i.e., brother-in-law of the informant/opposite party No.2 engaged the petitioner as his counsel in said Diphu P.S. Case No. 28/2021. On the night of 22.11.2021 petitioner from his Mobile No. 9085556257 made call to the informant/opposite party No.2's Mobile No. 700220354. It is alleged by the informant/opposite party No.2 that the petitioner during such call forced him to withdraw the said Diphu P.S. Case No. 28/2021 that was registered on the basis of the complaint lodged by his sister. He also alleged that during the call petitioner misbehaved with him, used slang language and threatened him of dire consequences, like he will be assaulted in front of the District and Sessions Judge, Diphu as well as Additional District and Sessions Judge, Diphu and further threatened him that his family members will also be assaulted whenever petitioner gets opportunity. For all such threatening of the petitioner, he, his sister and his family members suffered from mental agony.

17) Section 294 IPC reads as follows: -

294. Obscene acts and songs.—Whoever, to the annoyance of others

(a) Does any obscene act in any public place, or

(b) Sings, recites or utters any obscene song, ballad or words, in or near any public place,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

18) In the case of *Pawan Kumar -Vs- State of Haryana*, reported in (1996) 4 SCC 17, the Hon'ble Supreme Court have laid down the essential ingredients of offence under Section 294 IPC and held that —

In order to secure a conviction, the provision requires two particulars to be proved by the prosecution, i.e., (i) the offender has done any obscene act in any public place or has sung, recited or uttered any obscene songs or words in or near any public place; and (ii) has so caused annoyance to others. If the act complained of is not obscene, or is not done in any public place, or the song recited or uttered is not obscene, or is not sung, recited or uttered in or near any public place, or that it causes no annoyance to others, the offence is not committed.

19) In the case in hand from the FIR relating to said Diphu P.S. Case No. 343/2021 as well as from the Charge sheet No.No.46/2023 dated 30.06.2023 submitted under Section 294 IPC against the petitioner in said Diphu P.S. Case No. 343/2021, on the basis of which the learned JMFC, Karbi Anglong, Diphu on 17.08.2023 took cognizance of the offence under Section 294 IPC against the petitioner and issued summons to him in the PRC No. 112/2023, it can be seen that there is no iota that the alleged incident on the night of 22.11.2021 occurred "in or near any public place" that caused "annoyance to others", except that the petitioner made call from his Mobile No. 9085556257 to the informant/ opposite party No.2's Mobile No. 700220354 forced him to withdraw the Diphu P.S. Case No. 28/2021 that was registered on the basis of the complaint lodged by his elder sister and during such call the petitioner misbehaved with him, used slang language and the petitioner threatened the informant/opposite party No.2 that he will assault him in front of the District and Sessions Judge, Diphu as well as Additional District and Sessions Judge, Diphu and also threatened that the family members of the informant/opposite party No.2 will also be assaulted whenever the petitioner gets opportunity.

20) From the above, it can be seen that the essential ingredients of offence under Section 294 IPC are lacking in said PRC No. 112/2023 arising out of Diphu P.S. Case No. 343/2021.

21) Therefore, this Court is of the opinion that if the proceeding of said PRC No. 112/2023 arising out of Diphu P.S. Case No. 343/2021 pending before the Court of learned JMFC, Karbi Anglong, Diphu is allowed to continue, it would be an abuse of the process of the Court.

22) For the reasons above, so as to prevent the abuse of the process of the Court, the proceeding of said Police Report Case (PRC) No. 112/2023 pending before the Court of learned Judicial Magistrate First Class, Karbi Anglong at Diphu arising out of Diphu Police Station Case No.

343/2021, corresponding to G. R. No. 635/2021 under Section 294 IPC along with the FIR relating to said Diphu Police Station Case No. 343/2021 are set aside and quashed in exercise of the inherent power of this Court to secure the ends of justice.

23) The interim order of stay dated 08.02.2024 passed earlier in the connected interlocutory application I.A. (Criminal) No. 1284/2023 stands merged with this order.

24) Registry shall forward a copy of this order to the Court of learned Judicial Magistrate First Class, Karbi Anglong, Diphu for its information and necessary action.

25) Petitioner shall also submit certified copies of this order before the learned Judicial Magistrate First Class, Karbi Anglong, Diphu in said PRC No. 112/2023 and the Officer-in-Charge of Diphu Police Station, Karbi Anglong obtaining necessary acknowledgement from those authorities in that regard.

26) Accordingly, this criminal petition stands allowed to the extent above.

JUDGE

Comparing Assistant