

GAHC010288722023



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

Case No. : Crl.Pet./1379/2023

PALAN CHANDRA BISWAS AND 6 ORS
S/O LT. JAGADISH BISWAS R/O VILL NO. 1 BARPATHAR GARALU MOUZA
BUKANI P.S BHURAGAON DIST. MORIGAON ASSAM

2: PRAHLAD MANDAL
S/O SHYAM CHARAN MANDAL R/O VILL NO. 1 BARPATHAR GARALU
MOUZA BUKANI P.S BHURAGAON DIST. MORIGAON ASSAM

3: GOPAL MANDAL
S/O RASARAJ MANDAL R/O VILL NO. 1 BARPATHAR GARALU MOUZA
BUKANI P.S BHURAGAON DIST. MORIGAON ASSAM

4: DUKHI RAM MANDAL
S/O LT. NEPAL MANDAL R/O VILL NO. 1 BARPATHAR GARALU MOUZA
BUKANI P.S BHURAGAON DIST. MORIGAON ASSAM

5: BUDHI BHARALI
S/O GOPAL BHARALI R/O VILL NO. 1 BARPATHAR GARALU MOUZA
BUKANI P.S BHURAGAON DIST. MORIGAON ASSAM

6: NARAYAN MANDAL
S/O LT. NEPAL MANDAL R/O VILL NO. 1 BARPATHAR GARALU MOUZA
BUKANI P.S BHURAGAON DIST. MORIGAON ASSAM

7: TARA MOHAN MANDAL
S/O GAJENDRA MANDAL R/O VILL NO. 1 BARPATHAR GARALU MOUZA
BUKANI P.S BHURAGAON DIST. MORIGAON ASSA

VERSUS

SUKUMAR SARKAR AND ANR
S/O KANDULAL SARKAR R/O VILL NO. 1 BARPATHAR MOUZA BUKANI P.S
BHURAGAON DIST. MORIGAON ASSAM

2:PUBLIC PROSECUTOR
STATE OF ASSA

Advocate for the Petitioner : MS B DEVI, MR. P BORAH

Advocate for the Respondent : PP, ASSAM, MR. M ALOM (R-1),MD. A RAHMAN (R-1),MS. F H AHMED (R-1),MR. K U AHMED (R-1),MRS. S Y AHMED (R-1),MR. M K HUSSAIN (R-1)

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 29-07-2024

Heard Ms. B. Devi, learned counsel for the petitioners 1. Sri Palan Chandra Biswas, 2. Sri Prahlad Mandal, 3.Sri Gopal Mandal, 4. Sri Dukhi Ram Mandal, 5. Sri Budhi Bharali, 6. Sri Narayan Mandal and 7. Sri Tara Mohan Mandal, who have filed this application under Section 482 of the Code of Criminal Procedure, 1973 (the CrPC for short) with prayer for quashing the entire proceedings of CR Case No. 752/2023 under Sections 379/506/427/34 of the Indian Penal Code, 1860 (the IPC for short) as well as the order of issuance of process dated 07.11.2023 passed by the learned Sub-Divisional Judicial Magistrate (S), Morigaon [SDJM (S), Morigaon for short].

2. It is submitted that the criminal case is registered under Sections 379/506/427/34 of the IPC. It is submitted that the petitioners are affected by erosion and they along with 60 (Sixty) other landless families have been residing beside No. 122 Garalu Beel, Morigaon for a considerable period of time. The Beel is a Government land, ad-measuring about 137 Bighas but 8/10 Bighas is covered by shallow water and the remaining part of the Beel has become a high land due to accumulation of silt and sand during flood of the Brahmaputra river.

This fact has been supported by the Memo No. MRF3/11/49 addressed to the Managing Director of Assam Financial Development Corporation Limited by the Deputy Commissioner, Morigaon as well as the enquiry report dated 10.02.2019 submitted by the Circle Officer (i/c), Bhuragaon Revenue Circle to the Deputy Commissioner, Morigaon. It is also submitted that the enquiry report reveals that 32 (Thirty Two) families affected by erosion are dwelling by constructing permanent/semi-permanent houses and some houses are under the PMAY Scheme. There is a Kali Mandir which has been constructed by the local people and there is a pond within the Kali Mandir including a playground.

3. Vide letter No. AFDC63/2022/6169 dated 05.11.2022, the aforementioned Garalu Meen Mahal was finally settled in favour of the respondent No. 1 Sukumar Sarkar for the period between F.Y. 2022-2023 up-to 31.03.2029 i.e. for the period of 7 (Seven) years.

4. It is contended that now the respondent No. 1 intends to grab the aforementioned land, has instituted a false case against the present petitioners. An application dated 30.08.2022 was filed by the petitioners before the Deputy Commissioner, Morigaon praying for settlement of the land covered by the pond in favour of the Kali Mandir. On 31.08.2023, the respondent No. 1 filed a petition before the Deputy Commissioner, Morigaon under Section 144 of the CrPC registered as MR No. 174/2023 with allegation that the petitioners had illegally trespassed into the Meen Mahal and soaked the jute plants in the water for which the fishes got destroyed and the respondent No. 1 had to incur loss to the extent of Rs.3 to 4 Lacs.

5. A rift occurred between both the parties when the respondent No. 1 grabbed the land/pond attached with the Kali Mandir and he embarked upon his mission to grab the land by digging the earth of the embankment away from the

water area beel.

6. It is averred that on 05.09.2023, the respondent No. 1 instituted a false case which was registered as CR Case No. 752/2023 under Sections 379/506/34 of the IPC and the learned SDJM (S), Morigaon has issued notice against the petitioners. The respondent No. 1 has acted in a subterfuged manner by concealing before the Court that a complaint under Section 144 CrPC has been filed before the Deputy Commissioner, Morigaon. Moreover, the complainant has not filed any FIR relating to the earlier incident, which clearly reveals that the complainant/respondent No. 1 does not have a prima facie case against the petitioners and he resorted to file a false complaint petition against the petitioners alleging that on 04.09.2023 at about 6 O' Clock, a group of 20 (Twenty) persons led by the petitioners had illegally committed theft by fishing in the respondent No. 1's fishery. It has also been falsely alleged that the miscreants threatened the respondent No. 1 and the witnesses.

7. It is contended that the learned Magistrate without inviting police report erroneously passed the order dated 07.11.2023 in CR Case No. 752/2023 and issued process against the petitioners without an iota of evidence against the petitioners. As the complaint is false and vexatious, this Court has every power to invoke the inherent jurisdiction under Section 482 of the CrPC and quash the complaint petition against the petitioners. Due to the *malafide* act of the respondent No. 1, the pendency of the proceeding will indeed be an abuse of the process of the Court. A bare reading of the complaint petition clearly reveals that no ingredients of the aforementioned Sections of law have been made out against the petitioners. It has been admitted by the respondent No. 1 that the police of the Bhuragaon Police Station was present in the Beel and the petitioners were caught red handed in their act but no FIR has been lodged

against the petitioners nor any action has been taken by the police against the petitioners. The petitioners and the other villagers will be highly prejudiced if the respondent No. 1/complainant will be successful in grabbing the pond which has been constructed by the villagers and the petitioners in the Kali Mandir.

8. It is also averred that in WP(C) No. 646/2015, the complainant/respondent No. 1 was also impleaded as one of the respondent as alleged encroacher of the Garalu Meen Mahal instituted by the earlier lessee Sri Jagabandhu Sarkar and at that time the complainant/respondent No. 1 was supporting the petitioners but when the order of handing of the Fishery in favour of the complainant has been passed, the complainant has deceitfully turned against the petitioners.

9. Heard Mr. B.B. Gogoi, learned Additional Public Prosecutor, Assam for the respondent State and Mr. M.K. Hussain, learned counsel for the respondent No. 1 Sri Sukumar Sarkar.

10. It is submitted on behalf of the respondent No. 1 that the petitioners have committed theft of fishes from the fishery i.e. No. 122 Garalu Meen Mahal and the respondent No. 1 had incurred loss of Rs.3 to 4 Lacs. It is further submitted that the learned SDJM (S), Morigaon has passed a correct order by issuing notice against the petitioners. The complaint petition was filed and after scrutinizing the statement under Section 200 of the CrPC, the order dated 07.11.2023 was passed by the learned SDJM (M), Morigaon. No error is apparent in the order passed by the learned Magistrate. The provisions under Section 482 of the CrPC has to be exercised, sparingly the petitioners can place similar submissions at the time of framing of charge against them. At this nascent stage, the grievance of the complainant/respondent No. 1 cannot be dismissed.

11. The learned counsel for the respondent No. 1 has relied on the decision of the Hon'ble Supreme Court in *Sau. Kamal Shivaji Pokarnekar Vs. The State of Maharashtra & Ors. in Criminal Appeal No. 255 of 2019 reported in (2019) 14 SCC 350* wherein the Hon'ble Supreme Court has observed that:

“9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted.”

12. In reply, the learned counsel for the petitioners has submitted that the statement of the complainant/respondent No. 1 clearly reveals that police was present at the time of the incident but no FIR was lodged which clearly reveals that the complaint petition is a fabricated petition which was filed on 05.09.2023 i.e. after 3-4 days leaving enough scope for embellishment and fabrication of the alleged offence.

13. The learned counsel for the respondent No. 1 has also relied on the decision of Hon'ble Supreme Court in *Kaptan Singh Vs. The State of Uttar Pradesh and others in Criminal Appeal No. 787 of 2021 reported in (2021) 9 SCC 35* wherein it has been observed that:

“9.2 In the case of Dhruvaram Murlidhar Sonar (Supra) after considering the decisions of this Court in Bhajan Lal (Supra), it is held by this Court that exercise

of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction under Section 482 Cr.P.C. though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 Cr.P.C. Similar view has been expressed by this Court in the case of Arvind Khanna (Supra), Managipet (Supra) and in the case of XYZ (Supra), referred to hereinabove.

9.3 Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 Cr.P.C. ”.

14. I have considered the submissions at the bar with circumspection. It is true that this case is at its nascent stage. It cannot be ignored that the petitioners and the villagers are flood affected landless citizens who have been making a living after constructing their residences in the aforementioned area near No. 122 Garalu Meen Mahal. I have scrutinized the scanned copies of the Trial Court Records and the statement of the respondent No. 1 under Section 200 of the CrPC.

15. It is true that this case is at its nascent stage and summonses were issued against the petitioners. The statement of the respondent No. 1 under Section 200 of the CrPC clearly reveals a prima facie case against the petitioners. The petitioners can indeed raise their grievance before the trial Court at the point of framing of charges. At this nascent stage, it would not be justified to stifle the proceedings.

16. In the light of the decision in the Hon'ble Supreme Court in *Sau. Kamal Shivaji Pokarnekar (supra)* and the decision of *Kaptan Singh (supra)*, this

petition under Section 482 of the CrPC is rejected. No order as to costs.

17. In terms of the above observations, this Criminal Petition stands disposed of.

JUDGE

Comparing Assistant