GAHC010041312018

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

Case No. : Crl.Pet./172/2018

DR. MD. LOKMAN ALI
S/O- MD. SAYED ALI, R/O- VILL- GHOGA, P.O- LAWTOLA, P.S- MUKALMUA, DIST- NALBARI, ASSAM

VERSUS

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

2:SHEIKH MOBARAQUE HUSSAI

Advocate for the Petitioner : MR Z KAMAR

Advocate for the Respondent : PP, ASSAM

Linked Case : I.A.(Crl.)/184/2018

SK. MOBAROQUE HUSSAIN
Address:S/O- LT. ANADAR ALI
PRESIDENT OF THE GOVERNING BODY
BARKHETRI COLLEGE
MUKALMUA
P.O.- MUKALMUA
DIST.- NALBARI
ASSAM
PIN- 781126.

VERSUS

MD. LOKMAN ALI
Address:S/O- MD. SAYED ALI
R/O VILL.- GHOGA
P.O.- LAWTOLA
P.S.- MUKALMUA
DIST.- NALBARI
ASSAM
PIN- 781126.

Advocate for : MR. J H SAIKIA
Advocate for : PP
ASSAM appearing for MD. LOKMAN ALI: Advocate appearing for respectively.

BEFORE
HONOURABLE MR. JUSTICE MIR ALFAZ ALI

ORDER

Date : 02-12-2020

1. Heard Mr. A.R. Bhuyan, learned counsel for the petitioner and Mr. J.H. Saikia, learned counsel for the respondent No. 2. Also heard Mr. BB Gogoi, learned Addl. Public Prosecutor, Assam, appearing for the State respondent.

2. By this application filed under Section 482 of the Cr.P.C., the petitioner prays for quashing the FIR and the proceedings in Mukalmua P.S. Case No. 36/ 2017 registered under Section 468/471/420/409/201/506 IPC.

3. The learned counsel for the petitioner submits that the petitioner who is an Assistant Professor in the Department of History at Barkhetri College, Mukalmua, District Nalbari, Assam was also in-charge of the Principal. Later on, some dispute having arisen for the post of Principal of the said College, he was removed. The successor Principal- in-Charge of the college, lodged an FIR against the present petitioner alleging that though he was removed from the post of in-Charge Principal, he did not handover the relevant documents including Proceeding Book of the Governing Body and other records in spite of giving

undertaking to handover those documents. It was also alleged that the petitioner had withdrawn various amount from the College account and misappropriated Rs. 50,000/-. There was further allegation that the petitioner had withdrawn Rs. 1,08,000/- which was meant for financial assistance of the employees of the College during the financial year 2010-2011 and he also prepared false statement of the acquitance for misappropriating the money. On the basis of the said FIR lodged on 30.12.2011, Mukalmua P.S. Case No. 375/2011 under Section 417/ 419/467/468 IPC was registered. The contention of the learned counsel for the petitioner is that the subsequent FIR dated 04.12.2017 giving rise to Mukalmua P.S. Case No. 36/ 2017 under Section 468/471/420/409/201/506 IPC was also on the same and similar set of allegations as made in the earlier FIR. Therefore, the contention of the learned counsel for the petitioner is that the subsequent FIR and the proceedings is illegal as already the case has been registered and the petitioner has been facing trial for the charges on the same set of facts. By filing an additional affidavit alongwith documents it is also contended that already the petitioner has been acquitted by the trial court in the criminal proceedings in Mukalmua P.S. Case No. 375/2011 and as such, the present proceeding on the same set of facts is hit by Section 300 Cr.P.C. as well as Article 21 of the Constitution of India.

4. The learned counsel for the respondent No. 2 contends that the allegations and the charges are not same and similar and the subsequent FIR was lodged by the then Principal on the basis of the resolution of the Governing Body.

5. I have perused both the FIRs i.e. the FIR dated 30.12.2011 and the FIR dated 04.12.2017. Placing both the FIR in juxtaposition would show that the facts alleged in the impugned FIR are same and similar as the allegation made in the previous FIR, on the basis of which the earlier case was registered and the petitioner was put to trial, except, some elaboration of the same facts in the present FIR. Admittedly the charge sheet was filed by the police on the basis of the first FIR, the petitioner stood trial and the proceeding ultimately ended in acquittal of the petitioner.

6. Section 300 (1) Cr.P.C. provides that "A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the

same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of Section 221, or for which he might have been convicted under sub-section (2) thereof."

7. As already indicated above, the facts and accusation are same in both the FIRs. The learned counsel for the respondent No. 2 submits that the charges were different in both the cases, and therefore, the second FIR cannot be faulted. I am unable to accept the said submission, the reason being that it is not the provision of penal section under which case is registered. What is material is the allegation or the facts. If the facts of both the FIRs are same, subsequent proceeding even for different charge is not permissible on the same set of facts. When allegation and facts in both the FIRs are same and the petitioner already have been tried and acquitted in the earlier proceeding, allowing the present proceeding on the same facts, to continue would amount to abuse of the process of law.

8. Under the above facts and circumstances of the case, I am of the view, that this is a fit case where the criminal proceeding deserves to be quashed by invoking the provision of under Section 482 of the Cr.P.C to secure the ends of justice. Accordingly, the proceeding arising out of FIR dated 04.12.2017 and Mukalmua P.S. Case No. 36/ 2017 registered under Section 468/471/420/409/201/506 IPC and any other proceeding incidental thereto are hereby quashed.

9. Petition is accordingly allowed.

10. Any interim order passed earlier shall stand vacated.

JUDGE

Comparing Assistant