GAHC010216012019

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

Case No. : Crl.Pet./1085/2019

RAJU GOGOI AND 4 ORS.
S/O BHUKANTA GOGOI, R/O VILL-HATILUNG, ROWNAPUR, P.S.-NORTH LAKHIMPUR, DIST-LAKHIMPUR, ASSAM

2: MD. SALIM ALI @ HALIMUDDIN
S/O LATE AAIDOR ALI
R/O VILL-HATILUNG
ROWNAPUR
P.S.-NORTH LAKHIMPUR
DIST-LAKHIMPUR
ASSAM

3: AJIT BORA
S/O DIMBESWAR BORA
R/O VILL-HATILUNG
ROWNAPUR
P.S.-NORTH LAKHIMPUR
DIST-LAKHIMPUR
ASSAM

4: MD. KALIMUDDIN
S/O LATE AAIDOR ALI
R/O VILL-HATILUNG
ROWNAPUR
P.S.-NORTH LAKHIMPUR
DIST-LAKHIMPUR
ASSAM

5: PUTUL GOGOI
S/O LATE BINOD GOGOI
R/O VILL-HATILUNG
ROWNAPUR
P.S.-NORTH LAKHIMPUR
DIST-LAKHIMPUR

ASSA

VERSUS

GUNESWAR GOGOI AND ANR.
S/O LATE BHURAM GOGOI, R/O BIJAYNAGAR, WARD NO. 14, P.S.-NORTH LAKHIMPUR, DIST-LAKHIMPUR, NORTH LAKHIMPUR, ASSAM, PIN-787031

2:THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR
ASSA

Advocate for the Petitioner : MR SISHIR DUTTA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MIR ALFAZ ALI

ORDER

Date : 11-12-2020

(Oral)

Heard Mr. S. Dutta, learned counsel for the petitioner, Mr. B.B. Gogoi, learned Additional Public Prosecutor representing the respondent No. 2 and Mr. A. Sattar, learned counsel appearing for the respondent No. 1.

2. This petition u/s 482 CrPC has been filed praying for quashing the proceeding in C.R. (W) Case No. 124/2018 u/s 436/34 IPC.

3. The respondent No. 1 lodged an FIR alleging that his house was burnt down, wherein, he mentioned the name of all the five petitioners as suspected offenders. On the basis of the said FIR, police registered North Lakhimpur P.S. Case No. 303/2018 u/s 146/436 IPC and carried out the investigation. On conclusion of the investigation, police submitted final report stating that no material could be found during investigation against the petitioners. On receipt of the final report, learned Magistrate issued a notice to the respondent No. 1, whereupon, he appeared and filed a Narazi petition stating that he was not satisfied with the investigation

carried out by the police and sought to proceed with the case. Accordingly, the learned Magistrate during the course of hearing of the said Narazi petition, converted the case into a complaint case and examined the respondent No. 1 and the witnesses produced by him and proceeded with the trial, having taken cognizance against the petitioners by the order dated 23-05-2019.

4. Aggrieved by the order of the learned Magistrate taking cognizance, the petitioners have filed this instant petition for quashing the entire proceeding.

5. Learned senior counsel, Mr. Dutta submits that there was property dispute between the parties and the witnesses cited by the respondent No. 1 in the Narazi petition were neither cited in the FIR as witnesses to the occurrence nor examined by police during investigation. Mr. Dutta further submits that the witnesses, who were examined by the learned Magistrate were procured witnesses and their testimony could not have been relied upon. It is also submitted by Mr. Dutta that while passing the impugned order taking cognizance against the petitioners, the learned Magistrate did not scrutinize the evidence to ascertain the veracity of their statement and mechanically issued the process.

6. Mr. Sattar, learned counsel for the respondent No. 1 contends that the commission of the offence u/s 436 IPC has not been in dispute, inasmuch as, from the final report itself, it is apparent that the house, which was burnt down, was a dwelling house and there were goods and materials stored in the house at the time of occurrence.

7. There is no legal requirement that the informant has to cite the list of witnesses in the FIR itself. From the scanned copy of the case diary, it appears that two witnesses were examined by the IO, besides, the complainant regarding the occurrence. The witnesses stated in their statement that they came to know about the occurrence in the next morning. Rest of the witnesses examined were seizure witnesses. Be that as it may, while acting on a Narazi petition, the Magistrate is supposed to proceed on the basis of the materials produced by the informant/complainant before it and not required to be confined to materials in police report.

8. From perusal of the testimony of the witnesses cited by the respondent no. 1 in the Narazi petition and examined by the court, it cannot be said that prima facie offence no has

been made out against the petitioners. It is needless to say, that at the time of taking cognizance the learned Magistrate is not required to enter into a roving enquiry or scrutinizating the materials to test the veracity of the evidence and to find out whether a case of conviction has been made out. Only prima facie satisfaction as to commission of offence is sufficient for taking cognizance.

9. It is settled position of law, as held by a catena of decisions of the Apex Court that in an application u/s 482 CrPC the High Court is to act upon the allegations made in the complaint or FIR or the materials brought on record by way of examination of any witness/witnesses in its face value. If the allegations made in the FIR or complaint and the statement of the witness, if any, taken in its entirety and remaining unrebutted, prima facie makes out an offence, usually the High Court should stay it hands in such case. While considering the application u/s 482 CrPC for quashing the criminal proceeding at the threshold, the High Court is supposed to enter into a roving enquiry into the merit of the case or as to the truthfulness of the version given by the witnesses, which is a function to be undertaken by the trial court in due course.

10. Thus, having regard to the facts and circumstances of the case as well as the statement of the witnesses recorded by the learned Magistrate and also the scope of interference with the criminal proceeding at the threshold in exercise of inherent power u/s 482 CrPC, I am unable to concur with the submission made by the learned senior counsel, Mr. Dutta that the proceeding should be quashed, inasmuch, the witnesses produced by the respondent at the time of taking cognizance are not reliable.

11. Being of the above view, I find no merit in this petition and accordingly, this petition stands dismissed.

JUDGE

Comparing Assistant