GAHC010028842023

REPORTABLE
2026:GAU-AS:15069

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

Case No. : Crl.Pet./135/2023

KULENDRA KUMAR HUJURI
S/O- SRI UMESH CHANDRA HUJURI, R/O-RANGIA(MURARA), P.O- RANGIA, P.S- RANGIA, DIST- KAMRUP, PIN- 781354, ASSAM

VERSUS

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

2:PRAFULLA KALITA
S/O- LATE BAPURAM KALITA
R/O- VILL TARANI
P.O- TARANI MOUZA- PANDURI
P.S- RANGIA DIST- KAMRUP
PIN- 781354 ASSAM

BEFORE

HON'BLE MRS. JUSTICE SHAMIMA JAHAN

Advocate for the petitioner(s): Mr P K Munir,

Advocate for the respondent(s): Mr R J Baruah, APP, Assam
Mr M Biswas, R-2.

Date on which judgment was reserved : **NA**

Date of pronouncement of judgment : **07.10.2026**

Whether the pronouncement is of the : **NA**

operative part of the judgment?

Whether the full judgment has been pronounced? : **Yes**

JUDGMENT AND ORDER (ORAL)

Heard Mr. P K Munir, learned counsel for the petitioner and Mr. R J Baruah, learned Additional Public Prosecutor for the State of Assam/respondent No. 1, and Mr. M Biswas, learned counsel for the respondent No. 2.

2. By this application filed under Section 482 of the CrPC, read with Article 227 of the Constitution of India, the petitioner has prayed for setting aside and quashing of the criminal proceeding drawn up against the petitioner, in CR Case No. 23 of 2019, pending in the Court of Judicial Magistrate First Class, Rangiya. The petitioner has also challenged the order dated 25.11.2019, passed by the said Court in the said case by which cognizance of offence under Section 506 of the IPC, was taken against the petitioner.

3. The case of the petitioner is that a complaint was lodged on 11.03.2019 by respondent No. 2, stating inter alia that the complainant had erected a tin shed on the disputed land and that some miscreants broke the tin shed and took away the articles from the said disputed land. The complainant stated that although he had mentioned that he had land dispute with one Prasanna Saloi and others, but he claimed that it is his own land over which he made the

construction. He stated in the said complaint that when he again made arrangements for construction of house, petitioner reached the spot and stopped the complainant from doing so. The complainant stated that one day, when he opened his shop and was sweeping the floor, the petitioner arrived and told him as to why, he is making the construction on the disputed land despite his instruction not to do so. He also stated that the petitioner shouted at him and that he kept watching being helpless. He, thereafter, stated that hearing hue and cry, the villagers gathered and the petitioner could not enter his shop. The complainant stated that he replied to the petitioner that he had built his house on the disputed land, and that he need not worry about this, but the petitioner kept on shouting and created nuisance. The complainant further stated that the petitioner rebuked him, saying as to why he does not obey instruction given by Police and he also stated that the petitioner was not in uniform at that juncture. The complainant also stated that the petitioner had threatened him with dire consequences if he does not remove the tin roofed house from the disputed land and further that the petitioner after creating a ruckus for long left the place.

4. Pursuant to the said submission of the complaint, the Magistrate recorded statement under Section 200 of the CrPC of the complainant as well as other two witnesses and on finding sufficient ground for proceeding against the accused person, took cognizance of offence under Section 506 IPC.

5. The learned counsel for the petitioner submits that on 10.03.2018, i.e., one day before the present FIR, petitioner lodged an ejahar against respondent No. 2, stating *inter alia ,* that in connection with the ejahar lodged by one Shankar Bhuyan, he visited the shop of the respondent No. 2 for interrogation and that respondent No. 2 misbehaved with him by hurling abuses in front of his shop, causing obstacle in the investigation of the case and that after his departure from the shop, respondent No. 2 kept on threatening him. The learned counsel submits that the petitioner went for interrogation of Respondent No. 2 with regard to the said case and that respondent No. 2, had chased him out. The learned counsel for the petitioner had raised the main ground for quashing of the order taking cognizance is that, no prosecution sanction was obtained beforehand, i.e., before taking cognizance. He submits Section 197 of the CrPC, which provides that no Court shall take cognizance except with the previous prosecution sanction with regard to a Government servant. In support of his submission, he relied on the following judgments:-

i) ***Matajog Dobey vs. H C Bhari****;* reported in **AIR 1956 SC 44**; in which the Hon'ble Apex Court had held that income tax officials, who went in search of papers, which is required urgently, had tied the security personnel of the building and in that facts, sanction was directed to be required; and

ii) ***Union of India vs. Ram Kishan****; reported in* **(1971) 2 SCC 352,** in which the Hon'ble Apex Court had held that although the Police personnel was not in uniform, but in the facts of the case, it

was clear that he was acting in discharge of his duty and as such, prosecution sanction was considered necessary.

6. On the other hand, learned counsel for respondent No. 2 submitted that the petitioner came to his shop and shouted as to why respondent No. 2 was constructing a house on the disputed land, despite the instruction of the petitioner and that petitioner threatened him to remove the construction from the said land. He also submitted that the petitioner had threatened him with dire consequences if he does not do so and also that, the petitioner came in civil uniform. Further for the ends of justice, Respondent No. 2 appearing in person was also heard.

7. I have heard the learned counsels appearing for the parties and I have gone through the records.

8. It is a settled position of law that to determine as to whether any action was committed in discharge of official duty, what needs to be seen is the reasonable connection between the Act and the official duty. It is also a settled

position of law that it does not matter if the Act exceeds from what is strictly necessary for the discharge of the duty. What the Court needs to find out is whether the Act and the official duty are so interrelated that one cannot postulate reasonably that it was not done by the accused in performance of official duty, though sometimes, there can be some excess. It is also clear that the connected facts have to be clearly seen while examining the issue as to whether prosecution sanction will be required or not or in other words, whether the Act was in discharge of official duty or not. In ***Sankaran Moitra vs. Sadhana Das***; reported in **(2006) 4 SCC 584**, the Hon'ble Supreme Court while dealing with the peculiar facts, to the effect that while husband of the informant was distributing food in polling booths, disturbances arose and the Police came and hit repeatedly, due to which victims got injured and, in these facts, the majority view of the court was that sanction is required and the minority view was that sanction is not required. In the said case, it has been held by the Apex Court that prosecution sanction can be obtained at any stage. The relevant portion of the said Judgment is quoted hereinbelow:-

> "*2. The Bench also considered the question that if such sanction is necessary at any stage, it should be obtained at that stage. It was also indicated that such question may arise "at any stage of the proceeding". The complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of the official duty but the facts subsequently coming to light on a police report or judicial inquiry or even in the course of the prosecution evidence at the trial, may establish the necessity for sanction. The Court, therefore, concluded: Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case."*

In yet another decision delivered by the Apex Court in ***Devinder Singh Vs. State of Punjab reported in (2016) 12 SCC 87,*** it was held that although prosecution sanction should be obtained at the time of taking cognizance but if the cognizance was taken erroneously or facts established does not require obtaining the same, the said sanction can be obtained at a later stage. It has been held as under:

> "*39.8. Question of sanction may arise at any stage of proceedings. On a police or judicial inquiry or in course of evidence during trial. Whether sanction is necessary or not may have to be determined from stage to stage and material brought on record depending upon facts of each case. Question of sanction can be considered at any stage of the proceedings. Necessity for sanction may reveal itself in the course of the progress of the case and it would be open to the accused to place material during the course of trial for showing what his duty was. The accused has the right to lead evidence in support of his case on merits.*"

9. Applying the aforesaid analogy in the instant case, what needs to be seen is whether the complaint had disclosed that the act constituting the offence was done in the discharge or in purported discharge of official duty. It has been stated in the complaint that while he was doing his normal chores, petitioner came and told him as to why he had constructed his house over the land despite his instruction not to do so. Petitioner was also stated to have said that he had submitted report regarding the matter to the office of the Sub-Divisional Officer. The petitioner was also stated to have rebuked and said as to why the respondent No. 2 did not obey the instruction by Police. The petitioner was also found not in uniform but in civil dress wearing a hat. These statements cannot, by any stretch of reasoning, show that petitioner had gone to the shop

of respondent No. 2, for interrogating him in connection with the case lodged by Sri Sankar Bhuyan, as stated by the petitioner in his ejahar, as stated above. The said statements do not constitute an offence, done in discharge or purported discharge of official duty. Since it is held by the Supreme Court that subsequently, in the course of prosecution evidence at the trial, if it is deduced that prosecution sanction is required, the same can always be acquired. In the considered opinion of this Court, the said actions of the petitioner cannot be stated to be within his official duty and as such, the argument made by the learned counsel appearing for the petitioner is not accepted. Even some excess which is permissible cannot be applied in the instant case. Moreover, the complaint itself discloses commission of cognizable offence and as such, the same is not amenable for quashing as held by the Hon'ble Apex Court in so many decisions, one of them being ***State of Haryana vs. Bhajan Lal****;* reported in **1992 Suppl. 1 SCC 335.** Further, it is also seen that the Magistrate, after recording statement under Section 200 of CrPC of the complainant as well as the witnesses had taken cognizance of the case against the petitioner under Section 506 IPC, after finding sufficient ground for proceeding. As such, this Court does not deem it fit to interfere with the proceedings initiated against the petitioner in CR Case 23 of 2019 as well as the cognizance order dated 25.11.2019.

10. The present petition is as such, dismissed and disposed of.

JUDGE

Comparing Assistant