GAHC010088292022

2026:GAU-AS:16140

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

Case No. : Crl.Pet./424/2022

ASHOK KUMAR DAS @ DR. ASHOK KUMAR DAS
S/O LATE AKASH CH. DAS
R/O TILAK CHAND ROAD
WARD NO. 9, P.O. AND P.S. KARIMGANJ
DIST. KARIMGANJ, ASSAM, PIN-788710

VERSUS

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

2:RASHSREE ROY
D/O SRI RANJU ROY
R/O BIPIN PAUL ROAD
P.S. AND DIST. KARIMGANJ
ASSAM
PIN-78871

Advocate for the Petitioner : MR H R A CHOUDHURY, MR. K AHMED

Advocate for the Respondent : MS. SH BORA, ADDL. PP, ASSAM, MR. M S HUSSAIN (R-2),MR. V A CHOWDHURY (R-2),MS. C CHOUDHURY (R-2),MR. A M BORA (R-2)

BEFORE
HON'BLE MRS. JUSTICE MITALI THAKURIA

Date on which judgment is reserved : **13.10.2026**

Date of pronouncement of judgment : **04.11.2026**

Whether the pronouncement is of the operative part of the judgment? : N/A.

Whether the full judgment has been pronounced? : Yes.

JUDGMENT & ORDER (CAV)

Heard Mr. H.R.A. Choudhury, learned Senior Counsel being assisted by Mr. S.S. Ahmed, learned counsel for the petitioners. Also heard Ms. S.H. Bora, the learned Addl. P.P., Assam appearing on behalf of the State respondent No.1 as well as Mr. A.M. Bora, learned Senior Counsel assisted by Mr. V.A. Chowdhury, learned counsel appearing for the respondent No.2.

2. This is an application under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the C.R. Case No.96/2022 and all other criminal proceedings arising thereof, which is pending in the Court of the learned Chief Judicial Magistrate, Karimganj, whereby cognizance under Section 352 of the Indian Penal Code has been taken.

3. It is submitted by Mr. Choudhury, the learned Senior Counsel that initially an FIR was lodged by the respondent No.2 along with two others before the Officer-in-charge of the Karimganj Police Station which was accordingly received and registered as Karimganj P.S. Case No.831/2017, dated 07.09.2017 under Section 352/354B of the IPC read with Section 67/67A of the I.T. Act, 2000. But after completion of investigation of the case, the police submitted Final Report as there was no material for filing the charge sheet. Accordingly, on receipt of the Final Report, the Court of learned Chief Judicial Magistrate, Karimganj issued

notice to the informant for filing objection vide its order dated 05.04.2021 and the matter was fixed on 24.05.2021 for appearance.

4. At that relevant time, there was Covid pandemic and hence, the matter was taken up only on 01.10.2021, fixing the next date on 11.11.2021 for appearance. But even after receipt of the notice from the Court, the informant neither appeared in the Court on 11.11.2021, nor in the subsequent date. Subsequently a complaint was lodged before the learned Chief Judicial Magistrate, Karimganj by the respondent No.2, which was registered as C.R. Case No.96/2022, wherein she reiterated the contents of the FIR dated 07.09.2017, with the further allegation that in spite of materials in the FIR, the police submitted the Final Report without proper investigation. After filing of the C.R. Case No.96/2022, the learned Chief Judicial Magistrate, Karimganj call for the case record of Karimganj P.S. Case No.831/2017 and after going through the statement recorded under Section 200/202 of the CrPC and the statement recorded under Section 164 of the CrPC, in connection with the Karimganj P.S. Case No.831/2017, took cognizance in the C.R. Case No.96/2022, vide order dated 11.03.2022, under Section 352 of the IPC, without application of judicious mind and issued summons to the present petitioner.

5. Mr. Choudhury, the learned Senior Counsel further submitted that as per the allegation made in the FIR as well as in the complaint petition lodged by the respondent No.2 that on 07.09.2017, the scrutiny of nomination for the Student Body Election of Rabindra Sadan Girls' College, was scheduled to start. The informant along with the other students went to meet the petitioner at his chamber regarding the class attendance, when the petitioner misbehaved with the informant and other students and also asked them to go out of his chamber.

In that process, he also pushed out some of the students, which they felt that their modesty has been outraged. That apart, the respondent No.2 also brought the allegation that the petitioner caught holds her hand and pushed her outside his chamber. Mr. Choudhury, the learned Senior Counsel accordingly submitted that while investigating the case, the police did not find any material to proceed with the case or to file the charge sheet against the petitioner and for that reason only, the final report was submitted by the investigating officer.

6. The learned Senior Counsel further submitted that as per Section 352 of the IPC, one is to use criminal force or assault any person otherwise than grave and sudden provocation given by that person. But here in the instant case, from the contents of the FIR itself, it is seen that when some of the students entered into the chamber of the present petitioner, who was discharging the duty of the Principal of Rabindra Sadan Girls' College, came and argued, asking the attendance sheet of the students' and in that context, they miss-behaved with the petitioner and there is altercation between them in that regard. Thus, even if any criminal force is used by the petitioner, that was only under sudden provocation as all the students entered into the chamber of the petitioner and provoked him when he refused to give them attendance sheet. He further submitted that as per the definition of force/criminal force under Section 349 of the IPC, following ingredients are to be present, "*if a person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided that the person causing the motion, or change of motion, or cessation*

of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described:-

Firstly, by his own bodily power.

Secondly by disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person, and

Thirdly, by inducing any animal to move, to change its motion, or to cease to move."

7 As per Section 351 of the IPC, the offence of assault is defind as under:

"*351. Assault.— Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.*

Explanation.— Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault."

8. Mr. Choudhury, the learned Senior Counsel for the petitioner further submitted that the entire incident had happened only when the students entered into the Chamber of the present petitioner and started quarrelling with him asking for the students' attendance sheet. Thus there is no mention that the petitioner used any criminal force against the students. Rather, the students provoked the petitioner, for which he had to ask the students to get out of his chamber. The learned Senior Counsel further submitted that the present petitioner is from a very responsible person and he discharged his duty without any kind of blemish and has no criminal antecedent in his entire service period. But only with the grudge for non-furnishing some attendance sheets by the present petitioner, the false and concocted FIR as well complaint has been

instituted against him. He further submitted that the police did not find any materials against the petitioner during the investigation for which the Final Report was filed in the FIR lodged by the respondent No.2, along with two others, as the contents of the FIR does not disclose a *prima facie* case against the present petitioner to take cognizance under Section 352 of the IPC. Rather, it would be an abuse of the process of the Court, if it is allowed to continue further. In this context, Mr. Choudhury, the learned Senior Counsel for the petitioner also relied on a decision of the Hon'ble Apex Court, reported in ***2025 SCC OnLine SC 2060 (Anukul Singh vs. State of Uttar Pradesh and another)*** and basically emphasized on para 11.1 and 11.5, which read as under:

> "*11.1. This Court in State of Haryana v. Bhajan Lal, at paragraph 102, laid down illustrative categories where quashing of proceedings is justified. These are:*
>
> "*(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
>
> *(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
>
> *(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
>
> *(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
>
> *(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
>
> *(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or, where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.*
>
> *(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

The categories in Bhajan Lal are illustrative and not exhaustive, but they provide guiding principles to balance two competing considerations –(a) preventing abuse of process of law, and (b) ensuring that criminal proceedings are not stifled at the threshold on disputed questions of fact.

11.2. ……

11.3. ……

11.4. ……

11.5. Thus, the cumulative principles that emerge are: while the jurisdiction under Section 482 Cr.P.C is extraordinary and must be exercised sparingly, it is the duty of the High Court to intervene where continuation of criminal proceedings would amount to an abuse of process of law, or where the dispute is purely of a civil nature and criminal colour has been artificially given to it. Conversely, where disputed questions of fact arise requiring adjudication, the matter must ordinarily proceed to trial."

9. Accordingly, Mr. Choudhury, the learned Senior Counsel for the petitioner submitted that it is a fit case to quash the entire criminal proceedings initiated in the C.R. Case No.96/2022, pending in the court of learned Chief Judicial Magistrate, Karimganj and the subsequent order of taking cognizance passed by the learned Court below by invoking the power under Section 482 of the CrPC, correspondent to Section 528 of the BNSS, 2023.

10. Mr. Bora, the learned Senior Counsel appearing for the respondent No.2 submitted in this regard that the FIR lodged by the respondent No.2 and two others was investigated by the police and during investigation, it was found that there was no material to proceed under Section 354B of the IPC along with Section 67/67A of the I.T. Act. However, it is an observation of the I.O. that there is material under Section 352 of the IPC but the Final Report was to be filed as it was a non-cog case. But it is not a case that no material was found against the present petitioner. Rather, the Final Report was filed only for establishment of case under Section 352 of the IPC, which is non-cog offence. But the Investigating Officer could have furnished the charge sheet even under Section 352 of the IPC, as the case was registered under Section 352 of the IPC,

along with the other relevant Sections of the IPC and the I.T. Act. However, coming to know about filing of the Final Report in the case, the respondent No.2 had to institute the Complaint Case before the court of learned Chief Judicial Magistrate, Karimganj. After receiving the Complaint Case, the learned Chief Judicial Magistrate, Karimganj had call for the case record of Karimganj P.S. Case No.831/2017 (corresponding to G.R. Case No.2001/2017) and recording the statement of the respondent No.2 and other witnesses under Section 200/202 of the CrPC and also considering the statement made by the victim under Section 164 as well as 161 of the CrPC, the cognizance was taken. However, the learned Trial Court below only took the cognizance under Section 352 of the IPC, as the Court did not find any material to take cognizance on the other sections of law. Thus, there is no irregularity or illegality in the order of taking cognizance, passed by the learned Chief Judicial Magistrate, Karimganj rather it reveals that before passing the order of cognizance, all the relevant materials on the record as well as the materials available in the investigation of the earlier case by the police were considered.

11. Mr. Bora, the learned Senior Counsel further submitted that another petition for quashing was filed by the present petitioner under Section 482 of the CrPC, for quashing the FIR dated 07.09.2017, corresponding to Karimganj P.S. Case No.831/2017, under Section 352/354B of the IPC read with Section 67/67A of the I.T. Act, 2000. In the said Criminal Petition also, which was numbered as the Criminal Petition No.182/2018, this Court had observed that there is no specific evidence regarding outraging of modesty of the alleged victim, but it observed that registration of the case under Section 352 of the IPC does not appear to be incorrect and with that observation, it was held that it is not a fit case for quashing the FIR and thus, said Criminal Petition was disposed

of. But in spite of that observation of this Court in Criminal Petition No.182/2018, the petitioner has come up with another application i.e. the present petition for quashing the Complaint Case wherein the cognizance is also taken only under Section 352 of the IPC. He further submitted that whether there was provocation from the side of the informant/complainant or there was use of any criminal force etc. will be decided at the time of the trial. But *prima facie,* it is seen that there are sufficient materials to take under Section 352 of the IPC and the Investigating Officer also made an observation that case is found established under Section 352 of the IPC and in the same time, this Court while passing the order in Criminal Petition No.182/2018 also made some observations regarding presence of materials under Section 352 of the IPC. Thus, in such a situation, it is not at all a fit case to set aside and quash the entire criminal proceeding pending before the court of learned Chief Judicial Magistrate, Karimganj and the order of taking cognizance, by invoking the power conferred under Section 482 of the CrPC.

12. Ms. S.H. Bora, the learned Addl. P.P., Assam appearing on behalf of the State respondent No.1 also submitted that from the plain reading of the FIR as well as the complaint filed before the learned Chief Judicial Magistrate, Karimganj, *prima facie* a case is revealed to take cognizance under Section 352 of the IPC and hence, it is not a fit case to quash the entire proceeding at this stage. However, the petitioner would get the opportunity to prove his case at the time of trial or at the time of consideration of charge. Accordingly, she submitted that the present petition for quashing may be dismissed at this stage.

13. Hearing the submissions made by leaned counsel for both sides, I have also perused the case records and the TCR which has already been received.

14. From the submissions made by the learned counsel for both sides and from perusal of the record, it reveals that initially an FIR was lodged by the respondent No.2 along with other others which was registered as Karimganj P.S. Case No.831/2017, under Section 352/354B of the IPC read with Section 67/67A of the I.T. Act, 2000 and the police filed Final Report in the said case with the observation that there is no material under Section 354B of the IPC and Section 67/67A of the I.T. Act, 2000, though there is material under Section 352 of the IPC. But it was observed by the Investigating Officer that as Section 352 of the IPC is non-cog offence, the Final Report was submitted and after submission of the Final Report, the learned Chief Judicial Magistrate, Karimganj issued notice to the informant/complainant but the informant did not appear after receipt of the notice. However, another complaint was filed which considered to be the *naraji* petition and on the basis of the complaint, the C.R. Case No.96/2022 was registered by the learned Chief Judicial Magistrate, Karimganj. Further, it is seen from the record and the order passed by the learned Chief Judicial Magistrate, Karimganj that before taking cognizance, the learned Chief Judicial Magistrate, Karimganj recorded the statement of the respondent No.2/complainant and other witnesses under Section 200/202 of the CrPC and also considering the statement made by the victim under Section 164 & 161 of the CrPC before the Investigating Officer, while the case was at the investigation stage on the strength of the FIR, lodged in the police station.

15. Thus, it is seen that the learned Chief Judicial Magistrate, Karimganj had applied its judicial mind only after considering the statement of the witnesses/victims, recorded both in the C.R. Case No.96/2022 as well as in the case registered in the Karimganj Police Station and then only the cognizance was taken under Section 352 of the IPC. Further, it is seen that the complaint

was filed bringing the allegation under Section 354B of the IPC as well as Section 67/67A of the I.T. Act, 2000, apart from Section 352 of the IPC. But considering the materials on record and the statement of the victim and witnesses, the learned Trial Court took cognizance only under Section 352 of the IPC. Thus, *prima facie* it is seen that the order of cognizance has been passed by the learned Chief Judicial Magistrate, Karimganj only after applying his judicial mind and finding a *prima facie* case.

16. Coming to the statement made in the FIR as well as in the complaint petition, it is seen that the same allegation has been brought both in the FIR as well as in the complaint petition and there is no exaggeration of the matter. From the plain reading of the FIR as well as the complaint petition, it reveals that a *prima facie* case under Section 352 of the IPC is established against the present accused petitioner. However, the points raised by the learned Senior Counsel for the petitioner, Mr. Choudhury that the incident had happened only under sudden provocation from the students i.e. the informant and others etc. may be a point to be decided at the time of framing of charge or during the trial. But to take cognizance of an offence, it seems that there are materials under Section 352 of the IPC.

17. Further, as pointed out by Mr. Bora, the learned Senior Counsel appearing for the respondent No.2 that earlier also, one petition for quashing was filed before this Court which was numbered as the Criminal Petition No.182/2018 and the same was disposed of with an observation that there may be a case under Section 352 of the IPC and with that observation, the earlier petitioner filed under Section 482 CrPC was rejected by this Court.

18. Thus, it is seen that not only the learned Trial Court below had took cognizance of the case under Section 352 of the IPC, but same observation was earlier took by this Court, while disposing the petition under Section 482 of the CrPC. In the same time, it reveals from the Final Report it is seen that the police found materials under Section 352 of the IPC but the Final Report was filed as the same is a non-cognizable offence.

19. The Hon'ble Apex Court in the case of ***State of Haryana v. Bhajan Lal***, reported in ***1992 Supple. 1 SCC 335***, had provided several guidelines while disposing the criminal petition for quashing. The following guidelines are issued in para 102, which reads as under:-

> "*102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of Justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such powers should be exercised.*
>
> > *(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirely do not prima facie constitute any offence or make out a case against the accused.*
> >
> > *(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code expert under an order of a Magistrate within the purview of Section 155(2) of the Code.*
> >
> > *(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
> >
> > *(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
> >
> > *(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against accused.*

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

20. In the instant case, it is seen that the statement made in the FIR as well as in the complaint, *prima facie* reveals a case under Section 352 of the IPC against the present petitioner, under which the cognizance was taken by the learned Chief Judicial Magistrate, Karimganj.

21. Considering all these aspects of the case and the view expressed by the Hon'ble Apex Court, this Court is of the opinion that this is not a fit case to quash the entire proceeding, pending before the learned Chief Judicial Magistrate, Karimganj, wherein cognizance was taken under Section 352 of the IPC, at this stage by invoking the power conferred under Section 482 of the CrPC. More so, the case is at the very initial stage, wherein only the cognizance is taken and the petitioner will get ample opportunity to raise his defence at the time of consideration of charge as well as at the time of trial of the case.

22. Accordingly, the present quashing petition is found to be devoid of merit and accordingly, the same stands dismissed.

JUDGE

Comparing Assistant

Manoranjan Barman

Digitally signed by Manoranjan Barman
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