



GAHC010258392018

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

**Case No. : CrI.Pet./1179/2018**

1. MINU ROY AND ANR.  
W/O SUMIT KANTI DEY, R/O VILLAGE RUPSI, PART I RAJAPARA UNDER  
KAZIGAON POLICE STATION, KOKRAJHAR, BTAD, ASSAM

2: HALIMA KHATUN  
W/O ABDUL KUDDUS ALI  
R/O POLICE RESERVE DHUBRI UNDER DHUBRI POLICE STATION  
DISTRICT DHUBRI  
ASSAM

VERSUS

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

2:BARASHA BORAH BORDOLOI  
W/O SRI DHARANI BORDOLOI  
R/O BAIRAGIMOTH  
PO AND PS DIBRUGARH  
DIST. DIBRUGARH  
ASSAM  
PIN-78600

**Advocate for the Petitioner : MR. A M BORA**

**Advocate for the Respondent : PP, ASSAM**

**BEFORE**  
**HONOURABLE MR. JUSTICE ROBIN PHUKAN**

**JUDGMENT**

**Date : 15.05.2023.**

Heard Mr. A.M. Bora, learned Senior Counsel, being assisted by Mr. D. Gogoi, learned counsel for the petitioners. Also heard Mr. M.P. Goswami, learned Addl. P.P., Assam appearing for the State/respondent No.1 and Mr. J.I. Borbhuiya, learned counsel for the respondent No.2.

**2.** In this petition, under Section 482 of the Cr.P.C., two petitioners, namely, Smti. Minu Roy and Smti. Halima Khatun have put to challenge the correctness or otherwise of the order, dated 28.04.2016, passed by the learned Chief Judicial Magistrate, Dhubri in C.R. Case No.263/2016. It is to be noted here that vide impugned order dated 28.04.2016, the learned Chief Judicial Magistrate, Dhubri took cognizance of the offences under sections 120(B)/166/294/352 / 354/357/509/34 of the IPC, against the present petitioners along with three other accused persons and issued process to them to appear before the Court and to stand trial.

**3.** The background facts, leading to filing of the present petition, are adumbrated as under:-

“Smti Barasha Borah Bordoloi, the respondent No.2 here-in, filed a Complaint Case against the present petitioners, namely, Smti. Minu Roy and Smti. Halima Khatun, along with three others alleging inter-alia amongst others that, on 19.12.2015, she along with her driver and Advocate came to Dhubri to cause personal service of summons upon Shri Diganta Barah, the then Superintendent of Police, Dhubri, in connection with a Title Suit No.70/2015, pending in the Court of Civil Judge, Dibrugarh. Then her Advocate met Mr. Borah in his office chamber to deliver the summons and documents. But, Shri Borah refused to accept



the same. Upon being informed about such refusal by her Advocate, she decided to have direct talk with Mr. Barah and she went to the office Mr. Barah with her driver and on her reaching there one lady constable, namely, Halima Khatun guided her respectfully to the to the office chamber of Mr. Barah to deliver the same. Then Mr. Barah asked the respondent No.2 to come to his residence in the evening, where he will receive the summons and documents in presence of his Advocate. Accordingly, in the evening, the respondent No.2, along with her driver arrived at the residence of Mr. Barah and informed her arrival to the gate keeper as well as to Mr. Barah through his mobile. But, there was no response from the side of Mr. Barah. While she was waiting in front of his gate, at about 10 P.M., Mr. Barah along with his wife and Addl. Superintendent of Police, Sri Indranil Baruah and some other people including Constable Minu Roy, came out of his residence. And Mr. Barah had shouted upon her like a mad person and pointing their service weapon, Mr. Barah and the Addl. S.P. Shri Indranil Baruah had threatened to kill her if she does not leave that place. The respondent No.2 also alleged that thereafter, Mr. Barah had instructed some persons over telephone to register a false case against the respondent No.2 and after a few minutes, the respondent No.2 was assaulted and pushed forcefully into a police vehicle, wherein the Addl. S.P. had abused her physically. Further, it is alleged in the complaint that Mr. Barah had ordered his subordinates to detain the respondent No.2 inside the male lock up of Dhubri Police Station, and accordingly, she was detained there for upto 4:00 P.M. of next day, without food and water and she was also not allowed to communicate with family members by using mobile phone.



Upon the said complaint, the learned Chief Judicial Magistrate, Dhubri registered CR Case No.263/2016, and made over the same to the learned Addl. Chief Judicial Magistrate, Dhubri, vide order dated 20.01.2016, and the learned Court below, on the basis of the statement of the complainant and another witnesses, recorded under Section 200 of the CrPC, took the cognizance of the offences against the accused named in the complaint along with present petitioners, under Sections 120(B)/166/294/352/354/357/ 509/34 of the IPC, and issued summons to them vide order dated 28.04.2016 and directed them to appear before the Court to stand trial.”

**4.** Being highly aggrieved by the order of taking cognizance, dated 28.04.2016, the petitioners approached this court questioning the correctness or otherwise of the said order on the following grounds:-

(i) That, the learned Court below had committed manifest illegality by issuing process against the present petitioners without there being any prima facie case against them;

(ii) That, in order to issue a process on complaint, mere mentioning of the sections in the complaint petition is not sufficient. The complainant is required to bring the particulars of the offence committed by the accused and the role played by them in committing the offence before the Court. But, the complainant has failed to do so in the instant complaint case and as such issuing of process to the petitioners, is bad in law;

(iii) That, in the case of **State of Haryana vs. Bhajan Lal**,



reported in **1992 Suppl.1 SCC 335**, the Hon'ble Supreme Court, while considered the provisions of Section 482 and the powers of the High Court to quash criminal proceedings, held that where the allegations made in the first information report or in 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 or where the allegations made in the first information report of the 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 or where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act, etc., and since here in this case, cognizance was taken without there being any prima facie case against the petitioners, the impugned order cannot be allowed to stand;

(iv) That, a bare perusal of the complaint as well as initial deposition of the respondent No.2 and the statement of witness No.1, no incriminating material could be found against the present petitioners for taking cognizance against them;

(v) That, the learned Court below while taking cognizance had fail to take into account that the complainant had not sought prosecution sanction from the competent authority to proceed with the case against the petitioner;

(vi) That, the Government of Assam, had issued one Notification, No.HMA.280/88, dated 29.05.1990, requiring compliance of the provision of Sub - Section 3 to Section 197 of



the Cr.P.C. in respect of all the members of Assam Police when deployed for maintenance of law and order in the State of Assam. And therefore, taking cognizance against the petitioners, in contravention of the said Notification is illegal, and not tenable in law;

(vii) That, if the alleged offence was committed in performance of duty or in purported performance of the duty, Section 197 of the Cr.P.C. cannot be by-passed by reasoning that the person cannot perform his official duty outside his normal jurisdiction. Such reasoning is against the ratio of the various decisions of the Hon'ble Supreme Court rendered in several judgments, and as such issuance of process against the petitioners without prior sanction, is liable to be set aside;

(viii) That, the learned Trial Court has failed to apply his judicial mind to the averments made in the complaint petition as well as the statement on record while taking cognizance against the present petitioners;

(ix) That, the present criminal complaint is manifestly attended with mala fides with an ulterior motive for wrecking vengeance against the present petitioners;

Therefore, the petitioners contended to allow the petition by setting aside the impugned order, dated 28.04.2016.

**5.** Mr. A.M. Bora, learned Senior Counsel for the petitioners, advanced two folds arguments. Firstly, Mr. Bora, referring to three decisions of the Hon'ble Supreme Court in (1) **Ravindranath Bajpe vs. Mangalore Special Economic Zone**



**Ltd. and others**, reported in **2021 SCC OnLine SC 806**, (2) **Pepsi Foods Ltd. vs. Special Judicial Magistrate**, reported in **(1998) 5 SCC 749** and (3) **GHCL Employees Stock Option Trust vs. India Infoline Limited**, reported in **(2013) 4 SCC 505**, submits that summoning of an accused in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course and for initiating a criminal proceeding against a person, there must be specific allegation and/or averments with respects to the role played by them in their respective capacity. Referring to another decision of the Hon'ble Supreme Court, in the case of **Neelu Chopra and another vs. Bharti**, reported in **(2009) 10 SCC 184**, Mr. Bora, submits that mere mentioning of the sections and the language of those sections will not be sufficient to lodg a proper complaint and what is required to be brought to the notice of the Court is the particulars of the offences committed by each and every accused and the role played by them in committing that offence and without such materials, filing of a complaint with vague allegation, would be an abuse of the process of law. And the same happened in the instant case.

6. Taking this Court through the complaint petition, which is enclosed with the petition as Annexure-I, Mr. Bora submits that the averments made against the present petitioners in the said complaint, even if accepted as correct and taken at their face value, failed to disclose even a prima-facie case against them. Mr. Bora further submits that the complaint lodged by the respondent No.2 was registered under Sections 34/120(B)/166/167/294/352/353/354/357/ 504/506 and 509 of the IPC and except mentioning the Sections in the complaint no averments have been made against the present petitioners by the respondent No.2. Rather it is stated in the complaint that on 19.12.2015, while she went to



met the prime accused of the said complaint, namely, Shri Diganta Barah, the then Superintendent of Police, Dhubri District, in his office chamber, the petitioner No.2, namely, Smti. Halima Khatun guided her respectfully to the office chamber of the Superintendent of Police. Mr. Bora, further submits that the respondent No.2, in the complaint has mentioned that while she was waiting at about 9:00 P.M. outside the official residence of the then Superintendent of Police, Dhubri, he along with his wife and Addl. Superintendent of Police Sri Indranil Baruah and some other people including constable Smti Minu Roy came out of the residence of Addl. Superintendent of Police. Except these averments, nothing has been mentioned about the role played by these two petitioners in committing the offence, either in her complaint or in her statement under section 200 Cr.P.C., and though there is allegation of committing the offence under Section 120(B) of the IPC, yet how the conspiracy was hatched by the present petitioners and what role they have played, has never been averred in the petition and also stated in her statement recorded under Section 200 of the Cr.P.C., and as such, in view of the ration laid down by Hon'ble Supreme Court, in the case of **Bhajan Lal (supra)**, the present proceeding against the petitioners is an abuse to the process of the Court.

**7.** Secondly, Mr. Bora submits that both the petitioners are police constables and at the relevant point of time, they were discharging their official duties and in view of the Notification No.HMA.280/88, dated 29.05.1990, issued by the Home (A) Department of the Government of Assam, all members of Assam Police force, who are deployed in the law and order duty in the State of Assam, the provision of Section 197(3) of the Cr.P.C. is applicable, and the said section speaks about the requirement of prosecution sanction. And as no prosecution sanction has been obtained by the respondent No.2, while filing the complaint,





the impugned order, passed by the learned Court below is illegal and without jurisdiction and liable to be interfered with by this Court, by exercising the jurisdiction under Section 482 of the Cr.P.C. Under the above facts and circumstances, it is contended to allow this petition.

**8.** Per contra, Mr. J.I. Borbhuiya, learned counsel for the respondent No.2, submits that the prayer being made by the petitioners in this petition and the prayer made by one of the co-accused namely, Shri Diganta Barah, in the Criminal Petition No.995/2016, being same, and the said petition having been dismissed by this Court, after hearing learned Advocates of both the parties, the present petition with the same prayer, is not maintainable and the only recourse available to the petitioners are to approach the Hon'ble Supreme Court, by filing Special Leave Petition. Mr. Borbhuiya further submits that correctness of the impugned order, having been tested by this Court and the same having been able to withstand the test, it cannot be tested again on different ground. And as such, submits Mr. Borbhuiya, the present petition against the same impugned order is not maintainable. Mr. Borbhuiya further submits that the present petitioners have served under the main accused of the complaint petition namely, Shri Diganta Borah and they are also involved in the conspiracy against the respondent No.2, and they have lodged the FIRs, leading to registration of two criminal cases against the respondent No.2, being Dhubri P.S. Case No.1589/2015 and the Dhubri P.S. Case No.1590/2015, and there is specific allegation or conspiracy against them. Referring four case laws, **(i) Inspector of Police & Anr. vs. Battenapatla Vankataratnam & Anr.**, reported in **(2015) 13 SCC 87**; **(ii) Rajib Ranjan & Ors. vs. R. Vijaykumar**, reported in **(2015) 1 SCC 513**; **(iii) Devinder Singh & Others vs. State of Punjab through CBI**, reported in **(2016) 12 SCC 87**; **(iv) Devendra Prasad Singh vs. State of Bihar & Anr.**, **Criminal Appeal No.**



**579 of 2019**, arising out of **SLP (Cri.) No.21 of 2018**, Mr. Borbhuiya submits that prosecution sanction is required only when the alleged offences have been committed in discharge of the official duty. And in the present case, since the petitioners have committed the offence, which are not in discharge of their official duty, the sanction, as contemplated in section 197 Cr.P.C. is not required. Further, Mr. Borbhuiya submits that hatching conspiracy and cheating, fabrication of record or misappropriation cannot be said to be in discharge of the official duty of the public servant. Mr. Borbhuiya also referred two other case laws:- (i) **State of M.P. vs. Awadh Kishore Gupta &Ors.**, reported in **(2004) 1 SCC 691**, (ii) **State of Madhya Pradesh vs. Kunwar Singh, Criminal Appeal No. 709 of 2021** arising out of **SLP (Cri) No. 5517 of 2021**, to contend that in a petition under section 482 of the Code of Criminal Procedure, the merit of the allegation cannot be enquired into and the evidence cannot be appreciated. Mr. Borbhuiya, therefore, contended to dismiss this petition as it is bereft of merit.

**9.** In his reply to the submission of Mr. Borbhuiya, Mr. Borah, the learned Senior Counsel for the petitioners, submits that the present petitioners were not the petitioners in the Criminal Petition No.995/2016, and the said petition was filed on the ground of non compliance of Section 202 of the Cr.P.C. and the present petition is being filed on the ground of want of prosecution sanction as well as want of materials to disclose even a prima facie case against them. Mr. Borah further submits that the present petitioners were not party in the said petition and the grounds in the present petition are different from the Criminal Petition No.995/2016, and as such the order, so passed in the said petition is, therefore, not binding on them.

**10.** In view of the averments made in the petition and also in view of the

submissions, so advanced by the learned counsel for the petitioners as well as by the respondents, the questions, that arises for consideration of this court are :-

- (i) Whether the present petition is maintainable in view of adjudication of similar prayer in Criminal Petition No.995/2016?
- (ii) Whether the complaint and the statement of the witnesses discloses a prima facie case against the present petitioners under Sections 34/120(B)/166/167/294/352/353/354/357/504/506 and 509 of the IPC?
- (iii) Whether prosecution sanction is required to take cognizance of the offences against the present petitioners?

**11.** I have carefully gone through the petition and the documents placed on record and also gone through the case laws, referred by Mr. A.M. Bora, learned Senior Counsel for the petitioners and also the case laws, referred by Mr. J.I. Borbhuiya, learned counsel for the respondent No.2. I have also carefully gone through the Annexure-I (complaint petition) and the statement recorded under Section 200 Cr.P.C., i.e. Annexure-II, and her witness CW.1 as Annexure-III. Also I have gone through the Criminal Petition No.995/2016, and the impugned order dated 28.04.2016, passed by the learned court below in CR Case No. 263/2016.

**12.** Indisputably, the present petitioners were not a party in the Criminal Petition No.995/2016. Admittedly also, the ground, so heralded/agitated in the said petition, was different from the present petition. The present petition is being preferred on the ground of absence of prosecution sanction as well as non disclosure of a prima-facie case against the present petitioners from the



complaint as well as from the statement of the witnesses examined under Section 200 Cr.P.C. It also appears that the Criminal Petition No.995/2016 was filed on the ground of non compliance of Section 202 Cr.P.C. while taking cognizance against the petitioner of that case. As the present petitioners were not a party to the said proceeding and as the ground agitated in the said petition is different from the present petition, this court is unable to record concurrence with the submission of Mr. Borbhuiya, the learned counsel for the respondent No.2. Instead, this court is inclined to hold that the petition is maintainable. The right of the petitioners being individual cannot be denied on the ground so assigned by the learned counsel for the respondent No.2. Accordingly, question No.1 stands answered.

**13.** A cursory perusal of the complaint petition(Annexure-I) the statement of the respondent No.2 (Annexure-II) and statement of the witness, recorded under Section 200 Cr.P.C. (Annexure-III) reveals that the case was registered under 34/120(B)/166/167/294/352/353/ 354/357/504/506/509 of the IPC, and the learned Court below had taken cognizance of the offences under the said sections of law and process was issued to the petitioners to appear before the learned Court below and to stand trial under the said sections of law. The complaint petition also reveals that on 19.12.2015, the respondent No.2, went to the office chamber of the then Superintendent of Police, Dhubri District to cause service of summons of the Title Suit No.70/2015, pending in the Court of learned Civil Judge, Dibrugarh, as per the order of the said court along with her Advocate. Then at about 3:30 P.M., on that day, her Advocate informed her about refusal of the Superintendent of Police, Dhubri to receive the summons and then she decided to have a direct talk with the Superintendent of Police, Dhubri and reached his office chamber and then the petitioner No.2-Smti.



Halima Khatun had guided her to the office chamber of the Superintendent of Police, Dhubri respectfully. But, the Superintendent of Police, Dhubri refused to accept the summon and called her to his official residence, at about 7:00 P.M., so as to receive the summon in presence of his Advocate. Accordingly, she reached his official residence and informed the gate keeper and also sent some messages to the Superintendent of Police, Dhubri in his mobile, but she received no response. Then she awaited in front of his gate and at about 9:00 P.M., her driver went to have his dinner, but he did not return till 10:00 P.M. and then feeling suffocation in her vehicle, she came out of the same and then having seen her, the Superintendent of Police, Dhubri along with his wife, and Addl. Superintendent of Police, Dhubri Sri Indranil Baruah and some other persons, including Constable Minu Roy, came out of the residence and then the Superintendent of Police, Dhubri started shouting at her with derogatory words. It also reveals that thereafter, Dhubri P.S. Case No.1589/2015 and Dhubri P.S. Case No.1590/2015, were registered against the respondent No.2.

**14.** If these averments against the present petitioners have been taken at their face value and accepted as true in its entirety, the same fails to disclose even a prima facie case against the present petitioners of the offences, alleged in the Annexure-I. As submitted by Mr. Bora, the learned Senior Counsel for the petitioners, no specific role is assigned to the present petitioners while committing the aforesaid offences. Though it has been alleged that the two cases have been registered against the respondent No.2 in a planned manner to avoid service of summon and also to trap her by all the accused named in the Annexure-I, by repeatedly misusing their official power and position with a mala fide intention, yet, nothing has been set out in the complaint and also in the statement of respondent No.2, as to how the conspiracy was hatched. This

court failed to comprehend that guiding the respondent No.2, respectfully to the office chamber of the Superintendent of Police by Constable - Smti Halima Khatun, petitioner No.2 would constitute any of the offences, under which the learned court below had taken cognizance. The averments, so made against her, fails to disclose any legally prosecutable culpability. At the same time, merely coming out of the residence of the Superintendent of Police along with the Superintendent of Police and Addl. Superintendent of Police, by Constable Minu Roy, petitioner No.1, also would not attract any of the said offences, while no overt act was attributed to her. There is nothing in the complaint to disclose how the conspiracy was hatched.

**15.** A careful perusal of the impugned order, dated 28.04.2016, also fails to disclose the role played by the present two petitioners. In a criminal proceeding, for issuing summons to the accused persons, the Magistrate has to derive satisfaction from the record that a prima facie case is made out and also he has to indicate the role played by each of the accused in the order. Mere mentioning of the sections and the language of those sections are not sufficient to issue summon, as held by the Hon'ble Supreme Court in the case of **Neelu Chopra (Supra)**, **Pepsi Foods Ltd. (Supra)** and **GHCL Employees (Supra)**. In the case of **Pepsi Foods Ltd. (Supra)**, Hon'ble Supreme Court held that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is held in paragraph No.28 as under:

**“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the**

**complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."**

**16.** As no prima-facie case could be shown to have made out, the ratio laid down by the Hon'ble Supreme Court in the case of **Ch. Bhajan Lal (Supra)** is squarely applicable herein this case. I have gone through the case laws (i) **Awadh Kishore Gupta (Supra)** and (ii) **Kunwar Singh (Supra)** referred by Mr. Barbhuiya in this regard and I find that in view of the law laid down, in the case of **Ch. Bhajan Lal (Supra)**, the ratio laid down in the above two cases, as referred by Mr. J.I. Barbhuiya will not advance the case of the respondent No.2. Question No.(ii) in paragraph No.10 is answered accordingly.

**17.** Further, it appears that the present petitioners are members of the Assam Police Force and at the relevant point of time they were serving at Dhubri under the Superintendent of Police. In view of the Notification No.HMA.280/88, dated 29.05.1990, issued by the Home (A) Department of the Government of Assam, Sub-Section (3) of Section 197(3) of the Cr.P.C. is applicable to them, when deployed for maintenance of law and order in the State of Assam. The section speaks about sanction. Admittedly, sanction was not there at the time of taking cognizance. Under these circumstances, the requirement of sanction has to be examined.

**18.** In the case of **Matajog Dubey vs. H.C. Bhari**, reported in **(1955) 2 SCR 925**, a Constitutional Bench of Hon'ble Supreme Court has held that:-

**“Public servants have to be protected from harassment in the discharge of official duties while ordinary citizens not so engaged do not require this safeguard. It was argued that [section 197, Criminal Procedure Code](#) vested an absolutely arbitrary power in the government to grant or withhold sanction at their sweet will and pleasure, and the legislature did not lay down or even indicate any guiding principles to control the exercise of the discretion. There is no question of any discrimination between one person and another in the matter of taking proceedings against a public servant for an act done or purporting to be done by the public servant in the discharge of his official duties. No one can take such proceedings without such sanction.”**

**19.** While laying down the test, which is required to be adopted to find out whether sanction under Section 197 Cr.P.C. is required or not and to ascertain the scope and meaning of such sanction, their Lordships have further held as under:-

**“Slightly differing tests have been laid down in the decided cases to ascertain the scope and the meaning of the relevant words occurring in [section 197](#) of the Code; "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty". But the difference is only in language and not in substance. The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under [section 197](#), unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. There must be a reasonable connection' between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What we must find out is whether the act and the official duty are so inter-related that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in**





**excess of the needs and requirements of the situation.”**

**20.** Going by the aforesaid principle, so laid down in **Matajog Dubey (supra)**, a three Judges Bench of Hon'ble Supreme Court in **S. Moitra vs. State of West Bengal**, reported in **(2006) 4 SCC 584**, has echoed the same rule and held that - if the offence is committed during the course of the performance of his official duty, it would attract section 197 Cr.P.C.

**21.** As discussed in the foregoing para, the present petitioners were serving at Dhubri, under the then Superintendent of Police, Shri Diganta Borah. Indisputably, at the relevant point of time they were attending duties. And apparently, no overt act was attributed to them. Though Mr. Borbhuiya, the learned counsel for the respondent No.2, submits during argument that the two petitioners have lodged two FIRs against the respondent No.2 having conspired with the other accused persons, yet, Mr. Borbhuiya has failed to substantiate the same by producing relevant materials before this court. Even for the sake of argument, if it is accepted that they did the same, yet, it seems that they did it in discharge of their official duty. Over and above, filing of an FIR, while carrying out the command of the superior officer is not an offence. Thus it fails to disclose any legally prosecutable culpability. Thus, this court is unable to record concurrence with Mr. Borbhuiya, learned counsel for the respondent No.2, that no sanction is required. Applying the ratios, laid down in the case laws, discussed herein above, this court is constrained to hold that sanction is required.

**22.** I have carefully gone through the case laws referred by Mr. Borbhuiya, the learned counsel for the respondent No.2, in respect of sanction. But the

ratios, laid down in the said cases, have to be treated to be restricted to its' own facts and as such it would not advance the case of the respondent No.2. As no sanction has been obtained from the competent authority, the impugned order, dated 28.04.2016, passed by the learned court below, has failed to withstand the test of correctness and as such it requires interference of this court. Accordingly question No.(iii) in paragraph No.10 stands answered.

**23.** As observed and held by Hon'ble Supreme Court in catena of decisions, inherent jurisdiction under Section 482 Cr.P.C. is designed to achieve salutary purpose that criminal proceedings ought not to be permitted to degenerate into weapon of harassment. When the Court is satisfied that criminal proceedings amount to an abuse of process of law or that it amounts to bringing pressure upon accused, in exercise of inherent powers, such proceedings can be quashed. In the case of **Parbatbhai Aahir v. State of Gujarat (2017) 9 SCC 641**, Hon'ble Supreme Court has held that section 482 Cr.P.C. is prefaced with an overriding provision. The statute saves the inherent power of the High Court, as a superior court, to make such orders as are necessary (i) to prevent an abuse of the process of any Court; or (ii) otherwise to secure the ends of justice. Same are the powers with the High Court, when it exercises the powers under Article 226 of the Constitution. This being the legal position, the argument, so advanced by Mr. Borbhuiya, the learned counsel for the respondent No.2 left this Court unimpressed. The case laws - (i) **Awadh Kishore Gupta (Supra)** and (ii) **Kunwar Singh (Supra)** would not come into his aid. Here in this case, abuse of the process of the Court is writ large from the record, and as such this Court is duty bound to exercise its jurisdiction under Section 482 Cr.P.C., to prevent such misuse.



**24.** In the result, I find sufficient merit in this petition, and accordingly, the same stands allowed. The impugned order, so far it relates to the present petitioners, stands quashed. The parties have to bear their own costs.

**JUDGE**

**Comparing Assistant**