



GAHC010055922020



Page No.# 1/5

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

CRL. PETITION No.239 OF 2020

1. Shri Mithilesh Gupta,
Son of Late Bishanu Prasad Gupta.

2. Shri Lokesh Kumar Gupta.
Son of Shri Mithilesh Gupta,

Both residents of House No.555, nearby Check Gate, under
Khat Khati Police Station, PO: Khat Khati, District: Karbi
Anglong, Assam.

.....Appellants

-Versus-

Smti. Sangita Gupta,
Wife of Shri Lokesh Kumar Gupta,
Daughter of Birendra Shah,
Resident of Krishna Nagar, Bokajan under Bokajan Police
Station, District: Karbi Anglong, Assam.

.....Respondent

- B E F O R E -

HON'BLE THE CHIEF JUSTICE MR. SUDHANSHU DHULIA

For the Appellants : Mr. P. Kataki, Advocate.

For the Respondent : Mr. B. Deka, Advocate.

Date of hearing and Judgment & Order : **5th April, 2021.**



JUDGMENT & ORDER (ORAL)

Heard Mr. P. Kataki, learned counsel for the petitioners. Also heard Mr. B. Deka, learned counsel appearing for the sole respondent.

2. The present petition under Section 482 Cr.PC has been filed before this Court invoking inherent jurisdiction of this Court by the father and son, i.e. the petitioner No.1 and the petitioner No.2, respectively.

3. The petitioner No.2 and the complainant were married on 13.03.2012 as per Hindu custom and ceremony. Thereafter, there was a matrimonial discord and bitterness between the two. An FIR has also been filed by the wife against her husband and other relatives under Section 498(A) IPC, where charges had been framed and the trial is going on. The parties had been living separately for quite some time. Then a complaint was moved by the wife on 25.04.2019 alleging that some of the "*streedhan*", etc. and certain immovable properties were lying with the husband and when on 28.02.2016 and 11.03.2016, they tried to get that properties back from the husband, it was denied and instead abuses were thrown at them. Therefore, a complaint was filed by the wife against her husband under Section 406 IPC.

4. The learned Magistrate has taken cognizance of the matter and has summoned both the accused father and son, who are before this Court.

5. Mr. P. Kataki, learned counsel for the petitioners has taken this Court to the contents of the complaint moved by the respondent/wife. In

the complaint itself, there is absolutely no whisper as to any allegations which would amount to an offence under Section 406 IPC against her father-in-law, i.e. the present petitioner No.1. The allegations are specific to the son, i.e. the present petitioner No.2 before this Court. Moreover, another important question, which has been raised before this Court is that the complaint itself is barred by Section 468 Cr.PC inasmuch as the maximum sentence which can be imposed under Section 406 IPC is three years and from the date of the incident, i.e. 11.03.2016, three years had already been over by the time the complaint was filed on 25.04.2019. The cognizance was taken by the learned Magistrate on 11.07.2019. Section 468 Cr.PC reads as under:-

“468. Bar to taking cognizance after lapse of the period of limitation”.—

(1) Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in sub- section (2), after the expiry of the period of limitation.

(2) he period of limitation shall be-

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.”

6. Mr. B. Deka, learned counsel for the respondent/wife, on the other hand, would argue that the Court always has got powers to condone the delay and these powers vests with the Court under Section 473 Cr.PC and in the relevant case, it can be exercised. He also argued that in the present case, the limitation would not lie. He has relied upon the judgment of the Apex Court in the case of **Krishna Bhattacharjee -Vs- Sarathi Choudhury & Anr.**, reported in **(2016) 2 SCC 705**.

7. Mr. P. Kataki, learned counsel for the petitioners, on the other hand, has relied upon on a decision of the Apex Court in the case of **Arun Vyas & Anr. -Vs- Anita Vyas**, reported in **(1999) 4 SCC 690**, wherein it has been stated that although the learned Magistrate has got powers to condone the delay in appropriate case under Section 473 Cr.PC but while taking cognizance of the matter, he must assign reasons as to what are the specific conditions and what are the special circumstances introduced for which the delay has been condoned. Such, however, is not the case here as the learned Magistrate has not assigned any reason as to why the delay has been condoned.

8. Therefore, the matter should be heard by the learned Magistrate on this aspect, who shall then pass appropriate orders. But as far as the petitioner No.1 is concerned, i.e. the father, there is absolutely no case made out against him in the complaint. Therefore, proceedings against the petitioner No.1 cannot go on. To the extent therefore where the proceedings are against the father Shri Mithilesh Gupta, the same are quashed.



9. Let the petitioner No.2 appear before the learned Magistrate and make out a case as far as limitation and all other cause is concerned. He shall move an appropriate application within two weeks from today and the learned Magistrate shall decide the same as expeditiously as possible.

10. With the above observation and direction, this criminal petition stands allowed.

CHIEF JUSTICE

Comparing Assistant