



GAHC010075032021

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

Case No. : Crl.Pet./308/2021

JAGADISH PATHAK

S/O- LT. SUKHUNA RAM PATHAK, C/O- P.K.KALITA, P.W.CHOWK, ASSAM
ENGINEERING COLLEGE ROAD, P.O. ASSAM ENGINEERING COLLEGE, P.S.
JALUKBARI, DIST.- KAMRUP (M), ASSAM, PIN- 781013

VERSUS

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

2:PRATIBHA PATHAK
W/O- JAGADISH PATHAK
R/O- LANKESHWAR
P.O. GAUHATI UNIVERSITY
P.S. JALUKBARI
DIST.- KAMRUP (M)
ASSAM
PIN- 78101

Advocate for the Petitioner : MR. P K DAS

Advocate for the Respondent : MR. D DAS(ADDL.PP, ASSAM)



**BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR**

Date : 11-05-2022

JUDGMENT & ORDER

Heard Mr. P.K. Das, learned counsel appearing for the accused/petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor, Gauhati High Court for the State/respondent No. 1 as well as Mr. K.R. Patgiri, learned counsel for the informant/respondent No. 2.

2. This petition under Section 482 read with Section 397/401 of the Code of Criminal Procedure ('Cr.P.C.' for short) has been filed for setting aside and quashing the impugned F.I.R. dated 26.12.2020 being registered as Jalukbari P.S. Case No. 1628/2020, and consequent charge-sheet dated 16.02.2021 as well as the orders dated 01.03.2021 and 03.04.2021, passed by the learned Addl. Chief Judicial Magistrate, Kamrup (M), in P.R.C. Case No. 622/2021 against the accused/petitioner under Section 498A of the Indian Penal Code ('IPC' for short).

3. Mr. P.K. Das, learned counsel for the petitioner, submitted that in spite of the apparent fact that the F.I.R. did not disclose any material information regarding the nature of cruelty perpetrated and the kind of dowry demanded, the police registered the case under Section 498A of the IPC and even after completion of investigation having not found any credible prima facie evidence and fulfilling the requirements of law, the investigating officer submitted the charge-sheet under the aforesaid penal provision against the petitioner. Mr. Das further submitted that one day, the respondent No. 2/the wife of the petitioner



along with the son and daughter badly assaulted the petitioner and wrongfully confined him in a room of his house, for which the police, on being informed, rescued him and picked his wife/ respondent No. 2. Mr. Das vehemently submitted that in fact, the petitioner, who is aged about 60 years, has been the victim of cruelty of his wife/the respondent No. 2, but he is subjected to the instant false and fabricated case with the sole intention to perpetuate harassment on him.

4. Opposing the petition, Mr. D. Das, learned Additional Public Prosecutor, submitted that the police after completion of investigation, having found prima facie sufficient evidence laid the charge-sheet under Section 498A of the IPC and the case is presently pending at the stage of consideration of charge by the trial learned Judicial Magistrate. Therefore, Mr. Das submitted that it may not be proper for this Court to quash the proceeding at the aforesaid stage where the learned Magistrate is yet to examine the materials on the case diary and take a decision in exercise of his judicial discretion.

5. Mr. K. R. Patgiri, learned counsel appearing for the respondent No. 2/the alleged victim woman, referring to the averments made in the affidavit-in-opposition, submitted that the petitioner continuously subjected her and her two children to cruelty, both physical and mental. Mr. Patgiri emphatically submitted that despite having sufficient means, the petitioner did not provide any support for maintenance of his family to meet the day-to-day expenditures on food, medical treatments of her, who is suffering from various ailments and also for the education of the two grown up children. Mr. Patgiri also submitted that whenever the petitioner was requested for support on these unavoidable family requirements, she was beaten up mercilessly.

6. At this stage, Mr. P.K. Das, learned counsel for the petitioner, referring to the averments made in reply affidavit, vehemently denied the allegations made by his wife/the respondent No. 2 and submitted that with the meagre sources of income, the petitioner made all sorts of efforts to keep his family happy even by constructing an R.C.C. building, always providing sufficient financial support to meet all the day to day expenditures of his wife and two children.

7. I have considered the above respective submissions of both sides and perused records including the impugned orders.

8. It may be pointed out that the inherent power under Section 482 Cr.P.C. envisages three circumstances under which the inherent jurisdiction may be exercised, namely (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of the Court and (iii) to otherwise secure the ends of justice. While exercising the inherent jurisdiction, the Court does not function as a Court of appeal or revision. Therefore, it is well settled that the inherent jurisdiction, though wide, has to be exercised sparingly, only when such exercise is justified by the aforesaid tests specifically laid down in the Section itself in exceptional cases. The principles relating to exercise of inherent jurisdiction for quashing of complaint and criminal proceedings are laid down in the case of *State of Haryana and others -Vs- Ch. Bhajan Lal and others*, reported in 1992 AIR 604, which are as follows-

“108. 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 channelised and inflexible guidelines

or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power 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 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 F. I. R. 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 F.I.R. 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 F.I.R. 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 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."

9. The impugned F.I.R., dated 26.12.2020 (Annexure-2A) lodged by the respondent No. 2/the alleged victim wife of the petitioner reads as hereunder extracted-

"To,

The Officer-in-charge
Jalukbari Outpost

Date: 26/12/2020

Sub- FIR

Sir,

My husband Mr. Jagadish Pathak for a long time has been abusing or torturing us physically or mentally both. He has been also beating & torturing me and both my children namely Deepjyoti Pathak and Dimpay Pathak.

Since my daughter have been suffering a lot in her studies as it has been affecting her studies. Other things related with domestic lights which has been disconnected intentionally by himself with support of APDCL, Sub-Division, Azara during 27th Oct., 2020. We are suffering/hampering with the children education career. We are suffering from lot of financial hardships as it is becoming impossible to survive & fulfil our petty needs.

I am facing huge problems regarding my daughter's college fees. Now, he made a motive of criminal conspiracy to sell the plot where we are living.

Sir, on 24th December, 2020 at around 2.30 pm, my husband came into the house with a iron rod with an intent to kill me and my daughter and he throw the iron rod to kill my mother and luckily she saved her life. He started abusing us by coming towards us. Me and my daughter ran inside the house out of fear and locked the main door. As we locked the main door he break one of the window glass. We shouted for help and he went away by telling us that if we do not leave the house we will face dire consequences.

Sir, this kind of torture has been going on for days, he is not living with us from last 2 months as he lives in rented house.

Before moving to the rented house, he was brutally attacked his son namely Deepjyoti Pathak by sword/Dao that he had to get 3 stitches on his head with lots of blood loss. He also do not pay attention to our health and financial needs.

Also, one more thing, he also edited the all the call lists of me and my daughter's cell phone & remarked himself with bad languages which can't be accepted in any of the society & also dire consequences of black magic.

Sir, I am in fear of my life and my children, as he tried to kill us many times. He is very dangerous man and I believe that he will cause serious harm to us if nobody comes for help.

As a law abiding citizen of this country, I have full faith and respect towards our police & administration, therefore, I urge you and beg in front of you to please help us and save us.

And for this act of kindness I shall remain forever grateful to you.

Yours faithfully

Sd/- illegible

(PRATIBHA PATHAK)

Address: Lankeswar

Near Medhi Complex"

10. It is noticed that after registering the above F.I.R., on completion of investigation, the police submitted charge-sheet (Annexure- 3A) under Section 498A of the IPC against the petitioner. The submission of the charge-sheet by police after due investigation itself indicates existence of prima facie sufficient evidence, which is, of course, subject to the judicial scrutiny of the learned trial Court.

11. On a detailed scrutiny of the allegations made by the petitioner in the F.I.R., dated 07.08.2019 (Annexure- 1A) registered as Jalukbari P.S. Case No.1175/19 under Section 352/325/506/294/34 of the IPC also prima facie reveals counter allegations of cruelty towards him by the respondent No. 2/his wife. In this regard, the final outcome in investigation is, however, not known for want of relevant documentary evidence.

12. The Court of learned Additional Chief Judicial Magistrate, Karmup (Metro), Guwahati, after perusal of the case record and on being satisfied as to availability of prima facie sufficient material, has taken cognisance of the offence under Section 498A of the IPC and issued summons to the accused petitioner for appearance and accordingly, after his appearance, the case is now pending at the stage of consideration of charge.

13. Therefore, upon consideration of the above materials produced before this Court it cannot be said that there is prima facie no evidence constituting an offence of 'cruelty' under Section 498A of the IPC against the petitioner. The allegations raised against the petitioner by his wife/the respondent No. 2 are disputed questions of fact and as such, the truthfulness of the allegations cannot be scrutinised and adjudicated within the scope and ambit of a petition under Section 482 Cr.P.C. for having apparently not satisfied the requirements



for application of inherent jurisdiction nor the same fall within the categories of cases specified in the case of *Bhajan Lal (Supra)* warranting quashing as prayed.

14. For the above stated reasons, the petition stands dismissed.

15. The interim stay order stands vacated.

16. **The petitioner is directed to appear before the learned trial Court to receive instructions on or before 10.06.2022.**

Petition stands disposed of.

JUDGE

Comparing Assistant