



GAHC010210072021

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

Case No. : Crl.Pet./742/2021

GOPAL TALUKDAR
S/O LATE DHANESHWAR TALUKDAR
R/O VILL- DUMURIA
P.S. PATACHARKUCHI
DIST. BAJALI, ASSAM-781367

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE PP, ASSAM

2:OFFICER-IN-CHARGE

BARAMA POLICE STATION
P.S. BARAMA

IN THE DIST. OF BAKSA
ASSAM-781346

3:MIRJAHAN HUSSAIN
ASI
BARAMA POLICE STATION

P.S. BARAMA
IN THE DISTRICT OF BAKSA
ASSAM-781346

4:MONJIT ROY
S/O. PHALINDRA ROY
R/O. VILL. JALIKHATA
P.O. HELANA
P.S. PATACHARKUCHI



DIST. BAJALI
ASSAM
PIN-78136

Advocate for the Petitioner : MR. K SARMA

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

Date of judgment: 19.04.2024

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

JUDGMENT & ORDER

- 1.** Heard Mr. K. Sarma, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor appearing for State of Assam and other respondents.
- 2.** This application under Section 482 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, Shri Gopal Talukdar praying for quashing of the FIR dated 01.08.2021 filed by the respondent No. 3 before Officer-In-Charge of Barama Police Station and on the basis of which Barama P.S. Case No. 83/2021 was registered. The Petitioner has also prayed for quashing of the charge sheet No. 61/21 dated 29.09.2021 which has been filed after completion of the investigation of Barama P.S. Case No. 83/2021.
- 3.** The case of the petitioner as averred in the criminal petition, in brief, is that the petitioner is a practicing advocate in the courts at Bajali and Baksa since 2004. On 30.07.2021, one Monjit Roy, who is the client of the present petitioner, requested the present petitioner to write an FIR (First Information Report) regarding the death of his mother Jaya Roy near Barama Over Bridge on being

knocked down by a vehicle bearing Registration number AS-25P-6814. Accordingly, on the request of his client, the present petitioner wrote the FIR and the said FIR was lodged before the Officer-In-Charge of Barama Police Station and on the basis of the said FIR Barama P.S. Case No. 82/2021 was registered under Section 279/304A of the Indian Penal Code against the owner and rider of the said vehicle.

4. Thereafter, on 01.08.2021, the Investigating Officer of Barama P.S. Case No. 82/2021, namely, Mir Jahan Hussain had lodged an FIR before the Officer-In-Charge of Barama Police Station, *inter alia*, alleging that during investigation of Barama P.S. Case No. 82/2021, it came to the light that the name of the rider of the motorcycle in the FIR lodged by Shri Monjit Roy, on 30.07.2021 was wrongly mentioned as Utpal Thakuria, though, on the date of the accident, the motorcycle was driven by one Samarendra Thakuria, who is the brother of the Utpal Thakuria. The false statement was made in the FIR regarding the name of the rider only because of the fact that the actual rider, Samarendra Thakuria did not have the license to drive a motorcycle.

5. It is also alleged in the FIR that the informant of the FIR dated 30.07.2021 had confessed that he lodged the false FIR on the advice of the present petitioner to get the insurance money by misrepresenting the facts about the incident.

6. Mr. K. Sarma, learned counsel for the petitioner has submitted that the petitioner is an advocate and has been practicing since long and has a reputation in the society and he has only drafted the FIR as per the instruction of the first informant, namely, Monjit

Roy, and the allegation made against the present petitioner that he advised to mention wrong facts in the FIR is not true.

7. The learned counsel for the petitioner has also stated that the first informant of the FIR was also the Investigating Officer and hence there is procedural irregularity in this case.

8. It is also submitted by learned counsel for the petitioner that, on the basis of the averment made in the FIR, no offence under section 120B/420/182/511/34 has been made out against the present petitioner. If any wrong statement has been made in the FIR, it is the first informant, Monjit Roy, who is liable and not the present petitioner, who was only a counsel and he had acted as per the instructions of his client, the first informant Monjit Roy, while drafting the FIR.

9. The learned counsel for the petitioner has also submitted that the allegations made in the FIR are so absurd and inherently improbable that on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the present petitioner.

10. The learned counsel for the petitioner has also submitted that even if the criminal proceeding against the present petitioner is allowed to be continued, it would not entail any conviction and it would be only wastage of precious judicial time. Hence, he has prayed for quashing the charge sheet as well as the FIR against the petitioner.

11. In support of his submission, the learned counsel for the petitioner has cited a ruling of this court in the case of "**Priyanka**

Parashar v. State of Nagaland and Anr. reported in "**2011 (5) GLT 203.**"

12. The learned counsel for the petitioner has also cited a ruling of the apex court in the case of "***State of Haryana and Ors. v. Bhajan Lal and Ors.***" reported in "**1992 Supp (1) SCC 335.**"

13. On the other hand, Mr. D Das, learned Additional Public Prosecutor has submitted that this is not a fit case to invoke the powers of this court under 482 to quash the charge sheet which has been laid against the present petitioner.

14. It is submitted by learned Additional Public Prosecutor that in this case the FIR was lodged by one Mir Jahan Hussain, who was the Investigating Officer of Barama P.S. Case No. 82/2021 and on his FIR Barama P.S. Case No. 83/2021 was registered which was investigated by a different Investigating Officer, namely, Shri Gagan Sharma and therefore, he has submitted that the submissions made by learned counsel for the petitioner are factually incorrect.

15. It is also submitted by learned counsel for the petitioner that bare perusal of the FIR lodged by Mr. Mir Jahan Hussain on 01.08.2021 would show that there are categorical allegations made against the present petitioner that he had instigated and advised Shri Monjit Roy, to give false statement in the FIR only with an intention that the motor accident claims case filed by the petitioner does not fail as the actual rider of the vehicle, which was involved in the accident, was not having the driving license. He has also submitted that it is not a fit case for quashing of the FIR as after completion of investigation, charge sheet has been laid against the

present petitioner and sufficient materials were found, during the investigation, against the present petitioner of instigating the first informant Monjit Roy, to lodge a false FIR only with an intention to get the insurance money.

16. I have considered the submissions made by learned counsel for both the sides and have perused the materials available on record including the case diary of Barama P.S. Case No. 83/2021, which was called for in connection with this case. I have also perused the judgments cited by learned counsel for both the sides.

17. In the case of ***State of Haryana and Ors. v. Bhajan Lal and Ors.***” (supra), the Apex Court has observed that 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 a police officer under Section 156 (1) of the Code, except under an order of a Magistrate within the purview of Section 155 (2) of the Code, the inherent power under Section 482 of the Code of Criminal Procedure can be exercised to prevent the abuse of the process of court or to secure the ends of justice.

18. In the instant case on mere perusal of the First Information Report filed by the Investigating Officer of Barama P.S. Case No. 82/2021, it appears that though an allegation has been made against the present petitioner that it is he who had advised the first informant, Monjit Roy, to give wrong facts in the FIR so as to get the insurance money, however, the allegations made in the FIR only discloses commission of an offence under Section 182 of the Indian

Penal Code, which is a non-cognizable offence.

19. On Perusal of the case diary of Barama P.S. case No. 83/2021 also, it appears that the materials against the present petitioner are only under Section 182 of the Indian Penal Code, which is a non-cognizable offence. No materials are there on record under Section 420 of the Indian Penal Code against the present petitioner.

20. It appears that Section 420 of the Indian Penal Code has been added in this case only to make the case as cognizable. However, no materials are there on record against the present petitioner under Section 420 of the Indian Penal Code. It appears that under above circumstances, the embargo provided under Section 155(2) of the Code of Criminal Procedure 1973 is applicable in the instant case, where it has been provided that no police officer shall investigate a non-cognizable offence case without the order of a Magistrate having power to try such a case or to commit the case for trial.

21. On the basis of materials available on record, the only offence made out against the petitioner even if the allegations made in the FIR are taken on its face value, would be under Section 182 of the Indian Penal Code, which is a non-cognizable offence. Thus, the police don't have any legal authority to investigate the instant case, as it does not disclose a non-cognizable offence.

22. It also appears that no claim case has been filed by the petitioner or the first informant of the FIR which was lodged on 30.07.2021 and therefore, the addition of Section 420 of the Indian Penal Code in the instant case appears to be only to make the present case cognizable, which is not permissible under the facts and



circumstances of this case. As there has been a clear violation of the embargo provided in Section 155 (2) of the Code of Criminal Procedure, 1973 by the police, by investigating in a case which is non-cognizable without any permission to that effect from the concerned Magistrate, the continuation of the criminal proceeding against the present petitioner is an abuse of the process of court and in violation of the statutory provisions of Section 155 (2) of the Code of Criminal Procedure, 1973.

23. Thus, this Court is of considered opinion that to prevent the abuse of the process of court and to secure the ends of justice, this case is a fit case where the powers under Section 482 of the Code of Criminal Procedure, 1973 may be invoked. Accordingly, the charge sheet No. 61/21 dated 29.09.2021 filed against the present petitioner after completion of the investigation of Barama P.S. Case No. 83/2021 without any permission from the concerned Magistrate is hereby quashed and this criminal petition is hereby allowed.

JUDGE

Comparing Assistant