



GAHC010127452022

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

Case No. : Crl.Pet./607/2022

PAWAN AGARWAL
S/O- LATE NANDA KISHOR AGARWAL, R/O- HOUSE NO. 7, NEAR
SUDARSHAN PUBLIC SCHOOL, JYOTIKUCHI, P.O. KHANAPARA, P.S.
DISPUR, DIST. KAMRUP(M), ASSAM, PIN- 781022.

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:SANDEEP CHANDEL
S/O- THANDIRAM CHANDEL
R/O- BAKRAPARA
P.S. BASISTHA
BEHIND MANASHA MANDIR
P.O. BASISTHA
BELTOLA
GUWAHATI-781028
DIST. KAMRUP(M)
ASSA

Advocate for the Petitioner : MS M HAZARIKA

Advocate for the Respondent : PP, ASSAM

Date of Judgment & Order : 01-02-2024



**BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

JUDGMENT

Heard Mr. M.K. Borah, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Addl. P.P, Assam and Mr. P.K. Mazumdar, learned counsel for the respondent No. 2 (informant).

This is an application under Section 482 of Cr.PC, 1973 for quashing of the FIR dated 28.04.2022 in connection with Dispur P.S Case No. 1056/2022 registered under Section 120(B)/342/387 of Indian Penal Code.

The brief fact leading to the filing of the instant Criminal Petition is that, the accused/petitioner as well as the father of the respondent No. 2 are friends for last several years and out of that good will and good faith, the accused/petitioner invested an amount of Rs. 1.20 crores with the father of the respondent No. 2 for a new business, which was promised to be returned in installments. In the month of January, 2019, the father of the respondent No. 2 paid an amount of Rs. 5,00,000/- to the accused/petitioner and assured the accused/petitioner that the remaining shall be paid within one and a half year. As assured by the father of the respondent No. 2, the entire amount is to be paid within the month of April, 2022. Accordingly, the accused/petitioner called the father of the respondent No. 2 but he ignored the calls of the accused/petitioner and subsequently, the father of the respondent No. 2 came to meet the accused/petitioner on 18.04.2022 and assured him that he would return the money, but he requires some time and gave the accused/petitioner a duly signed stamp paper and also the signed blank paper with revenue stamp affixed and told the accused/petitioner to keep the same in his custody and that



the same was given as a token of his good intention to return the money within 6 (six) months or so. Thereafter, out of the blue after the matter was settled between the accused/petitioner and the father of the respondent No. 2 as aforesaid, the respondent No. 2 on 19.04.2022 lodged an FIR before the Basistha Police Station by bringing some frivolous allegations against the accused/petitioner. The accused/petitioner was brought to Police Station since the Police Authority of the Basistha Police Station acted on the FIR lodged by the respondent No. 2 and on that day itself, the accused/petitioner was allowed to go on bail by furnishing P.R. Bond. The accused/petitioner was called to the Dispur Police Station and came to know that the same FIR has also been lodged again before the Dispur Police Station against the accused/petitioner by the respondent No. 2 stating inter- alia that *"On 18.04.2022, at around 1:00 p.m., the said Pawan Agarwal called upon my father and me to discuss some business affairs in his office near Kendriya Vidyalaya Khanapara, at Khanapara, Guwahati but as my father visited the said place with me, there were a gathering of 4-5 persons alongwith Pawan Agarwal who threatened my father and me of dire consequences if we do not follow his instructions. Then the said Pawan Agarwal asked my father forcefully to accept some allegations that my father owed him an amount of Rs. 1 crore and 5 lakhs only. With a criminal mind, he made a call from one of the person present there and forced my father to accept the false statement that my father borrowed an amount of Rs. 1 crore and 5 lakhs from Pawan Agarwal and he is yet to repay the same. This entire conversation was recorded in the said phone but I did not received the recording inspite of my request to the said Pawan Agarwal. He afterwards threatened my father of life if he do not follow them. He forcefully and without the consent of my father took sign on one blank stamp paper owns a Revenue Stamp. Apart from that, the*

said Pawan Agarwal forcefully without my father's consent made him put his signature on blank white papers with revenue stamp affixed to it. In the witness part, they forcefully let me to put my signature.

That after taking forcefully signature in different documents, Pawan Agarwal forced my father to provide his Identity Card documents and few numbers of blank cheques. But these documents were not with my father at that time so Pawan Agarwal could not take these documents. He is still forcing my father to provide him such documents to him otherwise Pawan Agarwal is threatening to make good use of the already signed documents that he took into his possession forcefully from my father.

It is special mention here my father is a patient of anxiety and depression and is undergoing treatment for the same. That all these acts by Pawan Agarwal and the other people present there were already prepared criminal conspiracy against my father and also to extort money from my father. This act of Pawan Agarwal is purely with the intention of extorting money from my father who is an ill health person with mental issues like anxiety and depression.

Please do the needful at the earliest otherwise my father will be in danger of even losing his life as Pawan Agarwal is constantly threatening my father of taking drastic steps that might cost of our father's life as well as for the entire family.

Note, the same FIR has been submitted to Basistha Police Station on 19.04.2022 and after enquiry, Mukund Sharma Sir has recovered the blank stamp papers which were forcefully signed from us. The same are in custody of Basistha Police Station. Kindly look into the matter and do the

needful.”

Accordingly, a case has been registered as Dispur P.S. Case No. 1056/2022 under Sections 120(B)/342/387 of the Indian Penal Code.

Mr. M.K. Borah, learned counsel for the petitioner submits that allegations leveled in the FIR are not based on true facts and that the same is a fabricated and frivolous one. He further submits that the petitioner is a businessman of the locality and for the business purpose, the petitioner has to invest his hard earned money in different sources to accrue some profits out of that. He further submits that the petitioner has asked for the money to be refunded to him by the father of the respondent No. 2, but instead of returning the remaining amount to the petitioner, the respondent No. 2 has lodged an FIR. He further submits that the subject matter of the FIR is essentially civil in nature.

Mr. P. Borthakur, learned Addl. P.P on the other hand submits that on a plain reading of the FIR, the offences alleged are made out.

Mr. P.K. Mazumdar, learned counsel for the respondent No. 2 submits that the allegations are true and the same needs to be investigated.

I have heard the submissions made at the bar and perused the materials available on record.

The jurisdiction of this Court under Section 482 for quashing the FIR is well settled. In order to exercise the said jurisdiction, this Court is required to test the allegations made in the FIR, at their face value and accepted in their entirety, and to see whether the same prima facie constitutes any offence or



make out a criminal case against the accused. The contents of the FIR are reproduced hereunder for ready reference:-

“To,
The Officer-in-Charge
Dispur Police Station
Guwahati-06

Date: 28.04.2022

Sub: Lodging an F.I.R

Sir,

With reference to the subject cited above I, Shri. Sandeep Chandel, S/O. Thandi Ram Chandel, R/O. Near ManashMandir, Bakrapara, P.S. Basistha, would like to lodge an F.I.R against one Pawan Agarwal.

That on 18/04/2022, at around 1 PM, the said Pawan Agarwal called upon my father and me to discuss some business affairs in his office near Kendriya Vidyalaya, Khanapara at Khanapara, Guwahati. But as my father visited the said placewith me, there were a gathering of about 4-5 persons along with Pawan Agarwal who threatened my father and me of dire consequences if we do not follow his instructions. Then the said Pawan Agarwal asked my father forcefully to accept some allegations that my father owed him an amount of Rs.1 Crore and 5 Lakhs only. With a criminal mind he made a call from one of the person present there and forced my father to accept a false statement that my father borrowed an amount of Rs. 1 Crore and 5 Lakhs from Pawan Agarwal and he is yet to repay the same. This entire conversation was recorded in the said phone but I did not received the recording in spite of my request to the said Pawan Agarwal. He afterwards threatened my father of life if he do not follow them. He forcefully and without the consent of my father took sign on one blank StampPaper owns a Revenue stamp. Apart from that, the said Pawan Agarwal forcefully without my father's consent signed on blank white papers with Revenue stamp affixed to it. In the witness part they forcefully let me to put my signature.

That after taking forcefully signature in different documents, Pawan Agarwal forced my father to provide his identity card documents and few numbers of blank cheques. But these documents were not with my father at that time so Pawan Agarwal could not take these documents. He is still forcing my father to provide him such documents to him otherwise Pawan Agarwal is threatening to make good use of the already signed documents that he took into his possession forcefully from my father.

It is special mention here my father is a patient of anxiety and depression and is undergoing treatment for the same. That all these act by Pawan Agarwal and the other people present there were already prepared criminal conspiracy against my father and also to extort money from my father. This act of Pawan Agarwal is purely with the intension of extorting money from my father who is an ill health person with mental issues like anxiety and depression.

Please do the needful at the earliest otherwise my father will be in danger of even losing his life as Pawan Agarwal is constantly threatening my father of taking drastic steps that might cost us of our father's life as well as for the entire family.

Note: The same FIR had been submitted to Basistha Police Station on 19/04/2022 And after enquiry, Mukund Sharma Sir has recovered the blank stamp papers which were forcefully signed from us. The same are in custody of Basistha Police Station. Kindly look into the matter and do the needful.

Name of the Accused:

Pawan Agarwal

S/O. Unknown

Office Address- Opposite to Kendriya Vidyalaya, Khanapara

Guwahati-28

Ph No. 9365986175"

A perusal of the said FIR indicates that the accused/petitioner is alleged to have called his father and the complainant to discuss some business affairs in the office of the accused/petitioner. It further appears that when the

complainant and his father visited the said place, 4 to 5 persons who were already gathered there along with the accused/petitioner threatened them with dire consequences. It further appears that the accused/petitioner asked the father of the informant forcefully to accept some allegations that his father owes him an amount of Rs. 1 Crore 5 Lakhs. It further appears that the accused/petitioner made a call from one of the persons present there and forced the complainant's father to accept a false statement that his father borrowed an amount of Rs. 1 Crore 5 Lakhs from the accused/petitioner and he is yet to repay the same.

It further appears that the accused/petitioner thereafter threatened his father of life and also forcefully without the consent of his father took his signature on one blank stamp paper and also on a blank white paper with Revenue Stamp fixed on it.

It further appears that the accused/petitioner along with the other persons committed the act of criminal conspiracy against the informant's father and also was trying to extort money.

On the basis of the aforesaid allegations, a case was registered under Sections 120(B)/342/387 of Indian Penal Code.

Section 120(B), Section 342 and Section 387 of the Indian Penal Code is reproduced hereunder for ready reference:-

“120B. Punishment of criminal conspiracy.—(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, 1 [imprisonment for life] or rigorous imprisonment for a term of two years

or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.]”

“342. Punishment for wrongful confinement.—Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both”.

387. Putting person in fear of death or of grievous hurt, in order to commit extortion.— Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

Section 120(B) provides punishment of criminal conspiracy. The essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence. In the said case, the allegation and averments made in the FIR clearly indicates that there is an agreement between the accused/petitioner and the other persons present therein to commit an offence. As such, by taking the said allegation to be true, an offence under Section 120(B) is prima facie made out. Similarly, from the allegations made in the FIR, it clearly indicates that the informant and his father were restrained wrongfully by the accused/petitioner and the other persons and also that they were put in fear of that in order to commit extortion. As such, the ingredients of Sections 342 & 387 also appears



to be made out prima facie in the body of the FIR.

Thus, on the face of the FIR, taking the averments made therein to be true, prima facie a case is made out against the accused/petitioner. Having held so, this Court is of the opinion that the accused/petitioner has failed to make out a case warranting interference of this Court under Section 482 Cr.PC.

Accordingly, this petition stands dismissed.

No cost.

JUDGE

Comparing Assistant