

GAHC010023952024



2024:GAU-AS:7657

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

Case No. : Crl.Pet./124/2024

ARMY NO. 15715017K NAGIREDLA SRINU AN ANR.
S/O NAGINENDLA APPALANARASAYYA
VILL- JEEREPALAM, P.S. BHIMUNIPATTANAM, DIST. VISHAKHA-
PATTANAM, ANDHARA PRADESH

2: ARMY NO. 15723895P RAM KISHOR
S/O LATE ANGAD SINGH
VILL- RAMKHERA
P.S. CHHIBRAMA
DIST. KANNOUJ
UTTAR PRADESH

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE PP, ASSAM

2:SMT. MALA MADAN
W/O SRI RAJEEV MADAN
R/O GANGANAGAR PATIDOI BHERALA
P.S. MISSAMARI
P.O. MISSAMARI
DIST. SONITPUR
ASSAM
PIN- 784506.

3:SRI PARAG SEN DEKA
GENERAL SECRETARY

MISSAMARI SAMAJ KALYAN COMMITTEE

S/O LATE KANAK SEN DEKA
R/O NEPALIBASTI

P.S. MISSAMARI
P.O. MISSAMARI

DIST. SONITPUR
ASSAM
PIN-78450

Advocate for the Petitioner : MR. S K MEDHI, MR K K MEDHI

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

07.08.2024

Heard Mr. Sanjay Kumar Medhi, learned counsel for the petitioners and Mr. B Sharma, learned Additional Public Prosecutor, Assam for the State.

2. By order dated 06.02.2024 relevant records of PRC No. 1032/2020 was called from the Court of learned Chief Judicial Magistrate, Sonitpur, Tezpur.

3. One Smt. Mala Madan, wife of Rajiv Madan on 01.02.2020 lodged a written Ejahar before the Officer-in-Charge of Missamari Police Station stating that persons named in the said Ejahar on 30.01.2020 around 01:00 AM attempted to block the village road situated near their house and when they rushed to the spot Army Personnel of Missamari Army Cantonment pushed her from her back side and thereby outraged her modesty. When she resisted they had battered her on her back right side with blunt weapon with an attempt to kill her. When she charged the armed personnel as to why they had outraged her modesty and attempted to kill her they replied saying that they had the orders from Brigadier V.B. Shrikhande, Station Commander, Missamari. She stated that the residents were objecting for blocking the road with iron fencing. She also stated she had been treated for the injuries sustained on her right back side and enclosed a photograph therewith to prove the identity of the said armed personnel.

4. Said FIR of Smt. Mala Madan was registered as Missamari Police Station Case No. 14/2020 under Sections 354/323/307 IPC corresponding to G.R. No. 290/2020.

5. One Parag Sen Deka, General Secretary of Missamari Samaj Kalyan Committee on

01.02.2020 also submitted a written Ejahar before the Officer-in-Charge of Missamari Police Station that on the night of 30.01.2020 around 1 AM when it was found that the road from Patidoi Bherala (Ganga Nagar) via Military Station to Railway Station or via Old Missamari to other nearby areas had been blocked by iron fencing and holes were made on the road by JCBs by the arms personnel the local women went to the said place and wanted to know from those arms personnel as to why they have blocked the said road. Instead of replying to the queries made by the local women the arms personnel had beaten up those women and also the local people present there and pushed them back by using force and thereby outraged the modesty of women. The said road was closed by the arms personnel and from them the local public came to know that the said road has been closed down on the order of Brigadier V.B. Shrikhande, Deputy GOC, the road which was used by the local public since long.

6. The said FIR was registered as Missamari Police Station Case No. 15/2020 under Sections 323/354/34 IPC against the Arms Personnel of Missamari Military Station, corresponding to G.R. No. 291/2020.

7. From the records of P.R. Case No. 1032/2020 corresponding to G.R. No. 290/2020 arising out of Missamari P.S. Case No. 14/2020, it is seen that on 03.03.2020 the Investigating Officer of Missamari P.S. Case No. 15/2020 under Sections 323/354/34 IPC, who is also the Investigating Officer of said Missamari P.S. Case No. 14/2020 under Sections 354/323/307 IPC prayed for amalgamation of said Missamari P.S. Case No. 15/2020 with Missamari P.S. Case No. 14/2020 submitting that the incident of both the police cases, the place of occurrence and the victim as well as the accused persons of the cases are same and one.

8. On perusal of the case diaries, the learned Judicial Magistrate First Class, Tezpur finding that the place of occurrence of the cases as well as the parties involved in the cases being same, allowed the said prayer of the Investigating Officer of both the above noted Missamari Police Station cases. Accordingly, the concerned Investigating Officer proceeded with Missamari P.S. Case No. 14/2020.

9. During investigation of said Missamari P.S. Case No. 14/2020, the informant/victim was medically examined on 30.01.2020 at Goruabandha State Dispensary and the medical report of the said victim dated 30.01.2020 indicated that the victim was found with swelling on her right scapular region with simple injury due to blunt force. The statement of the informant/victim Smt. Mala Madan under Section 164 CrPC was recorded by the learned JMFC, Sonitpur, Tezpur on

11.02.2020. On completion of the investigation of the case, the concerned I.O. submitted Charge-Sheet in said Missamari P.S. Case No. 14/2020 vide Charge-Sheet No. 15/2020 dated 29.02.2020 against the present two petitioners and nine others, all are armed personnel serving at Missamari Army Cantonment during the relevant point of time on 30.01.2020 under Sections 323/354/506 IPC against all of them.

10. The said Charge-Sheet of Missamari P.S. Case No. 14/2020 was placed before the Court of learned Chief Judicial Magistrate, Sonitpur, Tezpur in said PRC Case No. 1032/2020 on 23.11.2020 and the learned CJM, Sonitpur, Tezpur by order dated 23.11.2020 on perusal of the case diary along with the relevant documents attached with it took cognizance of the offence under Sections 323/354/506 IPC against the petitioners and nine others named in the said charge-sheet, all are Armed Personnel serving at Missamari Army Cantonment. Accordingly, summons were issued to the accused persons of said PRC Case No. 1032/2020 arising out of Missamari P.S. Case No. 14/2020 including the present petitioners for their appearance in the said case.

11. The petitioners along with another in said PRC Case No. 1032/2020 arising out of Missamari P.S. Case No. 14/2020 on 22.11.2023 submitted an application being Petition No. 3595/2023 dated 22.11.2023 before the learned CJM, Sonitpur, Tezpur, stating that all the Arms Personnel against whom cognizance have been taken under Sections 323/354/506 in said PRC Case No. 1032/2020 were on duty and that as per the provisions of Section 197 CrPC and Section 6 of the Arms Forces (Special Powers) Act, 1958 prior prosecution sanction is necessary from the Central Government to proceed against such Arms Personnel serving under the Central Government in respect of anything done or purported to be done in exercise of the powers conferred by the said 1958 Act. As such, the petitioners prayed before the learned CJM, Sonitpur, Tezpur that until due prosecution sanction is obtained from the Central Government under Section 197 (2) of the CrPC and Section 6 of the Arms Forces (Special Powers) Act, 1958, the proceeding of said PRC Case No. 1032/2020 should be stayed.

12. In their said petition submitted before the learned CJM, Sonitpur at Tezpur in said PRC Case No. 1032/2020, the petitioners placed the relevant Sections of Section 197(2) CrPC, Section 6 of Arms Forces (Special Powers) Act, 1958, the decisions of the Hon'ble Supreme Court in the cases of (i) *Army Headquarters -Vs- CBI* reported in (2012) 6 SCC 228, (ii) *Mansukh Lal Vithal Das Chauhan -Vs- State of Gujarat* reported in (1997) 7 SCC 622 and (ii) *Rabina Ghale and*

Another -Vs- Union of India and Others in WP(Crl.) No. 265/2022 decided on 19.07.2022.

13. Section 197 CrPC relates to prosecution of Judges and Public Servants and Section 197(2) CrPC, 1973 stipulates that — “*No Court shall take cognizance of any offence alleged to have been committed by any Member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.*”

14. Section 6 of the Arms Forces (Special Powers) Act, 1958 relates to Protection to persons acting under Act and it provides that — “*No prosecution, suit or other legal proceeding shall be instituted, except with previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.*”

15. The learned CJM, Sonitpur, Tezpur by the order dated 21.12.2023 rejected the said Petition No. 3595/2023 dated 22.11.2023 of the petitioners on the basis of its opinion that in the said proceeding accused persons were not summoned for an offence committed in discharging their official duty for exercising power under the Arms Forces (Special Powers) Act, 1958 [AF(SP) Act] and that the facts and circumstances in the case in hand is different than that of the cases described in the decisions of the Hon’ble Supreme Court.

16. In the said order dated 21.12.2023, learned CJM, Sonitpur, Tezpur observed that the decisions of the Hon’ble Supreme Court relate to protection while discharging official duty or exercising power under AF(SP) Act but the case in hand is not a case of discarding official duty or exercising power under the AF(SP) Act by the accused persons and the case is relating to assault upon women by the male accused and outraging modesty of women. The learned CJM, Sonitpur, Tezpur found that the allegations against the accused persons of the case are lathi charge/physical assault upon women and outraging modesty of women. The learned CJM, Sonitpur, Tezpur came to the finding that it is not permissible by a male member of any force to assault upon women and that outraging of modesty of women is not covered/permissible within the limits of discharge of duty or exercise of power. The learned CJM, Sonitpur, Tezpur found that the allege acts of the accused persons does not fall under the scope and ambit of discharge of official duty or exercise of power under the AF(SP) Act.

17. In the said order dated 21.12.2023 the learned CJM, Sonitpur, Tezpur also considered Section 460(e) CrPC and came to the conclusion that even if there is any irregularity in taking

cognizance under Clause-a or Clause-b of Section 190 (1) of CrPC, it does not vitiate the proceeding. The learned CJM, Sonitpur, Tezpur found that even if any sanction is required for taking cognizance which was already taken vide order dated 23.11.2020, two years prior to filing of the Petition No. 3595/2023 according to Section 460 (e) of CrPC this irregularity does not vitiate the proceeding against the accused persons. For all such reasons, the learned CJM, Sonitpur, Tezpur by order dated 21.12.2023 rejected said Petition No. 3595/2023 of the petitioners.

18. Hence, this criminal petition by the petitioners, praying amongst others, to set aside the impugned order dated 21.12.2023 rejecting the Petition No. 3595/2023 that was filed by them before the said learned Magistrate as well as the order dated 23.11.2020 both passed by the learned CJM, Sonitpur, Tezpur in PRC No. 1032/2020 arising out of Missamari P.S. Case No. 14/2020.

19. Heard Mr. Medhi, learned counsel for the petitioners and Mr. B Sharma, learned APP, Assam for the State.

20. Also considered the decisions placed by Mr. Medhi, learned counsel on behalf of the petitioners.

21. On perusal of the records and particularly, the Charge-Sheet No. 15/2020 dated 29.02.2020 under Sections 323/354/506 IPC submitted in Missamari P.S. Case No. 14/2020, it can be seen that the concerned Investigating Officer in the said Charge-Sheet clearly stated that during the investigation the said officer found that the accused persons who are from 73 INF.DIV.SIG.REGT were serving the duty of surveillance and acted as guards. Further, the concerned I.O. in the said Charge-Sheet 15/2020 stated that all the 11 accused persons are the armed personnel of 73 INF.DIV.SIG.REGT and on the relevant date and time and at the relevant place of occurrence they were on their entrusted duty. Further, the concerned I.O. in the said Charge-Sheet stated that in a meeting held on 21.11.2011 it was decided that until another way comes up or made for egress and ingress of people of the locality shall use the road through the Missamari Army Cantonment, and though the local people will be able to use the said road, but they have to undergo the checking by Arms Personnel. Although there was no proper and suitable alternate road and the Arms Personnel of said Missamari Army Cantonment proceeded with the construction of the road. The local people came to the place of occurrence and objected to their act and there was push and pull by local people along with the Arms Personnel while objecting

the said road construction works of the Arms Personnel.

22. When all these facts have been specifically mentioned in the Charge-Sheet No. 15/2020 dated 29.02.2020 submitted by the Investigating Officer of said Missamari P.S. Case No. 14/2020, it is clear that the accused persons named in the Charge-Sheet were on official duty and their works had been objected by the local public that too in the midst of the night of 30.01.2020.

23. Apparently the learned CJM, Sonitpur, Tezpur while passing the impugned order dated 21.12.2023 rejecting the Petition No. 3595/2023 as well as while taking cognizance of the offence under Sections 323/354/506 IPC by order dated 23.11.2020 in said PRC Case No. 1032/2020 arising out of Missamari P.S. Case No. 14/2020 did not consider all these aspects that the accused persons of said Missamari P.S. Case No. 14/2020 were on official duty and that their work had been obstructed by the local public during the time of the alleged incident while Armed Personnel were constructing the road by giving fence on their own road in their area of Missamari Army Cantonment as can be seen from the sketch map of the place of occurrence submitted by the concerned investigating officer along with the charge-sheet of the case.

24. For the reasons above, the Court is of the opinion that to prevent the abuse of the process of the Court, the order dated 23.11.2020 passed by the learned Chief Judicial Magistrate, Sonitpur, Tezpur in said PRC Case No. 1032/2020 arising out of said Missamari P.S. Case No. 14/2020 taking cognizance of the offence under Sections 323/354/506 IPC against the accused petitioners in said Missamari P.S. Case No. 14/2020 being without any prosecution sanction from the Central Government as required under the law as well as the order dated 21.12.2023 passed by the learned Chief Judicial Magistrate, Sonitpur, Tezpur rejecting the Petition No. 3595/2023 filed by the accused petitioners in said PRC Case No. 1032/2020 arising out of said Missamari P.S. Case No. 14/2020 are required to be set aside and quashed for the ends of justice.

25. Accordingly, impugned order dated 23.11.2020 passed by the learned Chief Judicial Magistrate, Sonitpur, Tezpur in said PRC Case No. 1032/2020 arising out of said Missamari P.S. Case No. 14/2020 taking cognizance of the offence under Sections 323/354/506 IPC against the accused petitioners as well as the order dated 21.12.2023 passed by the learned Chief Judicial Magistrate, Sonitpur, Tezpur rejecting the Petition No. 3595/2023 filed by the accused petitioners in said PRC Case No. 1032/2020 are hereby set aside and quashed.

26. Needless to say that on obtaining necessary prosecution sanction from the Central

Government against the accused petitioners in said PRC Case No. 1032/2020 arising out of said Missamari P.S. Case No. 14/2020 to be submitted by the concerned Investigating Officer of Missamari P.S. Case No. 14/2020, the Court of learned Chief Judicial Magistrate, Sonitpur, Tezpur shall be at liberty to pass necessary order(s) in accordance with law with regard to the said Charge-Sheet No. 15/2020 dated 29.02.2020 submitted by the concerned Investigating Officer in the Missamari P.S. Case No. 14/2020.

27. With the above observations and directions, this criminal petition stands allowed to the extent above.

JUDGE

Comparing Assistant