

GAHC010058222022



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

Case No. : Crl.Pet./256/2022

SETAB UDDIN
SON OF LATE SURUK MIA
R/O VILL- LOHARPARA
P.S. NILAMBAZAR
DIST.KARIMGANJ, ASSAM

VERSUS

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

2:IMAN UDDIN
S/O LATE HASIM ALI
R/O VILL- SRIGOURI
P.S. BADARPUR
DIST. KARIMGANJ
ASSA

Advocate for the Petitioner : MR. D HUSSAIN

Advocate for the Respondent : PP, ASSAM

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

26.06.2024

Heard Mr. D. Hussain, the learned counsel appearing for the petitioner. Also heard Mr. Bankim Sarma, the learned Addl. Public Prosecutor, Assam representing the State Respondent No.1. Mr. R.A. Mazumder, learned counsel appears for Respondent No.2.

2. This is an application under Section 482 of the CrPC praying for quashing the *charge sheet* being C.S. No.191/2020 dated 30.06.2020 in respect of Patharkandi P.S. Case No.147/2019 corresponding to G.R. No.869/2019 under Sections 448/294/506/171(C)/34 of the I.P.C., r/w Section 131/132 of Representation of People Act.

3. On 18th April, 2019, the Respondent No.2 was working as the Presiding Officer of a Polling Station. On that day, some persons were found to be casting their votes without identity cards. Therefore, Mr. A.K. Sukla, the Micro- Observer had asked the informant to suspend the polling. Subsequently, at about 4 P.M., the polling started again. On that day, one former Minister along with some other people came to the polling booth and had quarrel with Mr. Sukla and the Respondent No.2.

4. The said former Minister started to use filthy language. The Respondent No.2 filed an FIR narrating the aforesaid facts. Thereafter, the police filed the *charge sheet* against the said former Minister and also the present petitioner.

5. I have considered the submissions made by the learned counsel of both sides.

6. The guidelines for consideration of a petition under Section 482 of the CrPC has been laid down by the Hon'ble Supreme Court in *State of Haryana v. Bhajan Lal*, AIR 1992 SC 604. Paragraph 102 of the judgment reads as under:

“102. 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 FIR 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 FIR 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 FIR 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."

7. Reverting to the case in hand, I find that the allegation brought by the Respondent No.2 does not constitute a *prima facie* case against the present petitioner Setab Uddin. So, allowing the criminal proceeding to continue before the trial court would be nothing but an abuse of the process of the court.

8. I am of the opinion that this is a fit case for exercising power under Section 482 of the CrPC. The criminal petition is allowed.

9. Accordingly, the *charge sheet* being C.S. No.191/2020 dated 30.06.2020 in respect of Patharkandi P.S. Case No.147/2019 corresponding to G.R. No.869/2019 under Sections 448/294/506/171(C)/34 of the I.P.C., r/w Section 131/132 of Representation of People Act, is quashed and set aside against the petitioner.

The criminal petition is disposed of.

JUDGE

Comparing Assistant