

GAHC010005582013



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

Case No. : Crl.Pet./216/2013

MANAB CHAKRABORTY
S/O SRI KHANINDRA CHAKRABORTY MANAGER, ROOPACHERRA TEA
ESTATE, P.O. LALA, P.S. KALTICHERRA, DIST. HAILAKANDI, ASSAM,

VERSUS

THE STATE OF ASSAM and ANR

2:SMTI RINA BALA NATH
W/O SRI KISHORI MOHAN DEBNATH
R/O VILL- CHOIBARI TEA ESTATE UNDER CHAPOR P.S.
DIST. DHUBRI
ASSA

Advocate for the Petitioner : MR.P SEN, MR.S DEY

Advocate for the Respondent : PP, ASSAM, MS.K DEVI,MR.R BARUAH,MS.H DAS,MS.K DAS

Linked Case : Crl.Pet./410/2012

SMTI RINA BALA NATH and ANR.
W/O- KISHORI MOHAN DEV NATH

2: KISHORI MOHAN DEV NATH
S/O- LT. BHARAT CHANDRA DEV NATH
BOTH ARE R/O VILL.- CHOIBARI TEA ESTATE
UNDER CHAPOR POLICE STATION IN THE DIST. OF DHUBRI

ASSAM.
VERSUS

THE STATE OF ASSAM AND ANR

2:MANAB CHAKROBORTY
S/O- SRI KHANINDRA CHAKROBORTY
R/O VILL.- CHOIBARI TEA ESTATE
UNDER CHAPOR POLICE STATION
IN THE DIST. OF DHUBRI
ASSAM.

Advocate for : MR.D TALUKDAR
Advocate for : MR.S DEY appearing for THE STATE OF ASSAM AND ANR

BEFORE

THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
O R D E R

14.11.2024

1. Heard Mr. D Talukdar, learned counsel for the petitioners in Crl. Pet/410/2012.
2. These two criminal petitions are taken up together for final disposal at the admission stage.
3. By these two petitions, both the petitioners are seeking quashment of two criminal prosecutions. Crl. Pet./410/2012 is filed by one Rina Bala Nath and her husband for quashment of complaint proceeding registered as CR case No. 24(C)/2012 and order of cognizance dated 21.04.2012 passed by the learned JMFC, Bilasipara under Section 500/506/34 IPC. The accused in the aforesaid CR case Sri Manab Chakraborty is the petitioner in other criminal petition i.e. Crl.Pet./216/2013. Crl. Pet./216/2013 is filed for quashing of FIR registered as Chapar PS case No. 08/2012 under Section 509/507 IPC dated 09.01.2012. The further challenge is an order dated 08.10.2012 passed by the learned SDJM, Bilasipara whereby cognizance under Section 509/507 of IPC was taken on the basis of the charge-sheet and GRCPR

No. 08/2012 arising out of Chapar PS case No. 08/2012.

4. Before proceeding further, let this court record the factual assertion made by both the petitioners in their respective complaint and FIR.

5. On 09.01.2012, the petitioner Manab Chakraborty lodged an FIR before the Officer-in-Charge, Chapar PS alleging that one Boloram Lohar, Mithu Lohar, Lowa, Tarzan Lohar and Akla Lohar entered into his office bungalow and attacked him with sharp weapon and injured him severely etc. Said case was registered as Chapar PS case No. 07/2012 under Section 147/148/448/325/326/307/379 IPC. Such FIR is not subject matter either of the criminal petitions and there is nothing material available on record as regards fate of such prosecution launched / initiated on the basis of such FIR.

6. On the same date i.e. on 09.01.2012, the petitioner, Rina Bala lodged an FIR against accused, Manab Chakraborty before the O/C, Chapar PS, inter-alia, alleging that the accused Manab Chakraborty had telephoned her and used obscene languages and thereafter invited her to his bungalow, enticed her to give a job and accordingly she lodged a complaint before the Management of Tea Estate, where the aforesaid person was working. Such FIR was registered as Chapar PS case No. 08/2012 under Section 509/507 IPC dated 09.01.2012, which is under challenge in Criminal Petition No. 216/2013 preferred by Manab Chakraborty.

7. Thereafter, said Manab Chakraborty filed another CR case No. 24(c)/2012 before the learned SDJM, Bilasipara on 25.01.2012, with an allegation that the accused Rina Bala and her husband Kishori Mohan are conspiring to kill him and they have been accusing him falsely in front of the people in order to malign him in the society and lodged a case with false allegation at Chapar police station. After filing of the complaint, informant, Manab Chakraborty was examined under Section 200 Cr.P.C. and on the basis of the statement made and after perusal of the complaint, the learned SDJM, Bilasipara under its order dated 21.04.2012 took cognizance of the offences under Section 500/506/34 IPC, which is under challenge in Crl. Pet/

410/2012.

8. Heard Mr. D Talukdar, learned counsel for the petitioners in Crl. Pet/410/2012. Mr. Talukdar referring to the complaint has argued that the aforesaid CR has been filed with a malicious intention to harass the petitioner inasmuch as if the complaint as well as statement recorded under Section 200 Cr.P.C. is taken at its face value and accepted to be correct, no case is made out under Section 500/506/34 IPC. In fact the lodging of FIR as well as CR case is the counter blast of the FIR lodged by the petitioner.

9. It is the case of the petitioner Rina Bala that she lodged the FIR at the first point of time and as a counter blast, the accused Manab Chakraborty had lodged the FIR. Therefore, it is apparently an abuse of the process. As pleaded in the revision petition that on plain reading of FIR as well as charge-sheet, it will transpire that no ingrediance of offence under Section 509/507 IPC is made out against the accused.

10. I have considered the material available on record, the statement made in the connected petition and the litigational history as available on record. Though none appears for the petitioner in Crl. Pet/ 216/2013, this court has perused the FIR as well as the ground cited in the petition. From the aforesaid, it is seen that the main issue arose out of an alleged attack on petitioner, Sri Manab Chakraborty by some accused persons. From the FIR lodged by Rina Bala against Manab Chakraborty, it is seen that if the allegation levelled by Rina Bala are accepted and treated to be correct, this court finds no material, which even remotely suggests commission of any offence under Section 509/507 IPC. At the same time, the litigational history and filing of FIR against each other also shows that such FIRs are being filed only to counter each other.

11. Now coming to the complaint lodged by Manab Chakraborty against Rina Bala, this court even if accepts the allegations to be correct, the grievance is that the FIR against Manab Chakraborty by Rina Bala is concocted. If such allegation is accepted in toto including the statement recorded under Section 200 Cr.P.C., this court finds no material even to remotely suggest any offence under Section 500/506/34 IPC.

This court also finds that the learned trial court has failed to exercise its power while taking cognizance inasmuch as the learned court ought to have applied its mind to the given fact and material of the case. Similar is the case in respect of the FIR lodged by Rina Bala against Manab Chakraborty.

12. In view of the aforesaid, this court is of the opinion that both these cases are fit cases to exercise this court's revisional power to interfere with the prosecution launched. Accordingly, both the criminal petitions stands allowed.

13. Accordingly, the complaint proceeding registered as CR case No. 24(C)/2012 and order of cognizance dated 21.04.2012 passed by the learned JMFC, Bilasipara under Section 500/506/34 IPC and order dated 08.10.2012 passed by the learned SDJM, Bilasipara whereby cognizance under Section 509/507 of IPC was taken on the basis of the charge-sheet and GRCPR No. 08/2012 arising out of Chapar PS case No. 08/2012 are set aside and quashed.

JUDGE

Comparing Assistant