

GAHC010062442021



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

**Case No. : Crl.Pet./237/2021**

BINOY KUMAR BARMAN  
S/O LATE KESHAB CHANDRA BARMAN, P/R/O VILL- WARD NO.10,  
MANGALDOI, P.O. AND P.S.-MANGALDAI, DIST- DARRANG, ASSAM, PIN-  
784125, P/R/A BADARPUR, P.O. AND P.S.-BADARPUR, DIST- KARIMGANJ,  
ASSAM, PIN-788806

VERSUS

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

2:MS WANSILA KHARKONGOR  
CHIEF REGIONAL MANAGER  
UNITED INDIA INSURANCE COMPANY LIMITED  
GUWAHATI REGIONAL OFFICE  
CHIBBER HOUSE  
G.S. ROAD  
GUWAHATI-78100

**Advocate for the Petitioner : MR. J C GOGOI**

**Advocate for the Respondent : PP, ASSAM**

**BEFORE**

**THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY**

For the Petitioner :Mr. B. D. Goswami, Advocate

For the Respondents : Mr. M. P. Goswami, Addl.PP  
Mr. R.C.Paul, Advocate (R-2).

Date of Hearing : 24.04.2024

Date of Judgment & Order : 24.04.2024

**JUDGMENT & ORDER(ORAL)**

1. Heard Mr. B. D. Goswami, learned counsel for the petitioner. Also heard Mr. M. P. Goswami, learned Additional Public Prosecutor for the State respondent and Mr. R. C. Paul, learned counsel for the respondent No. 2.
2. The present application is filed under Section 482 of Cr.P.C. praying for quashing the FIR dated 05.01.2015 registered as CID P.S. Case No. 04/2015 under Section 120B/420 of IPC corresponding to G.R. No. 633/2015.
3. The facts of the present case is that a motor accident claim case being MAC Case No. 1108/2007 was filed by one Smti Najuma Begum, Nur Alam and Smti Gulbahari claiming compensation against the United India Insurance Co. Ltd inter alia alleging that the predecessor-in-interest of the claimants died on a road traffic accident involving a vehicle having registration No. AS-25/A-7031.
4. The learned Motor Accident Claims Tribunal, Kamrup, Guwahati dismissed the aforesaid claim case vide judgment dated 16.05.2014 and made certain conclusions which are quoted herein below:-

*“The FIR was lodged by the concerned ASI on 05.10.2006 for the accident which took place on the night of 23.09.2006. No explanation has been offered by any of the sides regarding the enormous delay in filing the FIR. It transpires from the FIR that the case was registered on the basis of the said FIR lodged before the police and there is nothing on record to show that any prior FIR was lodged by the claimant before police regarding the accident. The police report, Ex-1 was*

*issued on 07.05.2007, i.e. after filing of the FIR. From the PM Report, Ex-2, it is found that post mortem on the dead body was conducted in Mangaldoi Civil Hospital on the night of the accident itself. But strangely enough no FIR was filed at that time. On close scrutiny of the evidence-on-record, I am of the considered view that it is a collusive case and police of Dhula PS on being approached by the claimant must have subsequently issued the police report, Ex-1, showing the Maruti Car as the offending vehicle in place of an unknown truck, which in fact caused the accident and managed to run away. For the aforesaid reasons, I am not inclined to grant any compensation to the claimant and the claim stands dismissed. I think it would be appropriate to direct the Crime Investigating Department to conduct a thorough investigation and take appropriate action against the concerned police officer of Dhula PS".*

5. Thus a direction was issued to Crime Investigating Department to conduct a thorough investigation and take appropriate action against the concerned Police Officer of Dhula Police Station.
6. On the basis of the aforesaid recommendation, the United India Insurance Company Limited had filed an application on 05.01.2015 before the Director General of Police, Assam requesting an enquiry against the Police Officer concerned of Dhula Police Station Case No. 127/2006 in connection with a road traffic accident dated 23.09.2006.
7. On the basis of such complaint, a CID PS Case No. 04/2015 under Section 120B/420 of IPC was registered. The present application for quashing the aforesaid case.
8. The learned counsel for the petitioner while assailing the judgment contends that on bare perusal of the complaint, it is clear that no case is made out against the petitioner and therefore, the proceeding should be quashed.
9. The learned counsel for the petitioner further contends that the elements which are required to constitute a crime, are Mens rea or guilty intention, Actus

reus or illegal act or omission and Injury to another human being not available in the case and therefore, this is a fit case for quashment.

10. The learned counsel for the petitioner further contends that for the pendency of the criminal prosecution, the petitioner's case for promotion is not considered and that is another reason why the present application is filed.
11. This Court has given anxious consideration to the submissions advanced by the learned counsel for the parties. Also perused the materials available on record.
12. In the case of **State of Haryana and Ors –Vs- Ch. Bhajan Lal reported in AIR 1992 SC 604-** the Hon'ble Supreme Court has laid down certain guidelines for exercise of power under Section 482 of Cr.P.C. The relevant portion of such judgment is quoted herein below:-

*"8.1. In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given 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 guide- i7 myriad kinds of cases wherein such power should be exercised:*

- (a) *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;*
- (b) *where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;*
- (c) *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;*
- (d) *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;*

(e) 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;

(f) 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;

(g) 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.

13. In a recent decision, the Hon'ble Apex Court in the case of **Neeharika Infrastructure Pvt. Limited –Vs- State of Maharashtra** reported in **2021 SCC Online SC 315**, noted that power of quashing under Section 482 of Cr.P.C. should be exercised in exceptional cases to prevent the miscarriage of justice inasmuch as in accordance with the parameters laid down by the Hon'ble Apex Court in the case of **Bhajan Lal** (supra) and in the case of **R.P.Kapur –Vs- State of Punjab** reported in **AIR 1960 SC 886**.

14. The Hon'ble Apex Court in **Neeharika** (supra) amongst other, made a conclusion that the Courts are also required to consider whether police should be permitted to investigate the allegation made in the FIR.

15. In the case in hand, the learned Tribunal has doubted the genuineness of the claim and conduct of the police officer of Dhula Police Station, and accordingly, investigation was started. The petitioner was granted bail under Section 438 of Cr.P.C.

16. Since the allegations are serious and a prima facie opinion has already been taken by the learned Tribunal, in the considered opinion, this Court in the given facts of the present case, should not restrain the investigating agency to continue with the investigation, rather being a police officer, the petitioner should co-operate in the investigation to unearth the truth.

17. It is well settled and as held in **Neeharika** (supra) that while balancing the rights of Investigating Agency to continue with the investigation of a complaint and right of innocent person against whom a criminal proceeding is initiated, which may be an abuse of the process of the law, in given case, is to be balanced. In the case in hand, the petitioner is not specifically named as accused rather a general investigation is directed in view of the specific findings of the learned Tribunal. Therefore, this Court at the behest of the petitioner, cannot stall the investigation that has been initiated inasmuch as such allegation involves the *prima facie* view of a Tribunal dealing with a claim. Further, the allegation *prima facie* makes out commission of offence under IPC.
18. That being the position, in the considered opinion of this Court, this is not a fit case to exercise its power under Section 482 Cr.P.C. and to quash the investigation.
19. So far coming to the grievance of the petitioner as regards his lack of promotion in view of the pendency of this case, the same can not be a ground to quash a prosecution. Such grievance of the petitioner can be redressed in a writ petition, if filed by the petitioner, in this regard.
20. Accordingly, for the reasons, discussed hereinabove, the present criminal petition stands dismissed.
21. Interim order if any stands vacated.

**JUDGE**

**Comparing Assistant**