

GAHC010016422014



2024:GAU-AS:11268

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

**Case No. : Crl.Pet./829/2014**

SUJIT KUMAR GHOSH  
S/O LT. S.C. GHOSH ADDITIONAL C.J.M. NAGAON, P.S. NAGAON, DIST.  
NAGAON, ASSAM PRESENTLY RESIDING AT HAILAKANDI TOWN, P.S.  
HAILAKANDI DIST. HAILAKANDI, ASSAM.

VERSUS

THE STATE OF ASSAM AND 8 ORS  
Represented By PP, Assam

2:SRI DEEP NUNIA @ CHUTO LEIKA  
S/O LT. BALDEV NUNIA  
R/O VILL- GHUNGOOR  
JURAMANDIR  
DIST. CACHAR  
ASSAM.

3:SRI PRANAB KEOT  
S/O LT. NUNIA KEOT  
R/O VILL- PANIBORA  
P.S. DHOLAI DIST. CACHAR  
ASSAM.

4:MD. SALIM UDDIN BARBUIYA  
S/O MD. ALIMUDDIN BARBUIYA R/O VILL- PATHAR KANDI  
NEAR RAILWAY STATION  
P.S. PATHARKANDI  
DIST. KARIMGANJ  
ASSAM.

5:MD. ALTAF HUSSAIN LASKAR  
@ SINU LASKAR

S/O SAFIQUE UDDIN LASKAR R/O VILL- ITKHOLA BASHGHAT  
MAHIGRAM  
P.S. SILCHAR  
DIST. CACHAR  
ASSAM.

6:SRI BABULAL NUNIA  
@ BABLA  
S/O SRI MOTILAL NUNIA R/O GHUNGOOR  
VETERINARY P.S. SILCHAR DIST. CACHAR  
ASSAM.

7:SRI PARESH REE

S/O LT. PABITRA REE  
R/O GHUNGOOR  
VETERINARY P.S. SILCHAR  
DIST. CACHAR  
ASSAM.

8:SRI AJOY VERMA  
S/O PARESH VERMA R/O GHUNGOOR  
VETERINARY P.S. SILCHAR  
DIST. CACHAR  
ASSAM.

9:MD. FARIZUDDIN LASKAR  
S/O LT. MOMTAJ ALI LASKAR  
R/O UTTAR KRISHNAPUR PART-III  
P.S. SILCHAR  
DIST. CACHAR  
ASSAM

**Advocate for the Petitioner :** MR.S BISWAKARMA, MR.S C BISWAS, MS.K L R YANTHAN, MR.S S DUTTA

**Advocate for the Respondent :** PP, ASSAM, MS.S F MAITAI, MR.A A R KARIM, MR.J ISLAM

**BEFORE**

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

**ORDER**

**07-11-2024**

1. Heard Mr. S.C.Biswas, learned counsel for the petitioner and Mr. P.Borthakur,

learned Additional Public Prosecutor, Assam for the respondent No.1.

**2.** The present application is filed under Section 482 of the Code of Criminal Procedure, 1973 assailing an order dated 05.12.2013 whereby the learned Chief Judicial Magistrate, Cachar, Silchar in GR Case No. 1405/2011 rejected the prayer of the petitioner for re-investigation of the case.

**3.** The brief facts of the case of the petitioner is that while the petitioner was posted as Sub-Divisional Judicial Magistrate (Sadar), Cachar, thief entered into his house on 30.05.2011 at about 02.30 am to 03:00 am by breaking open glass panel of the ventilator and took away cash amount of Rs. 30,000/-, gold ornaments, one diamond ring and one diamond nose pin etc. and in that regard, an FIR was lodged before Tarapur Police Out-Post on 03.05.2011. Accordingly, Silchar P.S. Case No. 662/2011 under Section 457/380/307/34 IPC was registered.

**4.** After completion of the investigation, the accused were charge sheeted vide charge sheet No. 568 dated 14.08.2012 under Sections 457/380/307/411/34 IPC. Thereafter, on 12.11.2013, the petitioner filed a petition before the learned Chief Judicial Magistrate, Cachar, Silchar praying for necessary order for re-investigation of the case by a competent and independent investigating agency inasmuch as the petitioner was not satisfied with the investigation of the case. The aforesaid petition was registered as Petition No. 3597 dated 12.11.2013.

**5.** Thereafter, the learned Chief Judicial Magistrate, Cachar, Silchar by its order dated 05.12.2013 rejected the prayer of the petitioner for re-investigation of the case and the matter was fixed on 09.12.2013 for appearance of the accused persons.

**6.** The petitioner had also filed an application on 10.07.2014 before the Superintendent of Police, Cachar, Silchar praying for necessary order for further investigation/reinvestigation of the case by a competent investigating officer for the interest of fair administration of justice. However, when nothing was proceeded, the present petition is filed assailing the impugned order dated 05.12.2013 passed by the learned Chief Judicial Magistrate, Cachar, Silchar as well as seeking reinvestigation in the

matter.

**7.** From the FIR, it is seen that no persons were named in the FIR. However, after investigation of the case, the investigating authority has sent 8 Nos. of persons for trial.

**8.** The learned Chief Judicial Magistrate, Cachar, Silchar after perusal of the material available on record including the petition filed by the petitioner refused to order for reinvestigation of the case on the ground that after filing of the charge sheet, charge was framed and in the meantime already five witnesses were examined.

**9.** The learned Chief Judicial Magistrate, Cachar, Silchar relying on the decision of the Hon'ble Apex Court in the case of ***Vinay Tyagi Vs. Irshad @ Deepak and others*** reported in **2013 (5) SCC 762** concluded that a Magistrate has no jurisdiction to direct for fresh or de-novo investigation and once the police report is filed, the Magistrate has jurisdiction to accept the report or reject the same right at the threshold and the Court has also the jurisdiction to discharge the accused or frame the charge and put him to trial. But there are no provisions in the Code, which empower the Magistrate to disturb the status of the accused.

**10.** The grievance of the petitioner as discernible from the pleading is that initially a Probationary Sub-Inspector of police was entrusted with the investigation of the case though subsequently, it was entrusted to a competent Investigating Officer but no steps had been taken for getting recorded confessional statements of the accused persons nor two accused persons, namely, Bimal Paul and Montosh Paul had been arrested and surprisingly, both the aforesaid accused persons were not sent for trial and one of the brothers of said Montosh Paul, namely, Monoj Paul had been named as a witness in the case.

**11.** The further grievance of the petitioner is that one of the prime accused, namely, Deep Nunia had not been arrested. It is another ground that the statements of the witnesses available on record are totally deviating from the statements given to the Investigating Officer at the time of the investigation. According to the petitioner, the Investigating Officer of the case under the influence of the accused persons had prepared

the statement under Section 161 CrPC.

**12.** I have heard the learned counsels for the parties and also perused the petition seeking re-investigation as well as the impugned order dated 05.12.2013 passed by the learned Chief Judicial Magistrate, Cachar, Silchar.

**13.** This Court cannot find fault with the order dated 05.12.2013 passed by the learned Chief Judicial Magistrate, Cachar, Silchar inasmuch as law is well settled that except the constitutional Court, the learned Magistrate shall not have jurisdiction to direct for reinvestigation or de-novo investigation. Such well reasoned order based on material available on record, cannot be interfered with in exercise of power under Section 482 CrPC.

**14.** This court has also considered the matter on the merit of the claim of re-investigation. From the material available on record, this Court does not find anything in the investigation to conclude that the investigation was either unsatisfactory or there is any deficiency in the mode and manner of the investigation carried out leading to the filing of the charge sheet. The fact remains that the petitioner has not found named those persons as accused in the FIR and the allegation leveled as recorded herein above, in the considered opinion of this Court, does not make out a case suggesting any malice in the investigation or any intention of the officers to favour the accused persons and therefore, this Court is of the opinion that this case cannot be termed as an exceptional case where this Court should exercise its inherent power to direct for fresh investigation or de-novo investigation or reinvestigation by an independent .

**15.** This Court after perusal of the material does not also find the present case to be a rare and exceptional case to direct for re-investigation or that by not doing so, it will damage the confidence in the public mind inasmuch as the power of reinvestigation/fresh investigation/de-novo investigation cannot be directed by a High Court as the matter of course or in a routine manner, but has to be essentially adopted in order to live up to and effectuate the salutary objective of guaranteeing an independent and upright mechanism of justice dispensation without fear or favour, by treating all alike. However, for the

reasons recorded herein above, in the considered opinion of this Court, the present case is not an exceptional case where this Court should direct for reinvestigation. Accordingly, the present petition stands dismissed.

**JUDGE**

**Comparing Assistant**