

GAHC010019632014



2024:GAU-AS:10978

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

Case No. : Crl.Pet./1001/2014

ANTINA KALITA
ADVOCATE, MORIGAON BAR ASSOCIATION, D/O BIRENDRA KALITA R/O
NAOKOTA,P.O. DOLOICHUBA P.S. and DIST. MORIGAON, ASSAM.

VERSUS

THE STATE OF ASSAM and ANR
REP. BY THE PUBLIC PROSECUTOR, ASSAM.

2:SRI BOGARAM DEKA
BENCH ASSISTANT
MORIGAON COURT
COURT OF MR. J.DAS MORIGAON
S/O SRI MEMBER DEKA P.O. MORIGAON
P.S. MORIGAON
DIST. MORIGAON
ASSAM

Advocate for the Petitioner : MR.M K HUSSAIN, MR.F K R AHMED,MR.A RAHMAN

Advocate for the Respondent : , PP, ASSAM,

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

11.11.2024

1. None appears for the petitioner on call. Mr. B Sarma, learned Additional Public Prosecutor, Assam is present.
2. The present application is filed under Section 482 Cr.P.C. seeking quashment of GR case No. 986/2013 arising out of Morigaon PS case No. 251/2013 under Section 380/411 IPC.
3. The brief fact leading to the present case as projected by the petitioner in her petition as well as from the LCR, it is seen that the petitioner is an Advocate practicing at Morigaon court. On 23.07.2013, the FIR in question was lodged by one Sri Bogaram Deka, who was Bench Assistant of the court of the Sub-Divisional Judicial Magistrate, Morigaon. As per the informant, on 23.07.2013, the petitioner accused wanted to go through the record of CR case No. 2027/2010 and such record was allowed to be inspected by one police constable, Md. Montuj Ali. According to the informant, said Advocate offered money to said constable and wanted to take back the original land revenue receipt in the name of another accused Mangal Singh Bordoloi, which was deposited in connection with a bail application. According to the informant, when they refused to part with the record, the accused forcefully took away the original land revenue receipt and in the process one part of the receipt was torn. Accordingly, Morigaon PS case No. 251/2013 under Section 380/411 IPC was registered.
4. Subsequently, after completion of the investigation, charge-sheet was filed before the court and same is pending trial before the learned CJM, Morigaon. It is the case of the petitioner that such FIR was lodged to protect the informant from their mis-deed inasmuch as it is her case that the petitioner wanted the

original land revenue receipt of the bailor who deposited it in connection with a bail application and in this regard she had also filed an application before the learned Sub-Divisional Judicial Magistrate with a prayer to allow her to take land revenue receipt from the record. Such application was put on 30.04.2013.

5. Be that as it may, after filing of the FIR by the Bench Assistant, the petitioner filed a complaint case on 24.07.2013 before the learned CJM, Morigaon, which was registered as CR case No. 1332/2013. As per the aforesaid complaint case, the accused Bench Assistant and the constable and one peon of the court of learned CJM, Morigaon demanded bribe from the petitioner to allow her to look into the records and thereafter, they falsely lodged the FIR that the petitioner has stolen the land revenue paying receipt.
6. The fundamental ground of challenge in this case is that the FIR has been lodged by the Bench Assistant with mala-fide intention and to cover up their mis-deed of demanding bribe to allow her to take the relevant land revenue receipt. According to the petitioner, the petitioner has been roped in to the case on the collective effort of the informant and other vested interest, who are making all possible efforts since last few months to tarnish the professional career of the petitioner as an Advocate in the esteem of the public. According to her, the allegations are false and self manufactured, which is evident from the fact that the document which is alleged to have been stolen by the petitioner is still available in case record of CR case No. 2027/2010 and in this regards, the petitioner has relied upon certified copy of the aforesaid documents.
7. In ***Mohammad Wajid & Anr vs. State of UP and Ors*** reported in ***2023 INSC 683***, the Hon'ble Apex Court has observed that when there is an allegation of

mala-fide in lodging an FIR, the court while exercising power under Section 482 Cr.P.C. may also look into and rely on the material available on record so as to ascertain whether the case is filed mala-fide and/ or it is an abuse of process of court.

8. In view of settled proposition of law, this court has also gone through the material available on record, though it is a petition under Section 482 Cr.P.C. for quashment of the FIR.
9. As recorded hereinabove, none appears for the petitioner to address this court. Therefore, this court has gone into the pleading and statements made in the petition, in the FIR lodged by the respondent/ Bench Assistant of the court in question, the complaint petition filed by the petitioner as well as the LCR and case diary of Morigaon PS case No. 251/2013 including the statements recorded by the investigating authority under Section 161 Cr.P.C.
10. The aforesaid material available on record suggests that there was an incident in the court of the learned Sub-Divisional Judicial Magistrate as regards taking back the original land revenue receipt, which was deposited by the bailor for release of an accused in the said case. It is also seen that subsequently, during the course of investigation said document was seized from the possession of the co-accused i.e. the bailor in whose name such certificate was issued. The other statement made also supported the projection made by the prosecution. In the aforesaid backdrop, the charge-sheet was filed and fact also remains that the FIR was lodged on 23.07.2013 and the complaint was filed by the present petitioner on 24.07.2013. Though a statement is made in the application that the learned Sub-Divisional Judicial Magistrate allowed to take

back the record, however, except filing a petition on 30.04.2013, nothing is on record reflecting any order that has been passed in the aforesaid application. Therefore, on the basis of aforesaid material, it cannot be said that FIR was lodged with a mala-fide intention and/ or to harass the petitioner Advocate. Even otherwise, if this court takes the FIR on its face value and accepts the same to be correct, in the considered opinion, the same discloses the offences as alleged.

11. That being the position, in the totality of the matter, this court would not like to exercise its power under Section 482 Cr.P.C. to quash the FIR as well as charge-sheet and the GR proceeding itself for want of the material required to exercise such power and as discussed hereinabove.
12. According, the criminal petition stands dismissed. However, it is made clear that observation made in the order shall not be treated as comment on the merit of the prosecution case.

JUDGE

Comparing Assistant