

GAHC010010772013



2024:GAU-AS:8222

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

Case No. : Crl.Pet./704/2013

DIPANKAR BISWAS
S/O LT. BHUPATI RANJAN BISWAS R/O FLAT NO. UD.2, BLOCK NO. H. 3/126,
MAHAVIR ENCLAVE, NEAR KALIBARI , PALAM DABRI ROAD, NEW
DELHI- 45.

VERSUS

THE STATE OF ASSAM AND ANR

2:MR. KAJAL CHANDRA DEY
S/O LT. AMAR CHANDRA DEY R/O ANAND NAGAR
BYE LANE NO.1
HOUSE NO. 9
LALGANESH
LOKHRA ROAD
P.O. UDALBAKRA
P.S. AMBARI FATASIL
GHY-34
DIST. KAMRUP M
ASSAM

Advocate for the Petitioner : MR.A CHOUDHURY, MR.D GOGOI,MR.I CHOWDHURY,MR.S R
BORUAH,MS.C CHOUDHURY,MR.A M BORA

Advocate for the Respondent : MRS.H SARMA, MS.L DAS,MR.A SALAMUDDIN(R-2),MR.D
CHAKRABARTY(R-2),MR.P KATAKI(R-2),MR.A S UDDIN,MR.K DEY,PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

20.08.2024

Heard Mr. A M Bora, learned Senior counsel assisted by Mr. V A Choudhury, learned counsel for the petitioner and Mr. B Sharma, learned Additional Public Prosecutor, Assam for the respondent No. 1, State. Also heard Ms. R Begum, learned counsel for the respondent No. 2.

2. By this application under Section 482 CrPC, the petitioner has prayed for quashing of the impugned order dated 23.07.2013 passed by the learned Sub-Divisional Judicial Magistrate (SDJM), Sadar-I, Kamrup (Metro), Guwahati in C.R. Case No. 1572^C/2013 pending before the said learned Magistrate with an interim prayer to stay the further proceeding of said C.R. Case No. 1572^C/2013.

3. The Court on 16.09.2013 while issuing notice to the respondents in the interim stayed the further proceeding of said C.R. Case No. 1572^C/2013 pending before the Court of learned Sub-Divisional Judicial Magistrate (SDJM), Sadar-I, Kamrup (Metro) at Guwahati until further order of the Court, which is still in force.

4. By order dated 20.11.2013, the Court called for the records of said C.R. Case No. 1572^C/2013 from the Court of learned SDJM, Sadar-I, Kamrup (Metro), Guwahati and the Registry has received the photocopy of the records of said C.R. Case No. 1572^C/2013. Perused the records of the case.

5. Brief facts of the case is that the respondent No. 2, namely, Kajal Chandra Dey, as a complainant filed a Complaint Case being C.R. Case No. 7331^C/2007 against one Mr. Ikram Yusuf Ali under Section 138 of the Negotiable Instruments Act, 1881 before the Court of learned Judicial Magistrate First Class (JMFC), Kamrup (Metro) at Guwahati. Said Mr. Ikram Yusuf Ali used to work as an Accounts Officer, PWD at Assam Pavilion Building Division, Assam House at New Delhi.

6. Due to non-appearance of said accused Mr. Ikram Yusuf Ali in said C.R. Case No. 7331^C/2007, the learned JMFC, Kamrup (Metro), Guwahati issued Non-Bailable Warrant of Arrest and Proclamation.

- 7.** For execution of the said NBWA and Proclamation, the Station House Officer (SHO) of Chanakyapuri Police Station, Chanakyapuri, New Delhi was asked to submit its report pertaining to whereabouts of the accused Mr. Ikram Yusuf Ali.
- 8.** Petitioner, Dipankar Biswas was serving as the Executive Engineer, PWD, Assam Pavilion Building Division, Assam House, New Delhi. On being asked by the said SHO, Chanakyapuri Police Station pertaining to the whereabouts of said Mr. Ikram Yusuf Ali, the petitioner on 01.06.2010 informed that said Mr. Ikram Yusuf Ali, Accounts Officer of Assam Pavilion Building Division, Assam House, New Delhi was not attending the Office since 25.05.2010 and that he had availed Earned Leave for a period w.e.f. 25.05.2010 to 24.06.2010.
- 9.** During the pendency of said C.R. Case No. 7331^C/2007, its complainant, i.e., the present respondent No. 2 filed a Petition in said C.R. Case No. 7331^C/2007 before the learned JMFC, Kamrup (Metro), Guwahati for issuance of summon upon the petitioner as an accused for commission of offence under Sections 166 and 167 of the IPC for giving false information to the Warrant Executing Officer.
- 10.** The learned JMFC, Kamrup (Metro), Guwahati by order dated 30.04.2013 passed in said C.R. Case No. 7331^C/2007 after obtaining all necessary reports from the PWD of the State, rejected the prayer of the complainant/respondent No. 2 to issue summons upon the petitioner and thereby rejected the said Petition of the complainant/respondent No. 2.
- 11.** The petitioner thereafter served a Pleader Notice upon the complainant/respondent No. 2 on 09.01.2013 demanding Rs.25,00,000/- towards the damages caused to him by the said complainant for making defamatory comments.
- 12.** Subsequent to that, the respondent No. 2 on 29.05.2013 vide Petition No. 4643 as a complainant filed a complaint case under Section 200 of the CrPC before the learned Chief Judicial Magistrate, Kamrup (Metro), Guwahati, praying to take cognizance of the offence under Sections 167/120(b)/420/ 468/34 IPC against the present petitioner as well as said Mr. Ikram Yusuf Ali, alleging that the present petitioner tried to save the other accused Mr. Ikram Yusuf Ali from legal action by submitting false information.
- 13.** The said complaint petition was accordingly registered as C.R. Case No. 1572^C/2013 and the learned Chief Judicial Magistrate, Kamrup (Metro), Guwahati transferred the said case to the Court of the learned Sub-Divisional Judicial Magistrate, Sadar-I, Kamrup (Metro), Guwahati for its

disposal.

14. The learned SDJM(S-I), Kamrup (Metro) on 23.07.2013 took cognizance of the offence under Sections 420/468/120(b) IPC against the petitioner and the other accused Mr. Ikram Yusuf Ali after recording the statement of the complainant/respondent No. 2 under Section 200 of the CrPC and on examining one of his witness (complainant's wife) under Section 202 CrPC.

15. It is submitted on behalf of the petitioner that the complainant/respondent No. 2 in his said complaint petition, C.R. Case No. 1572^C/2013 did not state that his earlier application was rejected by the Court concerned.

16. Hence, this criminal petition by the petitioner to set aside and quash the impugned order dated 23.07.2013 passed by learned Sub-Divisional Judicial Magistrate (SDJM), Sadar-I, Kamrup (Metro), Guwahati in C.R. Case No. 1572^C/2013.

17. Petitioner has annexed a copy of the said complaint petition pertaining to C.R. Case No. 1572^C/2013 of the respondent No. 2 as Annexure-XVI.

18. On perusal of the said complaint petition of the complainant/ respondent No. 2, i.e., C.R. Case No. 1572^C/2013, it is seen that the said complainant/respondent No. 2 suppressed before the Court of learned SDJM No. 1, Kamrup (Metro), Guwahati that his earlier petition in C.R. Case No. 7331^C/2007 submitted before the learned JMFC, Kamrup (Metro), Guwahati to issue summons to the petitioner for commission of offence under Sections 166 and 167 of the IPC for giving false information to the Warrant Executing Officer was rejected by the learned JMFC, Kamrup (Metro), Guwahati by order dated 30.04.2013 passed in said C.R. Case No. 7331^C/2007 after considering the detailed report submitted by the authorities of the PWD of the State relating to whereabouts of said Mr. Ikram Yusuf Ali during the relevant period of time.

19. After hearing the learned counsels for the parties and considering the entire aspect of the matter and on perusal of the records of said C.R. Case No. 1572^C/2013, this Court is of the opinion that if the order dated 23.07.2013 passed by learned Sub-Divisional Judicial Magistrate (SDJM), Sadar-I, Kamrup (Metro), Guwahati in C.R. Case No. 1572^C/2013 is allowed to remain in force, it will be an abuse of the process of the Court.

20. For the reasons above, the order dated 23.07.2013 passed by learned Sub-Divisional

Judicial Magistrate (SDJM), Sadar-I, Kamrup (Metro), Guwahati in C.R. Case No. 1572^C/2013 is hereby set aside and quashed to secure the ends of justice.

21. Accordingly, this criminal petition stands allowed to the extent above.

22. The interim order passed earlier on 16.09.2013 in the present proceeding stands merged with this order.

JUDGE

Comparing Assistant