

GAHC010036742023



2024:GAU-AS:7366

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

**Case No. : Crl.Pet./170/2023**

MASUM UDDIN  
S/O ISLAM UDDIN @ UTTOM  
VILL- DAKSHINKULL,  
P.O. BHANGA BAZAR  
P.S. BADARPUR  
DIST. KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS.  
REP. BY THE PP, ASSAM

2:SRI RANJIT DAS  
S/O LATE JATINDRA DAS  
VILL- KHAAG  
P.O. BHANGA BAZAR  
P.S. BADARPUR

DIST. KARIMGANJ  
ASSAM  
PIN-788701

3:MS. BINA RANI DAS  
D/O SRI RANJIT DAS  
PERMANENT RESIDENT OF VILL- KHAAG  
P.O. BHANGA BAZAR  
P.S. BADARPUR  
DIST. KARIMGANJ  
ASSAM  
PIN-788701  
NOTICE TO BE SERVED THROUGH C/O MS. AKUTHO ANGAMI  
4TH

MILE  
DIMAPUR  
NAGALAND  
PIN-79711

**Advocate for the Petitioner : MR S ISLAM, MR. S I KHAN,MR. A K TALUKDAR**

**Advocate for the Respondent : PP, ASSAM, MR. N DUBEY (r-2),F K R AHMED (R3)**

**BEFORE**

**HON'BLE MR. JUSTICE MANASH RANJAN PATHAK**

**31/07/2024**

Heard Mr. A K Talukdar, learned counsel for the petitioner and Ms. S Jahan, learned Additional Public Prosecutor, Assam for the State respondent/opposite party No. 1.

**2.** The opposite party No. 2, the complainant and the opposite party No. 3, daughter of the opposite party No. 2/complainant are represented by their respective counsels, whose names have been reflected in the cause list. But those two opposite party Nos. 2 & 3 remained unrepresented when the matter was taken up for consideration.

**3.** The petitioner herein has filed this criminal petition under Section 482 CrPC praying amongst others to set aside and quash the proceeding of Badarpur Police Station Case No. 32/2023 under Sections 364/447/323/294/ 506/34 IPC read with Sections 3(1)(x)(xi)(xv) of the Schedule Caste & Schedule Tribe (Prevention of Atrocities) Act, 1989 corresponding to G.R. No. 232/2023.

**4.** Brief facts of the case is that on 31.12.2022, the daughter of the complainant/opposite party No. 2 herein, aged about 22 years left her house for her college and did not return home. As such, the son of the opposite party No. 2 on 01.01.2023 lodged a report before the concerned police outpost with regard to missing of the opposite party No. 3. Later, on 28.01.2023 around 3 in the afternoon, few persons from Village-Dakshinkull, Bhanga Bazar under Badarpur Police Station, District-Karimganj with sharp weapons in their hands suddenly entered into their house and threatened the opposite party No. 2 and directed his son to withdraw the missing report filed on 01.01.2023 before the Police Outpost stating that if the said missing report is not withdrawn, then they will face dire consequences. During such process, a fight amongst them took place and on being shouted for help

by the opposite party No. 2, people from the neighborhood gathered in their residence and during such period, the accused persons uttering foul and filthy languages diminishing them as they are from lower class and thereafter, they fled away from their residence. As the accused persons and their family members misbehaved with the opposite party No. 2 and their family, diminished them because of their caste, they were hurt by such action of the accused persons. For such reasons, the opposite party No. 2 was of the impression that those accused persons have kidnapped his daughter/opposite party No. 3 and kept her in their custody and he was of the belief that those accused persons may also kill her. Though, some of the persons decided to solve the dispute between them amicably and approached the accused persons but they did not agree, rather threatened them stating that if the missing report filed on 01.01.2023 before police is not withdrawn, then the accused persons will kill the opposite party No. 3/daughter of the opposite party No. 2. As the opposite party No. 2 waited for amicable settlement of the dispute between him, his family and the accused persons, there was a delay in lodging the complaint. As such, on 30.01.2023, the opposite party No. 2 filed a complaint petition before the learned Chief Judicial Magistrate, Karimganj against the accused persons in that regard requesting the authority to send the matter to the Badarpur Police Station for investigation and to arrest the accused persons in the matter.

**5.** The learned Chief Judicial Magistrate, Karimganj on 30.01.2023 on receipt of the said complaint from the opposite party No. 2 registered it as C.R. Case No. 109/2023 and transferred the matter to the Court of learned Additional Chief Judicial Magistrate, Karimganj for disposal.

**6.** The learned Additional CJM, Karimganj on receipt of the said C.R. Case No. 109/2023 on transfer, considering the complaint under Section 156(3) CrPC disposed of the said complaint sending it to the Officer-in-Charge of Badarpur Police Station to register the said complaint and to investigate the matter directing the complainant to co-operate with the investigation of the case. On such forwarding by the learned Additional CJM, Karimganj, the said complaint petition of the opposite party No. 2 being C.R. Case No. 109/2023 filed on 30.01.2023 was registered as Badarpur Police Station Case No. 32/2023 under Sections 364/447/323/294/506/34 IPC read with Sections 3(1)(x)(xi)(xv) of the Schedule Caste & Schedule Tribe (Prevention of Atrocities) Act, 1989.

**7.** It is seen from the affidavit of the opposite party No. 3/daughter of the opposite party No. 2 that as per the High School Leaving Certificate Examination (HSLC), 2017 issued by the Board of Secondary Education (SEBA), Assam on 31.05.2017, her date of birth is 14.02.2001 and that she had an affair with the petitioner, one of the accused persons of the said complaint dated 30.01.2023

lodged by her father which was subsequently registered as Badarpur P.S. Case No. 32/2023.

**8.** In her affidavit, the opposite party No. 3 stated that both she and the petitioner are major and are living as husband and wife but because of filing of such complaint petition registered as Badarpur P.S. Case No. 32/2023 against her husband and his other family members including her father-in-law, they had to shift their residence frequently. In her affidavit, the opposite party No. 3 also stated that the petitioner was known to her and her family since her childhood and their families were also in good terms for many years, visiting each other's family during Durga Puja, Vishwakarma Puja, Sankranti, Iftar, Eid etc. and as the petitioner and she had a love affair for a long period they decided to marry without changing their religion, deciding that they shall be free to follow their own respective religions to which neither the petitioner nor she had any objection and both of them mutually decided to help and cooperate with each other in observing their respective religions. She also stated that the petitioner and she got married as per the basic Muslim and Hindu rules and rituals and registered their marriage under the Special Marriage Act, 1954. Since the family members of the petitioner and the opposite party No. 3 became furious on coming to know that the opposite party No. 3 got married with the petitioner they being annoyed declared to burn them if they could be found during search and because of such fear they had to shift their residence frequently. In that regard, the opposite party No. 3 also placed a copy of the order dated 10.03.2023 passed by a Co-ordinate Bench of this Court in WP(C) No. 1283/2023, wherein it is stated that as she and the petitioner belong to two different religions, they are facing harassment and hindrances in different forms as both of them tied the knot on 31.12.2022 to live together as husband and wife.

**9.** In the said Writ Petition WP(C) No. 1283/2023, the opposite party No. 3 has also narrated the fact that her father/opposite party No. 2 lodged a complaint in Badarpur P.S. Case No. 32/2023 which was registered under Sections 364/447/323/294/506/34 IPC and as such, prayed before the Court to give them necessary protection.

**10.** Considering such submission of the opposite party No. 3 in said WP(C) No. 1283/2023, the Co-Ordinate Bench of this Court by order dated 10.03.2023 while issuing notice to the respondents therein including the Director General of Police, Assam; the Deputy Commissioner, Karimganj; Superintendent of Police, Karimganj and the Officer-in-Charge of Badarpur Police Station, Badarpur, Karimganj directed not to take any coercive action against the petitioner and opposite party No. 3.

**11.** On perusal of the complaint petition filed by the opposite party No. 2 before the learned CJM, Karimganj that was transferred to the Additional CJM, Karimganj, it is seen that the opposite party No.

2 before filing the said complaint petition did not approach the concerned police station nor filed any such FIR relating to the incident stated in the said complaint petition. The complainant/opposite party No. 2 in his said complaint petition dated 30.01.2023 being C.R. Case No. 109/2023 also did not state as to whether on his such approach relating to the incident alleged, the concerned police station registered his FIR or not. From the said complaint dated 30.01.2023, it is also seen that the opposite party No. 2 before filing the said complaint petition dated 30.01.2023 before the learned CJM, Karimganj did not approach the Superintendent of Police of Karimganj District as required under Section 156 (1) & (2) CrPC.

**12.** Law is well settled that first without exhausting the provisions of Sections 156(1) and 156(2) CrPC and without complying with the provisions prescribed in those two sections, a complainant cannot approach the Court of learned Magistrate by filing a complaint to refer the said application to the concerned police station to register it as a police case for the investigation of the case as has been alleged in the complaint petition.

**13.** The Hon'ble Supreme Court in the case of *Sakiri Vasu -Vs- State of U.P.*, reported in (2008) 2 SCC 409 have laid down that – *If a person has a grievance that the police station is not registering his FIR under Section 154 CrPC, then he can approach the Superintendent of Police under Section 154(3) CrPC by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156(3) CrPC before the learned Magistrate concerned. If such an application under Section 156(3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.*

**14.** It is also seen that though the learned Additional CJM, Karimganj by order dated 30.01.2023 forwarded the said compliant petition to the Officer-in-Charge of Badarpur Police Station to register the said complaint as a police case and to investigate the matter, but the said Magistrate committed error and illegality in accepting the said complaint petition under Section 156(3) CrPC of the complainant/opposite party No. 2 filed on 30.01.2023. Further, the said Magistrate also committed illegality in registering a case amongst others under Sections 3(1)(x)(xi)(xv) of the Schedule Caste & Schedule Tribe (Prevention of Atrocities) Act, 1989 as under the provisions of the said 1989 Act, it is

only the Special Magistrate who has the power under the said 1989 Act to direct registration of any such case under the said Sections of 1989, noted above.

**15.** It is also not the case of the respondent No.2/complainant that he had approached the concerned police station, lodged an FIR relating to the incident alleged under Section 156(1) CrPC and that the same was not registered by police. Then he under Section 156(2) CrPC approached the Superintendent of Police of Karimganj District and informed him about non registration of his FIR in the concerned police station. As the Superintendent of Police of Karimganj District also did not consider his communication and no police case was registered, therefore, he had to file the complaint petition on 30.01.2023 under Section 156(3) CrPC before the Chief Judicial Magistrate, Karimganj being C.R. Case No. 109/2023 for a direction to the Officer-in-Charge of Badarpur Police Station, Badarpur, Karimganj to register the case.

**16.** Since the complaint petition of the opposite party No. 2 itself is non-sustainable on the basis of which the learned Additional CJM, Karimganj passed the order dated 30.01.2023 for registering it as a police case, the said order of the learned Additional CJM, Karimganj is found to be bad in law.

**17.** Consequently, the registration of Badarpur Police Station Case No. 32/2023 under Sections 364/447/323/294/506/34 IPC pursuant to the order of the learned Additional CJM, Karimganj passed in C.R. Case No. 109/2023 also being bad in law.

**18.** For the reasons above and to prevent the abuse of the process of the Court, this Court in exercise of the power conferred under Section 482 CrPC, the complaint petition dated 30.01.2023 being C.R. Case No. 109/2023 submitted by the respondent No.2/complainant before the Chief Judicial Magistrate, Karimganj that was transferred to the Court of learned Additional Chief Judicial Magistrate, Karimganj as well as the proceeding of Badarpur Police Station Case No. 32/2023 under Sections 364/447/323/294/506/34 IPC along with the FIR of the said Badarpur P. S. Case are hereby set aside and quashed.

**19.** Needless to say, that the opposite party No. 2/complainant, if so advised, in accordance with law may approach the concerned police station in lodging any such complaint with regard to the incident of 28.01.2023.

**20.** The petitioner along with the certified copy of this order shall place the same before the Officer-in-Charge of Badarpur Police Station, obtaining necessary acknowledgment from the said authority in that regard.

**21.** Since the petitioner and the opposite party No. 2 earlier approached the Writ Court in WP(C) No. 1283/2023 for their protection and the opposite party No. 3 in her affidavit also stated that because of their inter-religion marriage, either of the family of the petitioner and/or opposite party No. 3 may cause disturbance to them including physical assault, it is made clear that the Superintendent of Police, Karimganj as well as the Officer-in-Charge of Badarpur Police Station shall provide the necessary safeguard to the petitioner and the opposite party No. 3 on their appearance before the Superintendent of Police, Karimganj, with a copy to the Officer-in-Charge of Badarpur Police Station by registered post with A/D within 30 (thirty) days' time, obtaining necessary acknowledgment from the said authority in that regard.

**22.** With the above observation and direction, this criminal petition stands disposed of.

**JUDGE**

**Comparing Assistant**