

GAHC010021552024



2024:GAU-AS:7656

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

Case No. : Crl.Pet./113/2024

ANUSHA KALITA
D/O- SRI CHIDANANDA KALITA, PRESENT ADDRESS- SISTERS PG, H/NO.
27, WARD STREET, UZAN BAZAAR, GUWAHATI, DIST. KAMRUP(M), PIN-
781001, ASSAM AND PERMANENT ADDRESS- SHIBNAGAR KALANGPAR
PATH, NAGAON, P.S. NAGAON SADAR, DIST. NAGAON, ASSAM, PIN-
782001.

VERSUS

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

2:RINKI BORDOLOI
W/O- SHRI DIPJYOTI KAKOTI
MANAGING DIRECTOR OF ABHITH SIKSHA HAVING ITS REGISTERED
OFFICE AT 16/34
2ND FLOOR
F.C. ROAD
UZAN BAZAR
NEAR INCOME TAX OFFICE
DIST. KAMRUP(M)
ASSAM
PIN- 781001

Advocate for the Petitioner : J RABHA, MR A N SARMAH, MR R D GOSWAMI

Advocate for the Respondent : PP, ASSAM, MR. A SAIKIA (R-2)

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

07-08-2024

Heard Mr. Rohit Deb Goswami, learned counsel for the petitioner and Ms. Nandita Das, learned Additional Public Prosecutor, Assam for the State respondent No. 1. Also heard Mr. Anupam Saikia, learned counsel for the respondent No. 2/informant.

2. The petitioner has filed this criminal petition on 02.02.2024, praying amongst others, to set aside and quash the FIR relating to Latasil Police Station Case No. 190/2023 dated 18.10.2023 registered under Section 294 IPC against her corresponding to GR No. 7780/2023 on the basis of the written FIR lodged by the respondent No. 2 on 18.10.2023.

3. The respondent No. 2 is the owner and proprietor of *Abhith Siksha*, an educational institute, where the petitioner was an employee. On 18.10.2023 the respondent No. 2 lodged a written FIR before the Officer-in-Charge of Latasil Police Station stating that the petitioner, an employee (teacher) of her organization, sought for a leave on 17.10.2023 that could not be granted to her, for which she used abusive language to her senior, i.e., the informant and resigned through WhatsApp message without serving any notice period and also did not hand over the official belongings.

4. In the said FIR, the respondent No. 2 further alleged that since then the accused petitioner was trying to bring the reputation of her organization down by continuously reviewing in Google by herself and by her fellow mates, which had brought the reputation of her organization down publicly and that effected business of her organisation. The said act gave her mental harassment, both personally and also from business perspective.

5. It is also stated in the FIR by the informant that as after the said incident of 17.10.2023, on continuous placing of 1(one) star by the persons concerned who are not connected to her organization and never been linked with the said organization, her organization earned a bad reputation. Informant also stated that one Parimita Bhuyan who was her employee left the job on

13.09.2023 without issuing any resignation and reviewed her organization on 18.10.2023 under the influence of the accused petitioner and that said Parimita Bhuyan admitted over phone in the evening of 18.10.2023 that she had done it under the influence of the accused petitioner and the said incident created by the accused petitioner just for a day leave, affected their personal and professional reputation.

6. In the said FIR dated 18.10.2023, the informant/respondent No. 2 gave a list of 16 such reviewers and requested the concerned officer of the Latacil Police Station to take immediate action as the reputation of her organization was at stake and the Google rating of her organization was going down rapidly.

7. Said FIR of the respondent No. 2 dated 18.10.2023 was accordingly registered as Latacil Police Station Case No. 190/2023 under Section 294 IPC against her corresponding to GR No. 7780/2023.

8. The Court on 06.02.2024, while issuing notice to the respondents, also called for the scanned copy of the records of said Latacil Police Station Case No. 190/2023 corresponding to GR No. 7780/2023, which has been placed today. Perused the Case Dairy of said Latacil P S Case No. 190/2023.

9. Mr. Goswami, learned counsel for the petitioner has submitted that though the FIR dated 18.10.2023 of the respondent No. 2 has been registered as Latacil Police Station Case No. 190/2023 under Section 294 IPC against the petitioner, but from mere reading of the FIR, it can be seen that there are no such ingredients of the offence under Section 294 IPC.

10. It is also submitted by Mr. Goswami that the petitioner appeared in the National Eligibility Test and if on the basis of the said FIR of the respondent No. 2 registered as Latacil Police Station Case No. 190/2023 under Section 294 IPC is allowed to proceed, she will face great difficulties.

11. For the reasons above, Mr. Goswami, learned counsel has submitted that the proceeding of said Latacil Police Station Case No. 190/2023 and the FIR of the respondent No. 2 dated 18.10.2023 should be set aside and quashed.

12. Mr. Saikia, learned counsel for the respondent No. 2/informant from the affidavit of the respondent No. 2 filed on 23.04.2024 placed before the Court that the petitioner misbehaved with the respondent No. 2 and involved herself with others, lowering the name and reputation of her organization, thereby rating down of her organization in the Google.

13. Ms. N Das, learned Additional Public Prosecutor, Assam submitted that the police have already recorded the statement of the informant and other witnesses acquainted with the facts of the case relating to said Latasil P.S. Case No. 190/2023. Learned Additional Public Prosecutor, Ms. N Das also stated that statement of the petitioner, accused in said Latasil Police Station Case No. 190/2023 has already been recorded and she was granted bail by police.

14. The CDR report of the mobile number of the petitioner reflects that the petitioner on 17.10.2023 made two calls to the respondent No. 2/informant, at 20:59 19 Hours and 20:59 52 Hours, where the first call was for 7 seconds and the second call was for 6 seconds.

15. Further, during investigation police seized the mobile phone of the respondent No. 2 and then recorded the statement of the petitioner under Section 41 A of the CPC.

16. From the records of the Latasil P.S. Case No. 190/2023 placed before the Court by Ms. N Das, learned Additional Public Prosecutor, it is seen that after completion of the investigation of the case, the investigating officer of the case on 28.11.2023 vide No. 134/2023 submitted the Chargesheet in said Latasil Police Station Case No. 190/2023 under Section 294 IPC.

17. Section 294 IPC reads as follows: -

“294. *Obscene acts and songs.— Whoever to the annoyance of others—*

(a) does any obscene act in any public place, or

(b) sings, recites, or utters any obscene song, ballad or words, in or near any public place,

shall be punishable with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

18. In the case of *Pawan Kumar -Vs- State of Haryana*, reported in (1996) 4 SCC 17, the Hon'ble Supreme Court while considering a case of conviction for offence involving moral turpitude have held the essential ingredients of the offence under section 294 as —

“In order to secure a conviction, the provision requires two particulars to be proved by the prosecution, i.e. (i) the offender has done any obscene act in any public place or has sung, recited or uttered any obscene songs or words in or near any public place; and (ii) has so caused annoyance to others. If the act complained of is not obscene, or is not done in any public place, or the song recited or uttered is not obscene, or is not sung, recited or uttered in or near any public place, or that it causes no annoyance to others, the offence is not committed. The measure of sentence of three months imposable thereunder suggests that such offence is triable summarily under Section 260 of the Code of Criminal Procedure, it being not an offence punishable with death,

imprisonment for life or imprisonment for a term exceeding two years."

19. The Hon'ble Supreme Court while deciding a case relating to the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, in the case of *Swaran Singh -Vs- State*, reported in (2008) 8 SCC 435 have held that —

"We must, therefore, not confuse the expression "place within public view" with the expression "public place". A place can be a private place but yet within the public view. On the other hand, a "public place" would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality of the State, and not by private persons or private bodies."

20. From the reading of the FIR of the case lodged by the respondent No.2/ informant of the case, it can be seen that she did not state that the petitioner used abusive language to her in a public place. The FIR of the case lodged by the respondent No.2 was for her mental harassment and for bringing down public reputation of her organization, *Abhith Siksha*, by continuous reviewing in Google by the petitioner and her fellow mates putting (giving) one star against her said organization, *Abhith Siksha*, after the incident with the petitioner.

21. Someone reviewing the organisation of the informant/respondent No.2 in in a particular platform of Google by granting it one star, those people have expressed their opinion with regard to the organization of the informant only, such review may be good or poor or bad, but definitely such act of review granting one star to the informant/respondent's organisation cannot be said to be an obscene act in any public place or cannot be said of singing and/or reciting and/or uttering any obscene song, ballad or words in a public place or near public place and further those acts did not cause annoyance to any member of the public.

22. Moreover, from the FIR of the case that was lodged by the respondent No. 2 as informant nor in the chargesheet No. 134/2023 dated 28.11.2023 filed in said Latasil P.S. Case No. 190/2023 there is no mention about the place where the petitioner used abusive language to the respondent No.2, i.e., the concerned public place or near the concerned public place by which the said act of the petitioner caused annoyance to any member of the public in such a public place.

23. In the chargesheet No. 134/2023 dated 28.11.2023 filed in said Latasil P.S. Case No. 190/2023 there is a mention that —"Due to some unavoidable circumstances the informant could not grant leave to the petitioner and as a result on that day, i.e., on 17.10.2023 at 08:59 pm the petitioner called on informants Mobile 9706171198 from her mobile number 9365493100, abused

the informant by using vulgar language and resigned from the job by sending WhatsApp message. On that day when the informant received the call from the accused petitioner, the mobile phone of the informant was on loudspeaker as a result of which husband of the informant heard the entire conversation. The CDR of the informant's mobile number has also corroborated the fact that on 17.10.2023 at 08:59 pm the informant received call from the mobile phone of the accused petitioner. Thus, prima facie a case is made out under Section 294 IPC against the accused petitioner."

24. From the above it is observed that in the case in hand both the informant/respondent No.2 in her FIR relating to Latasil P.S. Case No. 190/2023 as well as the Investigating Officer of the case in the Chargesheet filed in said Latasil P.S. Case No. 190/2023 did not state the public place or the concerned place near public place where the petitioner committed such obscene act and who were the members of public to whom the petitioner caused annoyance in such a public place or near the concerned public place.

25. As noted above, to prove the offence under section 294 of IPC mere utterance of obscene words are not sufficient, but there must be further proof to establish that it was to the annoyance of others where it should be in a public place or near a public place and on scrutiny of the record in the present case those are found lacking.

26. For the reasons discussed above, this court is of the view that the proceeding of Latasil Police Station Case No. 190/2023 under Section 294 IPC, corresponding to G R Case No. 7780/2023 against the petitioner pending before the learned CJM, Kamrup (Metro) at Guwahati amounts to abuse of the process of the Court and accordingly, it deserves to be set aside and quashed.

27. Consequently, the proceeding in G R Case No. 7780/2023 under section 294 of IPC, 1860 arising out of Latasil Police Station Case No. 190/2023, pending before the Court of learned Chief Judicial Magistrate, Kamrup (Metro) at Guwahati along with the FIR dated 18.10.2023 lodged by the respondent No.2 pertaining to said Latasil Police Station Case No. 190/2023 are hereby set aside and quashed.

28. In the result, this criminal petition is allowed and disposed of.

29. Return the case dairy of Latasil Police Station Case No. 190/2023, corresponding to G R Case No. 7780/2023 to the Public Prosecutor, Assam, Gauhati High Court, Guwahati obtaining

necessary acknowledgement from the said authority.

JUDGE

Comparing Assistant