
(2020) 04 GAU CK 0009
In the Gauhati High Court
Case No : Criminal Petition No. 998 Of 2018

Anurag Sarmah @ Sharma

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

Date of Decision : 29-04-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 41A, 197, 200, 202, 482
Indian Penal Code, 1860 — Section 34, 147, 148, 339, 379, 506

Citation : (2020) 04 GAU CK 0009

Hon'ble Judges : Ajai Lamba, CJ

Bench : Single Bench

Advocate : T.J. Mahanta, P.P. Baruah

Final Decision : Dismissed

Judgement

1. Anurag Sarmah @ Sharma has filed this petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing Complaint Case

No.62c/2018 pending in the Court of Judicial Magistrate, First Class, Dibrugarh so far as the petitioner is concerned and for quashing order dated 10th

July, 2018 passed in the said criminal complaint case by the Judicial Magistrate, First Class, Dibrugarh.

2. The Court proceedings have been conducted by means of creating a Virtual Court with the help of technology, so as to maintain distance between

the staff, Advocates and the Presiding Judge.

3. I have heard Mr. T.J. Mahanta, learned senior counsel assisted by Mr. T.Gogoi, learned counsel for the petitioner and Mr. P.P. Baruah, learned

Public Prosecutor, Assam for Respondent State. None appears for the respondent/complainant.

4. Factual background is required to be seen.

It appears that one Ashok Kumar Jha lodged an FIR on the basis of an application dated 3rd May, 2018 (Lahowa P.S. Case No.63/2018 under

Sections 147/148/339/506 I.P.C.) with the accusation that Ashok Kumar Jha earlier made complaints in July, 2017 till 2nd May, 2018 against

Debeswar Gogoi, Nayanjoti Gogoi, Jitu Gogoi, Dipen Das, Dipankar Gogoi, Anupam Konwar, Sri Suresh Bawri, Rajesh Gogoi and Dhruba Das in

relation to property of Jha Tea Estate.

It has been alleged that at about 8.20 P.M., Nayanjyoti gave a call on the mobile phone to deliver the tea estate, namely Jha Tea Estate or else they

will continue looting green tea leaves from the garden and any obstruction would cause bloodshed. Number of the mobile phone has been given in the

said document appended with the petition as Annexure-6.

It has further been alleged in the complaint/FIR that in consonance to the threat, at about 8.30 A.M., the above named accused started plucking green

tea leaves from the garden by taking law in their own hands.

Request has been made to the police to take all necessary action against the offenders and protect the life and property.

5. It appears that Shri Anurag Sarma, Dy.S.P., Dibrugarh was asked to investigate the matter.

6. It further appears that notice under Section 41-A of the Code of Criminal Procedure was given to Debeswar Gogoi dated 19th May, 2018 with the

plea that there are reasonable grounds to examine the said Debeswar Gogoi to ascertain the facts. It further appears that Debeswar Gogoi did not

appear before the investigating agency on 21st May, 2018, in response to the notice dated 19th May, 2018 (supra) (Annexure-7), whereupon second

notice was given on 22nd May, 2018 (Annexure-8) asking Debeswar Gogoi to appear on 26th May, 2018.

7. The impugned complaint placed on record as Annexure-1 dated 4th June, 2018 alleges that Debeswar Gogoi had filed a Title Suit No.167/2017

against Maharudra Jha, (i.e. accused No.2 in the complaint), for declaration and permanent injunction restraining him and his workers, subordinates

and agents from entering the land which was in possession of father-in-law of the complainant, namely Lt. Baneswar Gogoi for the last about 50 years

continuously.

It has been stated in the impugned complaint that Lt. Baneswar Gogoi planted

green tea in the land and after his death, Debeswar Gogoi continued tea cultivation. However, Manarudra Jha all of a sudden came back from Bihar and tried to dispossess her husband in collusion with others. It has been stated that Maharudra Jha is an influential person and is a man of money, power and tries to instigate persons against husband of the complainant so as to grab the property. It has been alleged that said Maharudra Jha with the assistance of police personnel has already filed false criminal cases against husband of the complainant, namely Debeswar Gogoi and others, which are pending.

Details of those cases are not required to be given as they would not be relevant for considering the issue raised by virtue of this petition.

8. It has been alleged that in continuation of same criminal design Anurag Sharma, accused No.1 in the complaint (petitioner) forced Debeswar Gogoi to vacate the land and to deliver possession to accused No.2 Maharudra Jha illegally, while taking law in their own hand. The accused were informed about the pendency of title suit, however, they refused to obey the order. Accused No.1/Anurag Sharma (petitioner) threatened that they would snatch away the small tea garden by any means and continue to harass the complainant and her husband/family members.

9. In para-5 of the complaint, following accusation has been made in verbatim :

â??5. That in continuation of the aforesaid illegal activities of the accused persons on 01/06/18 at about 3.30 a.m. when the complainant along with her minor daughter and son, in absence of her husband was sleeping at her residence about 4 (Four) Bolero car came to her house with force of C.R.P.F. and Police leaded by the accused persons Sri Anurag Sharma and Sri Maharudra Jha and threatened her to open the door of her house by kicking the front door and when the complainant let them to know about the absence of her husband they without listening to her, compelled her to open front door and by creating havoc and terror situation entered into all the rooms including her bedroom wherein her minor daughter and son were sleeping, and that is also without the presence of any woman police, local person or Gaon Burah. When the minor daughter and son of the complainant wakeup and as they feared seeing the situation, the complainant requested the accused person no. 1 not to continue his such type of activities, but the accused person no. 1 touching her body forcefully pulled her to the inside room

and started throwing the bed sheet, down lop and other goods and belongings of the house. The accused person also used obscene languages towards the complainant and when the complainant objected he warned her to inform her husband Sri Debeswar Gogoi for vacating the land and in question otherwise he will be shot dead by his revolver. Lastly when other relatives of the complainant hearing an shouting assembled therein and in their presence the accused person no. 1 waned the complainant to send the message to her husband to deliver the possession of the aforesaid land to the accused person no. 2 immediately else to face with further dire consequences and fled away there from.â??

10. Leaned counsel for the petitioner contends that Anurag Sharma being DSP and Investigating Officer of FIR Lahowal Police Station Case

No.63/2018 (supra) had gone to the house of the complainant in discharge of his public duties. The accused in FIR Lahowal Police Station Case

No.63/2018 (supra) refused to join investigation although repeated notices under Sections 41A were given. In such circumstances, sanction to

prosecute is required to be taken under Section 197 Cr.P.C. Since sanction to prosecute has not been taken, and therefore, proceedings are rendered

illegal and liable to be quashed.

Learned counsel for the petitioner has also relied on Annexure-9 which purportedly was prepared in regard to the incident of 1st June, 2018. It is a search list.

It is the contention of learned counsel for the petitioner that the petitioner had gone to conduct search for the accused Debeswar Gogoi so as to arrest him.

11. Learned counsel for the respondent No.2 has not appeared. I have, however, gone through the pleadings and the accompanying documents and have considered the legal issues in context of the documents placed on record.

12. I have considered the facts and circumstances of the case.

It cannot be disputed that civil suit/civil proceedings are pending in respect of the property which is the cause of dispute. It further cannot be disputed,

in context of recital/allegations in the FIR (Annexure-6) Lahowal Police Station Case No.63/2018 (supra) that the allegation was in regard to Jha Tea

Estate, made against Debeswar Gogoi and others, and for plucking green tea

leaves from the garden. It is merely for committing offence of theft under Section 379 I.P.C. of tea leaves which could not have been stored in the house.

13. So far as the alleged incident on 1st June, 2018 is concerned, the same is said to have occurred at 3.30 A.M.

14. Considering the facts and circumstances, it appears that impugned order dated 10th July, 2018 was passed by Judicial Magistrate, First Class,

Dibrugarh. On perusal of the statement of the complainant and witnesses recorded under Sections 200 and 202 Cr.P.C.,

it has been stated that on 1st June, 2018 at 3.30 A.M., while the lady/complainant was alone with two minor children, the police personnel went to her

house purportedly in search of her husband and forcibly entered the house and barged each and every room. Blankets were removed from atop 14

years old daughter. The Court has taken cognizance of the fact that civil dispute has been pending. The Court has further taken cognizance of the

evidence that has come on record to the effect that the petitioner Anurag Sarmah threatened the complainant that he would kill her husband if he does

not stop laying claim over the disputed land, while the accused No.2 kept sitting in a car parked near the house. No woman police personnel were

present. In this background, vide the impugned order dated 10th July, 2018, it has been observed by the Court that the Court is of the considered

opinion that sanction to prosecute is not required against Anurag Sarmah (accused No.1) because ex-facie it reveals that the acts were not done in

exercise and colour of his office. Under the circumstances, the accused was summoned to stand trial.

15. Considering the nature of the incident; the nature of accusation against the petitioner, who is accused No.1 in the complaint; the time of incident

i.e. 3.30 A.M.; the nature of case which was purportedly being investigated by the petitioner [Lahowal Police Station Case No.63/2018 (supra)], it is

evident that the petitioner abused his official position as police officer and sided with one of the parties in the civil dispute. Allegedly, it is with such

criminal design that the petitioner went to the house of the complainant, a lady, at the dead of night and allegedly committed the offence. Considering

the facts and circumstances in context of the provisions of Section 197 of the Code of Criminal Procedure, the Court has no doubt that the petitioner

was not acting or purporting to act in the discharge of his official duty. It becomes evident that in the garb and in abuse of his official position as a police officer, the petitioner allegedly indulged in committing the said act.

16. Considering the facts and circumstances, above noted, I find no fault with the impugned order dated 10th July, 2018. For such alleged action,

protection under Section 197 Cr.P.C. cannot be granted so as to safeguard the interest of the petitioner. Protection under Section 197 Cr.P.C. has not

been provided by the legislature so as to protect persons such as the petitioner who allegedly committed the acts, as averred in para-5 of the

complaint, and extracted specifically in earlier part of this judgment.

17. The Court is of the considered opinion that sanction to prosecute the petitioner as accused No.1 is not required, in context of his actions alleged in

the complaint. The impugned order, therefore, does not suffer from any illegality.

18. Section 482 of the Code of Criminal Procedure can be invoked to prevent the abuse of the process of any Court or to secure ends of justice.

Surely, actions such as allegedly committed by the petitioner would not fall within the four corners of such jurisdiction so as to allow the petitioner to

invoke Section 482 of the Code of Criminal Procedure. Rather, if such a person is given protection, it would be result in abuse of process of law; and

ends of justice would not be secured.

19. Dismissed.

20. Let a copy of this order be sent to the Principal Secretary, Home and Director General of Police, Assam.

21. Anything said herein in this order is not observation of this Court on merits of the case. The facts and circumstances have been considered only so

as to take into account whether in the facts and circumstances of the case the petitioner is entitled to protection under section 197 Cr.P.C. or not.

22. Let a copy of this order be provided under the signature of the Court Master.