
(2021) 07 GAU CK 0050

In the Gauhati High Court

Case No : Writ Petition (Criminal) No. 10 Of 2019

Girindra Das

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 13-07-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Indian Penal Code, 1860 — Section 143, 147, 148, 149, 341, 365, 387, 447, 506

Code Of Criminal Procedure, 1973 — Section 173(2)(ii), 190(1)(c)

Citation : (2021) 07 GAU CK 0050

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : S P Choudhury

Final Decision : Disposed Of

Judgement

1. Heard Mr. S.P. Choudhury, learned counsel for the petitioner as well as Mr. D. Nath, learned Senior Government Advocate appearing for the State.

2. It is seen that the grievance in the present writ petition is that despite FIR lodged by the petitioner on 02.05.2019, the IO of Bazaricherra P.S. Case No.59/2019 under sections 143/147/148/149/341/447/365/387/506 IPC had not carried out investigation.

3. The learned counsel for the petitioner has submitted that the FIR reveals that not only the accused persons had restrained and confined the petitioner, but also demanded ransom from the petitioner and family members and he was threatened with illegal fire arms. It is submitted that it has been specifically mentioned in the FIR that the accused persons had direct connection with Islamic fundamentalist/ terrorist organization. It is further

submitted that in the order dated 26.07.2019, this Court had mentioned as follows:

“Grievance of the petitioner is that there has not been any proper investigation, in respect of Bazaricherra PS Case No.59/2019, in

which petitioner is the informant. Further grievance is that appropriate sections of law have not been added.

Therefore, apprehension is expressed that this may lead to misdirection in investigation.

On the next date Mr. D Nath, learned Government Advocate, Assam shall place before the Court status report of investigation in

Bazaricherra PS Case No.59/2019.

List in the admission column on 21.08.2019.”

4. Thereafter, this Court by order dated 21.08.2019 noticing that nothing had been stated in the para-wise comments about the investigation carried out

or progress made therein direction was made to the Superintendent of Police, Karimganj to submit status report in terms of order dated 26.07.2019.

5. The learned Senior Government Advocate submits that pursuant to the said order dated 21.08.2019, the status report dated 17.09.2019 had been

submitted and the filing of the said status report is reflected in the order dated 18.11.2019. By the said order, this Court had directed that the Forest

department of the State be impleaded as respondent no.6.

6. By referring to the affidavit filed by the respondent no.3 i.e. the Superintendent of Police, Karimganj on 03.02.2021, the learned counsel for the

petitioner submits that the said affidavit has been perfunctorily and mechanically filed without indicating the nature of investigation carried out and

without giving any material particulars.

7. Accordingly, it is submitted by the learned counsel for the petitioner that the apprehension expressed by the petitioner, which is recorded in the

order dated 26.07.2019 has turned into a reality because the IO of the said Bazaricherra P.S. Case No.59/2019 has submitted a final report. It is

submitted that as per instructions received by him, the police have not even examined all the persons who were recently on the date of the incident

and the statement of the immediate neighbors has also not been recorded.

8. The learned Senior Government Advocate submits that after closure of the investigation, final report number 60/2019 dated 26.11.2019 has been

submitted and thereafter no further investigation could be carried out as the investigation was closed.

9. Having noticed that this is a writ petition wherein the petitioner has sought for direction to the respondents to incorporate the relevant and

appropriate section as discernable from the FIR for issuance of the writ or a direction to the respondents to investigate the matter with spirit and

independently without being influenced by any extraneous considerations, this Court is of the considered opinion that on submission of the final report

of closure of investigation, the petitioner has a right under section 190(1)(c) Cr.P.C to a copy thereof.

10. The learned counsel for the petitioner submits that he has no instructions as to whether the petitioner has been served with a copy of the closure

report which is also known as final report as per the requirement of section 173(2)(ii) of the Cr.P.C.

11. It is deemed appropriate in the light of the status-report dated 17.09.2019 that the said status report be incorporated in this order so that the

petitioner is made aware of the nature of investigation being carried out. The Court is of the opinion that the disclosure of the status report in this order

will not cause any prejudice to the State respondents. Accordingly, the disclosure of the status report is being made under the peculiar facts and

circumstances of this particular case. The status report is as follows:

Office of the Superintendent of Police

Karimganj ::: Assam

Letter No.CRIME/IX-15/HC/2019/6954/ Dated:: 17/09/2019

To,

â??Xâ?? (name withheld),

Addl. Sr. Govt. Advocate, Assam,

Honâ??ble Gauhati High Court,

Guwahati.

Sub:- Status report in connection with WP(Crl) No.10/2019 (Girendera Das-Vs- State of Assam & Otrs) Pertaining to Bazaricherra PS Case

No.59/2019 u/s 143/147/148/149/341/447/365/387/506 IPC.

Ref:- Your M/No.Addl./SRGA/DN/19/7226-7228, Dated, 28/08/2019.

Sir,

In inviting a reference to the subject cited above, I have the honour to submit herewith the upto date status report in connection with the

case for favour of your kind information and necessary action.

On 02/05/2019 at 2:40 pm, the complainant Sri Girindra Das @ Sun, S/o Lt. Brojendra Ram Das of Vill-Manikbond Mahi, PS Bazaricherra

Dist. Karimganj lodged and FIR at the Bazaricherra PS to the effect that on 20/04/2019 at about 7-00 PM, while the complainant was

proceeding to watch his fishery at Chourala on his own land, the FIR named accused namely- (1) Abdul Jalil, S/O Lt. Anfor Ali, (2) Md.

Sufian Ali S/O Lt. Tahir Ali, (3) Akbabure Rahman S/O Abdul Jalil, (4) Md. Sabuddin @ Badrul S/O Lt. Nimar Ali, (5) Md. Karim Ali S/O

Md. Tayab Ali, (6) Akram Ali, S/O unknown all are of village Sambhunagar, Manikbond, Kotamoni villages respectively under

Bazaricherra PS possessed with fire arms and sharp weapons stopped him and took him forcibly on gun point in the house of accused

Abdul Jalil who are the sympathizer of an international anti-social group and demanded Rs.3,00,000/- (three lakh) only for their

international anti-social group. The Complainant further alleged that if he failed to pay the demanded ransom, the FIR named accused

persons threatened him to cause harm to his family members with dire consequences. Hence, the case has been registered and investigation

carried on.

Action taken so far:-

1) The I/O visited the P.O. and drew a rough sketch map of the same by showing details as per the index.

2) The I/O examined the Complainant Sri Girendra Das @ Sun S/O Lt. Brajendra Ram Das of Vill-Manikbond Mahi, PS Bazaricherra, Dist.

Karimganj and recorded his statements U/S 161 Cr.P.C. During examination the I/O asked the Complainant to produce the land document

of his fishery. However, the Complainant failed to produce any land document though the Complainant in his FIR alleged that he was in his

fishery at the time of occurrence, i.e. on 20/04/2019 at about 7-00 P.M.

3) The I/O also examined the witnesses viz. (i) ASI Sanjib Sinha, I/C, Nagra P.P. (ii) Barindra Das S/O Lt. Brojendra Das of Village-

Manikbond, PS Bazaricherra, (iii) Gulab Uddin S/O Lt. Hamid Ali, Village- Manikbond, PS Bazaricherra, (iv) Pintu Das, S/O Lt. Pulindra

Das, Village- Manikbond, PS Bazricherra, (v) Rangadulal Sarkar S/O Kamala Kt. Sarkar, Village- Manikbond, PS Bazaricherra, (vi) Lakhi

Kata Das S/O Lt. Jitendra Das, Village- Manikbond, PS Bazaricherra, (vii) Hasan Ali S/O Lt. Abdul Karim, Village-Manikbond, PS

Bazaricherra, (viii) Binay Charai S/O Lt. Manik Chorai, Village- Manikbond, PS Bazaricherra, Dist. Karimganj and recorded their

statement u/s 161 Cr.P.C also.

4) During investigation, the witness namely Binoy Chorai, S/O Lt. Manik Chorai, Village- Manikbond, PS Bazaricherra produced one

Photostat copy of document, issued jointly by the District Tribe Welfare Officer, Karimganj District Collector/Deputy Commissioner,

Karimganj and Divisional Forest Officer, Karimganj vide Sl. No. 401, Dated, 08/02/2010 regarding allotment of 30 bighas Forest land

under occupation of Manik Chorai the Late father of Binoy Chorai. Ongoing through the land document as produced by the aforesaid

witnesses, it could be learnt that, the P.O is a forest land and Title occupation was allotted to one Manik Chorai, i.e. the father of the

witness.

5) During the investigation, the I/O made house search of all the FIR named accused persons. However, neither any Gun has been

recovered or detected during the time of house search, nor any evidence in support of the FIR named accused persons found for possessing

of illegal Arms.

6) During the investigation, all the FIR named accused appeared before the I/O at Bazaricherra PS and they were examined/ interrogated

thoroughly and recorded their statement U/S 161 Cr.P.C. in connection with the case.

7) The I/O also collected GDE Nos. of Nagra P.P., vide No.327, Dated, 22/04/2019, 328, Dated, 22/04/2019, 329, Dated, 22/04/2019, 338,

Dated, 23/04/2019 and 339, Dated, 23/04/2019 respectively in connection with the case.

8) During investigation of the case and on examination of available witnesses, it is revealed that there is a dispute going on between the

Complainant and the FIR named accused persons since last 01(one) year owing to the physical possession of the disputed land. In course of

the investigation, it is also learnt that the disputed land is a Reserve Forest land measuring about 10 bighas of land which was allotted in

the name of one Manik Chorai, i.e. the Late father of the witness Binay Chorai, but the Complainant failed to produce any land document of

the disputed forest land despite issuance of repeated direction to produce the land documents.

In course of investigation of the case, the allegation regarding the kidnapping of Complainant on gunpoint as well as demanding and

payment of Ransom of Rs.3,00,000/- (three lakh) to be paid in favour of an international anti social group is totally false and fabricated

and baseless one. It is pertinent to mention here that on the basis of the statement of the I/C, Nagra P.P. as well as the GDE extract of Nagra

P.P., the date of occurrence was mentioned to be found on 22/04/2019 regarding physical assault on the Complainant by 7/8 persons.

The investigation of the case is almost completed and the case is now pending only for submission of F.F.

Submitted for favour of your kind information.

Yours faithfully

Superintendent of Police,

Karimganj

12. In view of the said status report dated 17.09.2019, this Court is of the considered opinion that no purpose will be served in keeping the present writ petition pending.

13. Accordingly, on closure of the investigation, this writ petition is also closed. However, with a liberty to the petitioner to file a protest petition, if so advised before the learned competent Court having jurisdiction.

14. This Court is further inclined to observe before parting with the records that in the present case, the investigation was not being monitored by this

Court and therefore, in exercise of writ jurisdiction under Article 226 of the Constitution of India, the Court is not inclined to appreciate the nature of

investigation carried out so far and to issue further directions of either further investigation or approve the closure of the investigation which may

prejudice the petitioner in exercising his right to submit a protest petition before the competent Court.

15. Accordingly, with the aforesaid observation this writ petition stands closed with liberty to the petitioner as indicated above.