
(2018) 05 GAU CK 0043
In the Gauhati High Court
Case No : Crl.Pet. 559 of 2017

HAREN MAHANTA

APPELLANT

Vs

THE STATE OF ASSAM and ANR

RESPONDENT

Date of Decision : 07-05-2018

Acts Referred:

Indian Penal Code, 1860 — Section 346, 498(A)
Code of Criminal Procedure, 1973 — Section 211

Citation : (2018) 05 GAU CK 0043

Hon'ble Judges : HITESH KUMAR SARMA

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. Heard Mr. AC Sarma, learned counsel for the petitioner and Mr. BJ Dutta, learned Addl. PP for respondent No.1/State. The respondent No.2 is

represented by Mr. S. Deka, learned counsel.

2. The present petition is filed seeking quashment of the order dated 18.03.2017 passed by the learned Judicial Magistrate, 1st Class, Nagaon in CR

Case No.763/2015 ordering issuance of summon against the present petitioner under Section 498(A) IPC.

3. Learned counsel for the petitioner has submitted that the respondent No.2 earlier also filed a case before Jajori Police, which was registered as

Jojori PS Case No.98/2013 under Section 498(A)/346 IPC. In the aforesaid case, investigation was not properly carried out by the investigating Police

Officer. These facts are revealed from the complaint petition on the basis of which cognizance by the aforesaid order was taken by the learned trial

court. The complaint petition itself indicates that there was another case filed by the present respondent No.2 against the present petitioner, inter alia,

under Section 498 (A) IPC. A copy of the complaint petition is annexed as Annexure-9, at pages-70 to 72 herein. The learned counsel for the petitioner has drawn attention of this Court to Annexure-3, at pages 22 to 24, to show that in the aforesaid Jajori PS Case No.98/2013, Final Report has been submitted after investigation of the case, with a further prayer by the investigating Police Officer to initiate a proceeding against the present respondent No.2 under Section 211 of the CrPC. Vide Annexure-5, at page- 31 of the petition, the aforesaid Final Report was accepted by the learned trial court.

4. On perusal of the order, dated 22.12.2013, on the Final Report, it is found that the informant/respondent No.2 could not be traced out, meaning thereby, that she could not be heard in respect of acceptance or otherwise of the Final Report submitted by the investigating Police Officer. The said order also makes it clear that a Non-FIR case has been ordered to be registered as prayed for by the investigating Police Officer against the respondent No.2.

5. In the considered view of this Court, order drawing up a proceeding against the respondent No.2 at the instance of the investigating Police Officer without specifically stating the acceptance or otherwise of the Final Report, could not have been passed by the learned trial court. There is no instance in the said order as to what was the mode and manner in which process was issued to inform the respondent No.2 in respect of submission of the Final Report by the investigating police officer of aforesaid Jajori PS Case No.98/2013.

6. That being so, in the considered opinion of this Court, it is fit case where the learned trial court shall look into the aforesaid aspect, particularly, a notice has to be issued upon the respondent No.2 in respect of acceptance or otherwise of the Final Report submitted in respect of Jajori PS Case No.98/2013 and thereafter only, on hearing her objection, if any, final decision ought to have been taken.

7. As stated above, there is no instance in the order, dated 22.12.2013, passed by the learned trial court as to what happened to the Final Report.

There is no specific order of acceptance or rejection of the Final Report. Therefore, in view of the statement made by the complainant in the complaint petition in CR Case No.763/2015 as well as in the order passed in

Jajori PS Case No.98/2013, referred to above, the learned trial court ought to have considered the matter in its entirety.

8. In view of the above position, both the parties are directed to appear before the learned trial court on 06.06.2018 and on their appearance, the learned trial court shall consider the observations of this Court made hereinabove and will proceed with the Final Report in Jajori PS Case No.98/2013 afresh, and thereafter, will consider the matter in respect of continuance of the proceeding of CR Case No.763/2015 keeping in view the statement therein stating pendency of the aforesaid Jajori PS Case.

9. With the above directions and observations, this petition stands disposed of.

10. Learned counsel for both the parties shall appear before the trial court on the aforesaid date along with a certified copy of this order.

11. LCR be sent with the copy of this order within 7 (seven) days from today by the Registry.