

(2018) 05 GAU CK 0012
In the Gauhati High Court
Case No : Crl.Pet. 363, 365 of 2011

KAMLESH SINGH

APPELLANT

Vs

THE STATE OF ASSAM AND ANR

RESPONDENT

Date of Decision : 10-05-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 401, 482

Citation : (2018) 05 GAU CK 0012

Hon'ble Judges : HITESH KUMAR SARMA

Bench : Single Bench

Final Decision : Disposed Of

Judgement

[1] None appears for the petitioners on call. Also none appears for the respondent No. 2 on call. State respondent No. 1 is represented by Mr. B

Sarma, learned Additional Public Prosecutor.

[2] Both the matters have been posted for hearing. Both these petitions are pending since 2011, and therefore, considering the fact that none appears

for the petitioners and the respondent No. 2 and also in view of the fact that the status report of the case called for in Criminal Petition No. 363/2011,

vide order, dated 19.04.2018 although same is not required now for the reasons that the LCR has been received in the said case and on perusal of

which this Court can see as to in what stage the case is pending before the learned trial court.

[3] I have perused both the petitions as well as the FIR which is common in both the petitions. I have also perused the record of the Lower Court. The

record of the Lower Court makes it appear that there is no further proceeding carried out in the case after the bail order of the accused-petitioners.

Therefore, case has not been progressed.

[4] These Criminal Petition No. 363/2011 has been filed by the petitioner, Sri Kamlesh Singh and the Criminal Petition No. 365/2011 has been filed by

the petitioners, Sri Surendra Agarwal and Sri Nagendra Agarwal under Sections 482/401 of the Cr.PC praying for quashing of the FIR, dated

27.05.2011 of Panbazar P.S. Case No. 174/2011.

[5] I have perused the FIR to find out whether a cognizable offence has been made out against the accused-petitioners. On perusal of the FIR it is

found that the allegation of the informant is against one Binay Singh who was his employee and who was entrusted with the collection of money from

the market in respect of his business. He had collected an amount of Rs. 6 lakhs and did not give the same to the informant. He had also in his

possession one outstanding bill and some material in respect of accounts of his firm. There is absolutely no allegation made against the present

accused-petitioners. Their names only figures in the FIR as persons involved in the alleged offence. But, there is no statement at all, even to indicate

remotely, that the present accused-petitioners are, in any way, involved in the allegation alleged.

[6] That being so, prima facie, there is no material against them in respect of commission of a cognizable offence, and therefore, proceeding against

them in the case will be an abuse of the process of the Court. Therefore, by invoking the inherent power of this Court under Section 482 of the Cr.PC,

the FIR, referred to above, in respect of the present accused-petitioners in the aforesaid two criminal petitions are quashed.

[7] Both the petitions are disposed of accordingly.

[8] Send down the LCR along with a copy of this judgment.