

(2023) 06 GAU CK 0095
In the Gauhati High Court
Case No : Criminal Petition No. 747 Of 2016

Smriti Lekha Kakoti

APPELLANT

Vs

State Of Assam And Anr.

RESPONDENT

Date of Decision : 28-06-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 190, 200, 202, 204, 482

Indian Penal Code, 1860 — Section 499, 500

Citation : (2023) 06 GAU CK 0095

Hon'ble Judges : Susmita Phukan Khaund, J

Bench : Single Bench

Advocate : A. Choudhury, J.C. Choudhury, L.C. Dey

Final Decision : Disposed Of

Judgement

1. Heard Mr. A. Choudhury, learned counsel for the petitioner as well as Mr. J.C. Choudhury and Mr. L.C. Dey, learned counsel for the respondents.

2. The petitioner is the wife of the respondent no. 2. She has filed this application under Section 482 Cr.P.C. challenging the impugned order dated 17.09.2015 passed by the Special Judicial Magistrate, Assam at Guwahati in Complaint Case No. 1755(C)/2015.

3. The petitioner has submitted that she had a love affair with the respondent No. 2 since 1997 and she got married to him in the year 2006, as per Hindu rites. From the threshold of her marriage, she was subjected to cruelty by her in-laws and finally her husband also started subjecting her to cruelty. Her husband was also maintaining an illicit relationship with Smt. 'X' and she caught her husband with Smt. 'X' red handed in an objectionable situation. This resulted in a quarrel between the petitioner, respondent no. 2 and Smt. 'X'. Thereafter, the relationship between the petitioner and the respondent no. 2 became strained and at times he also even threatened to kill her and he tried to drive the petitioner out of her matrimonial home. The petitioner was impelled to lodge the

FIR on 10.06.2015, which was registered as Dispur P.S. Case No. 1126/2015, corresponding to G.R. Case No. 6002/2015 and finally, charge-sheet was laid against the respondent no. 2. Cognizance was taken by the learned Judicial Magistrate First Class, Kamrup (M), but the respondent no. 2 had preferred a Criminal Petition No. 19/2016 with prayer for quashing the FIR dated 10.06.2015 as well as the proceedings on the basis of the FIR.

4. It is also submitted that the petitioner filed a petition on 17.06.2015 before the Assam State Commission for Women against the respondent regarding cruelty meted out to her as well as the dowry demanded from her by the respondent no. 2 and notices were issued against the respondent no. 2 by the Commission for women.

5. In retaliation, the respondent no. 2 initiated a complaint case against the petitioner under Section 500 of IPC on 04.08.2015 with allegation of defamation against the respondent no. 2 by the petitioner.

6. It was alleged by the respondent no. 2 that, he was perturbed by the behaviour of the petitioner after his marriage to her. She was obstinate and used to visit undisclosed places. When the respondent no.2's endeavours went in vain, he was impelled to pray for a decree of divorce by dissolution of marriage between him and the petitioner and his petition was registered as F.C. (Civil) No. 264/2015 and notice was issued by the Family Court, Guwahati to the petitioner.

7. On receipt of notice, the petitioner left her matrimonial home and lodged the FIR dated 10.06.2015. The respondent no. 2's written complaint was registered as Complaint Case No. 1755/2015 and his initial deposition was recorded and two witnesses were examined under Section 202 Cr.P.C. Cognizance was taken by the learned Trial Court under Section 500 IPC and notices were issued to the petitioner, who appeared before the Court and prayed for bail.

8. The petitioner impugned the order of the learned trial Court contending inter-alia that the notices were issued arbitrarily without pondering over the matter. It is submitted that the learned trial Court has erred in law as well as in facts, as no offence under Section 499/500 IPC is made out against the petitioner. Further proceedings of the Court will indeed amount to an abuse of the process of the Court and so on and so forth.

9. The respondent No. 2 has also filed an affidavit-in-opposition stating that the corresponding C.R. Case No. 1755C/2015 is now pending in the Court of the Judicial Magistrate, 1st Class at Kamrup (M). It is averred that the petitioner, with wild allegations had lodged an FIR against him and his parents but charge-sheet was laid only against him as the IO failed to collect any evidence against his parents and sister to book them u/s 498 A IPC and consequentially the case ended in acquittal. The petitioner was acquitted of charges u/s 498 A IPC in connection with G.R. Case No. 6002/2015. Annexure-B is the charge-sheet, Annexure-C is the evidence on record and Annexure-D is the judgment of acquittal. It is alleged that the petitioner created such a situation which almost

went to the extent of partition of paternal property of the respondent No. 2. The false FIR was lodged after foisting a case to tarnish the image of the respondent No. 2 and his family. Moreover the complaint lodged against the respondent No. 2 by the petitioner before the Assam State Women Commission also ended in a fiasco as the petitioner failed to appear before the Women Commission. It is contended that both the FIR and the complaint before the State Commission for Women were replete with defamatory allegations which has marred the image of the petitioner and his family members. After going through the statements of the witnesses, cognizance was taken as the learned trial Court found a prima facie case against the petitioner u/s 500 IPC. The grounds on which the petition u/s 482 Cr.PC is filed by the petitioner are not valid and the case being C.R. Case No. 1755C/2015 cannot be quashed at this stage. The respondents have prayed to dismiss the petition in limine.

10. I have scrutinized the complaint petition marked as Annexure-6 and the order of cognizance marked as Annexure-9. After scrutinizing the complaint petition and the FIR as well as the FIR lodged by the petitioner's father, it is apparent that there is bad blood between the parties who are at loggerheads. Charges and counter-charges have been directed towards the parties. The criminal case launched against the respondent No. 2 ended in acquittal. It is an admitted fact that the respondent No. 2 filed a petition for dissolution of his marriage which was registered as F.C. (Civil) No. 264/2015 and notice was issued to the petitioner on 10.06.2015. Thereafter on 10.06.2015, the petitioner immediately lodged an FIR. It is contended that publications were made with false imputation against the respondent No. 2 that he had an illicit relationship with a junior doctor, namely, Smt. 'X', but no such publications have been brought to the fore. A complaint with such implications before the Assam State Women Commission does not tantamount to publications, neither it is a libel or a slander.

11. It is alleged that the FIR does not disclose any offence u/s 499/500 IPC and further proceeding will indeed be an abuse of the process of the Court. On the contrary, it is submitted that Section 499 IPC does not mandate that the imputations have to be published widely, and making such imputations would suffice. Moreover, it is submitted on behalf of the respondent No. 2 that the order of taking cognizance is an interlocutory order and cannot be quashed.

12. The learned counsel for the respondent has relied on the decision of the Hon'ble Supreme Court in *Mehmood Ul Rehman v. Khazir Mohammad Tunda & Others* in Criminal Appeal No. 1347 of 2010 vide order dated 31.03.2015, wherein, it has been observed that:-

"Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for

summons to be issued but it is nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning thereby that it is not a prerequisite for deciding the validity of the summons issued."

13. It has thereafter been held by the Hon'ble Supreme Court in Mehmood Ul Rehman's case (supra) that:-

"Having gone through the order passed by the Magistrate, we are satisfied that there is no indication on the application of mind by the learned Magistrate in taking cognizance and issuing process to the appellants. The contention that the application of mind has to be inferred cannot be appreciated. The further contention that without application of mind, the process will not be issued cannot also be appreciated. Though no formal or speaking or reasoned orders are required at the stage of Section 190/204 CrPC, there must be sufficient indication on the application of mind by the Magistrate to the facts constituting commission of an offence and the statements recorded under Section 200 of CrPC so as to proceed against the offender. No doubt, the High Court is right in holding that the veracity of the allegations is a question of evidence. Question is not about veracity of the allegations; but whether the respondents are answerable at all before the criminal court. There is no indication in that regard in the order passed by the learned Magistrate. We, hence, set aside the order dated 03.04.2007 passed by the Judicial Magistrate First Class, Srinagar and the impugned order passed by the High Court. The matter is remitted to the Magistrate for fresh consideration and further action, if required to be taken in accordance with law."

14. The learned counsel for the respondent No. 2 has also relied on the decision of the Hon'ble Supreme Court in Sonu Gupta v. Deepak Gupta & Ors in S.L.P. (Crl.) Nos. 300-302 of 2013 vide order dated 11.02.2015 (connected Criminal Appeal Nos. 285-28/2015):-

"..... At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence, or, in other words, to find out whether prima facie case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor he is required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not. It is also well settled that cognizance is taken of the offence and not the offender. Hence at the stage of framing of charge an individual accused may seek discharge if he or she can show that the materials are absolutely insufficient for framing of charge against that particular accused. But such exercise is required only at a later stage, as indicated above and not at the stage of taking cognizance and summoning the accused on the basis of prima facie case. Even at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not the requirement and a prayer for discharge can be allowed only if the court finds that the

materials are wholly insufficient for the purpose of trial. It is also a settled proposition of law that even when there are materials raising strong suspicion against an accused, the court will be justified in rejecting a prayer for discharge and in granting an opportunity to the prosecution to bring on record the entire evidence in accordance with law so that case of both the sides may be considered appropriately on conclusion of trial."

15. The learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in *State of Haryana and Others v. Bhajan Lal and Others*, reported in 1992 Supp (1) SCC 335, wherein it has been observed that:-

"In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized an inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress

for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

16. I have considered the submissions at the bar with circumspection. The initial deposition of the complainant u/s 200 Cr.PC as well as the witnesses u/s 202 Cr.PC have been appended along with this petition and marked as Annexure-6. The FIR reveals that it has been alleged by the petitioner that the respondent No. 2 had an illicit relationship with a junior doctor, namely, Smt. 'X' but his initial deposition u/s 200 Cr.PC reveals about publications through news. At this stage, it is submitted that the petitioner has been entangled in a false case with mala fide and in order to wreak vengeance, when there are charges against the petitioner by the respondent No. 2 that she had initiated the criminal case u/s 498A against him as counter blast against the divorce petition filed by the respondent No. 2. This case is at the initial stage and it cannot be held at this juncture that further proceeding will be an abuse of the process of the Court. As soon as cognizance was taken vide order dated 17.09.2015, further proceedings of the complaint Case No. 1755C/2015 has been stayed by an order of this Court dated 26.09.2016. I am hesitant to interfere with the order of cognizance dated 17.09.2015, which cannot be dismissed as an order passed without application of mind. It has been clearly reflected in the order dated 17.09.2015 in C.R. Case No. 1755C/2015 that after examining the initial deposition and after the enquiry made u/s 202 Cr.PC, the learned Magistrate found sufficient grounds for proceeding against the petitioner and thereafter summonses were issued against her. However, at the same time, it is held that this stage is still at the initial stage of the proceeding, and there are other stages of the proceeding when the petitioner may pray for any other relief.

17. In terms of the above observations, petition is dismissed.

18. No order as to costs.