

GAHC010005052020



**THE GAUHATI HIGH COURT  
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : Crl.Pet./19/2020**

SMTI MANITA BORAH  
W/O SRI PRANAB KUMAR BARUA, R/O SOUTH HAIBORGAON, A.R.B.  
ROAD, (NEAR KHUTIKATIA SHIVA MANDIR), P.O.-HAIBARGAON, P.S.-  
SADAR NAGAON, DIST-NAGAON, ASSAM-782001

**VERSUS**

**THE STATE OF ASSAM AND 5 ORS.  
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM**

2:JAYANTI DOIMARI  
W/O SRI PUN YESWAR BORO  
R/O KHAGARIJAN  
P.S.-THELAMARA  
DIST-SNITPUR  
ASSAM  
PIN-784149

3:SMTI RADHIKA DEVI  
W/O SRI DAMBARU BASNET  
R/O KAMARPATHAR  
P.S.-THELAMARA  
DIST-SONITPUR  
ASSAM  
PIN-784149

4:SMTI GILISANDHYA DOIMARI  
W/O MAHESAR DOIMARI  
R/O NO. 2 SIMALAGURI  
P.S.-THELAMARA  
DIST-SONITPUR  
ASSAM

PIN-784149

5:SMTI RASHMI BASUMATARY  
W/O LOHIT DOIMARI  
R/O SILIKHABARI  
P.S.-THELAMARA  
DIST-SONITPUR  
ASSAM  
PIN-784149

6:RAJANI DAS  
S/O LATE BANESWAR DAS  
R/O NIZ-BORGAON  
P.S.-THELAMARA  
DIST-SONITPUR  
ASSAM  
PIN-78414

**Advocate for the Petitioner : MR. R SARMA**

**Advocate for the Respondent : PP, ASSAM**

**BEFORE**  
**HONOURABLE MR. JUSTICE MIR ALFAZ ALI**

**JUDGMENT & ORDER (CAV)**

Learned Senior Counsel, Mr. TJ Mahanta assisted by R. Sarma, learned counsel for the petitioner and learned Addl. Public Prosecutor, Mr. BB Gogoi for the State were heard.

2. By this petition u/s 482 CrPC the petitioner Monita Borah has challenged the order dated 26-12-2019 passed by the learned Special Judge, Assam, in Special Case No. 2/2014, whereby, charges u/s 384/34 IPC read with Section 7 of the P.C. Act were framed against the petitioner along with the co-accused Shanti Kumari Das.

3. The brief facts of the case, which may be relevant for disposal of this petition are that on 19-10-2012 at about 11 am, the co-accused Shanti Kumari Das, who happens to be a supervisor, ICDCS, came to the house of Lakhi Acharya, an Anganwadi worker, where she

collected Rs. 3,000/- each from 22 numbers of Anganwadi workers of Borgaon, 'Kha' circle with a view to pay the money to the present petitioner Monita Borah, who was the CPDO at the relevant time. The co-accused Shanti Kumari Das collected the entire amount threatening the Anganwadi workers, that if they do not pay the amount, their service may be hampered. While the said Shanti Kumari Das was collecting money, police was informed and immediately police accompanied by the circle officer arrived at the place of occurrence. The police apprehended Shanti Kumari Das and recovered Rs. 50,500/- from her. The FIR was lodged by Jayanti Daimary (respondent No. 2) on the basis of which, police registered the case and eventually submitted charge-sheet against the present petitioner and co-accused Shanti Kumari Das u/s u/s 384/34 IPC read with Section 7 of the P.C. Act. The learned Special Judge took cognizance and framed charges against the petitioner by the impugned order, which is under challenge in this petition.

4. Mr. TJ Mahanta, learned senior counsel for the petitioner submits that there was no material on record to justify the framing of charge against the present petitioner, inasmuch as, as per accusation and materials brought on record, it was Shanti Kumari Das, who collected money from the Anganwadi workers by threatening them, that if the money is not paid, their service may be hampered. The only allegation in the FIR was that Shanti Kumari Das collected the money on the pretext of paying the same to the petitioner Monita Borah. Besides, the allegation that Shanti Kumari Das collected the money from the Anganwadi workers by threatening them on the pretext of paying the same to Monita Borah, no other evidence could be collected during investigation against the present petitioner, and as such, learned trial court ought not to have framed charge against the petitioner in absence of any material. Learned senior counsel, Mr. Mahanta further submits that only material available in the case diary was the statement of the circle officer, who stated before police that the co-accused, Shanti Kumari Das made a statement before the police in his presence that she (Shanti Das) collected the amount at the instruction of Monita Borah. The contention of Mr. Mahanta is that even if the statement of the Circle Officer is accepted as an extra-judicial confession of the co-accused, the same is not sufficient to frame a charge and put a person into trial without any further materials, inasmuch as confession of a co-accused cannot be the basis of framing charge in absence of any other evidence. Mr. Mahanta further contends that

the so-called extra judicial confession is also inadmissible in evidence. In support of his submission, Mr. TJ Mahanta relied on a decision of the Apex Court in ***Suresh Budalmal Kalani Vs. State of Maharashtra*** reported in **(1998) 7 SCC 337** wherein the Apex referring to an earlier decision in ***Kashmira Singh Vs. State of M.P.*** held that the court should first consider the other materials and evidence against the accused excluding the confessional statement of the co-accused and see whether a conviction can be safely based without such confession and if the other materials brought on record are capable of belief independently, in such event, the Judge may call in aid, the confession to lend assurance to other evidence. The Apex Court held that just in the light of the above principle, the confession of the co-accused cannot be called in aid to frame charge in absence of any other evidence to do so.

5. Learned Addl. Public Prosecutor, Mr. BB Gogoi submits that while framing charge, the court is not required to assess the probative value of the materials on record and the charge can be framed even on the basis of strong suspicion.

6. Since, the learned Special Judge is required to follow the procedure laid down for trial of warrant cases by Magistrate, before advertting to the submission made by the learned counsel, it shall be useful to refer to Section 239 and 240 of the Code of Criminal Procedure, which are reproduced below :-

*Section 239 :- When accused shall be discharged. If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.*

***Section 240 :- Framing of charge.***

*(1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.*

*(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.*

7. A perusal of the provisions of Section 239 and 240 CrPC make it clear that if upon

consideration of the police report and the documents filed therewith and making examination of the accused, if any, or after giving opportunity of being heard to the accused and the prosecution, if the Magistrate considers that charge brought against the accused is groundless, he shall discharge the accused. If upon such consideration, examination and hearing, Magistrate is of the opinion that there is ground for presuming that the accused has committed the offence, he shall frame charge against the accused in writing. Thus, while framing charge or discharging the accused, the court is required to apply its judicial mind to come to a decision whether there is ground for framing charge or not. Therefore, the court cannot afford to act merely as a post office or a mouthpiece of the prosecution, or cannot frame charge mechanically without applying judicial mind.

8. In ***Union of India Vs. Prafulla Kumar Samal*** reported in ***1979 3 SCC 4***, while considering the scope of Section 227 of the CrPC, the Apex Court observed that in exercising jurisdiction u/s 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total affect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on. This, however, does not mean that the Judge should make a roving enquiry into the pros and cons of the matter, as if, it was conducting a trial. The Apex Court also observed that while considering the question of framing of charge u/s 227 CrPC, the court has the undoubted power to shift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. Similar view was expressed by the Apex Court in ***Sajjan Kumar Vs. CBI***, reported in ***(2010) 9 SCC 638***, wherein the Apex Court observed, that at the time of consideration of the charge, the court has the power to shift and weigh the evidence for a limited purpose to find out whether a prima facie case against the accused has been made out or not.

9. In ***Chitresh Kumar Vs. State (NCT of Delhi)*** reported in ***(2009) 16 SCC 605***, the Supreme Court observed that the word "presume" means if on the basis of materials on record, court could come to the conclusion that commission of offence is a probable consequence, a case for framing charge exists. It goes without saying, that in order to form a presumptive opinion as to existence of factual ingredients constituting the offence, for the

purpose of taking a decision whether to frame a charge or not, the court is required to go through the materials and evidence brought on record and shift the same for the limited purpose so that an innocent person is not unnecessarily put to trial.

10. In the light of the above settled principle, let me now examine the evidence and materials brought on record during investigation of the instant case.

11. Almost all the Anganwadi workers, who paid money were examined u/s 161 CrPC by the police. All of them stated in their statement recorded under Section 161 CrPC, that Shanti Kumari Das came to the house of Lakhi Acharyya, where the Anganwadi workers assembled and said Shanti Kumari Das demanded Rs. 3,000/- from each of the Angawadi Workers under the threat, that if money is not paid, their services will be hampered. It was stated by all of them that Shanti Kumari Das collected the money with a view to pay the same to the petitioner. The material on record shows, that while Shanti Kumari Das was collecting money police was informed and she was caught with the money. However, according to the statement of the Anganwadi workers, Shanti Kumari Das collected money on the pretext of paying the same to the petitioner. There is no material on record to show that the petitioner demanded any money or threatened anyone to pay such money, nor there was any material to show that the present petitioner engaged or instructed Shanti Kumari Das to collect money from the Anganwadi Workers. It is also on record that while Shanti Kumari Das was collecting money, the police was informed and the police along with the Circle Officer arrived at the place of occurrence and seized money from the possession of Shanti Kumari Das in presence of witness including the Circle Officer Monoj Saikia. However, it is in the statement of the Circle Officer recorded under Section 161 CrPC that in front of him, Shanti Kumari Das stated that she collected money at the instruction of Monita Borah, the present petitioner. Even if it is assumed for the sake of argument that such a statement was made by Shanti Kumari Das before the police in front of the Circle Officer and the same is accepted as a extra-judicial confession, it would be inadmissible in evidence in view of Section 25 & 26 of the Evidence Act and the court cannot rely on such evidence even to form a presumptive opinion as to the commission of crime, because the materials which cannot be legally translated into evidence also cannot be the basis of framing charge.

12. On perusal of the record, I do not find any cogent material, which can be relied upon

even for taking a presumptive opinion as to the probability of the commission of the offence by the present petitioner, rather, entire materials and evidence brought on record appears to be against the co-accused Shanti Kumari Das, who demanded and collected money from the Angawadi Workers under threat of causing harm to their job. Framing charge mechanically in absence of any legal evidence or material shall unnecessary put an innocent person to trial and as such court should take a pragmatic view, while drawing a presumptive opinion as to the ground for framing charge. Viewed thus, the evidence and materials brought on record in the instant case appears to be grossly inadequate even to form a presumptive opinion as to existence of a *prima facie* case for framing charge against the present petitioner. Therefore, the impugned order to the extent of framing charge against the present petitioner calls for interference.

13. Accordingly, the petition is allowed and the impugned order to the extent of framing charge against the present petitioner Monita Bora is hereby set aside.

14. Return the LCR, if any.

**JUDGE**

**Comparing Assistant**