

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.Petn. No. 1 of 2020

Date of Decision: 01.12.2021

Shri Kitbok Rymbai

Vs.

State of Meghalaya & 3 Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. K. S. Kynjing, Sr. Adv, with
Ms. A.D. Syiem, Adv.
For the Respondent(s) : Mr. S. Sengupta, Addl. Sr. PP (R.1 & 2)
Mr. T.T. Diengdoh, Sr. Adv. with
Mr. C.C.T. Sangma, Adv (R. 3 & 4)

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| i) | Whether approved for reporting in Law journals etc.: | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |

1. Vide order dated 28.06.2019 passed in GR Case No. 127 of 2015, the learned Magistrate First Class, Subordinate District Council Court, Jowai after hearing the accused person therein who is the Petitioner herein and after calling upon him to answer to the charges under Section 188/506 IPC for offences said to have been committed by him has passed the impugned order whereby, the learned court has found that no case can be made out under Section 188 IPC, however the charges under Section 506 IPC is made out against him to which charges have been framed against him accordingly.

2. The Petitioner/accused being aggrieved by the said order mentioned above has approached this Court by way of this application under Section 482 Cr.P.C with a prayer to set aside and quash the same.

3. Facts as could be ascertained on the petition in hand including the

annexures therein is that, on 29.05.2015, an FIR was lodged before the Officer in-Charge Ummulong Police Out Post by the Respondents No. 3 and 4 herein as complainants to the effect that the Petitioner herein as headman of Khliehtyrshi village has issued residential and birth certificates to the residents which is highly illegal and in disobedience to the order of the High Court of Meghalaya dated 10.12.2014 passed in WP(C) No. 363 of 2014. On being opposed by the said Respondents, the Petitioner has threatened to hurt and defame them. In the said FIR, the Respondent No. 3 has further alleged that the Petitioner has threatened her on 11.05.2015 when she met him near her house and had objected to his illegal claim over the land of Respondent No. 4 herein. Again, on 25.05.2015, the Petitioner has again threatened to hurt the Respondents No. 3 & 4 after they opposed his illegal intention to claim the land of Respondent No. 4. By misusing his powers as headman, he has threatened and used abusive language against Respondents No. 3 & 4. The FIR was registered as Jowai P.S Case No. 127(6) 2015 under Section 188/506 IPC and on investigation being launched and completed, the charge sheet was filed before the court and at the stage of consideration of charges after hearing the parties, the said impugned order was passed.

4. Heard Mr. K.S. Kynjing, learned Sr. counsel assisted by Ms. A.D. Syiem, learned counsel who has submitted that a perusal of the FIR and the statement of the Complainants who are the only witnesses in the case, what can be seen is that the complaint was filed as there is a land dispute involving the land of the Respondent No. 4 and the Petitioner regarding a road which passes through her land. The complaint alleging criminal intimidation by the Petitioner by way of threatening against the Respondents No. 3 and 4 cannot be substantiated as there is no threat of any kind and no evidence in this regard was forthcoming and as such, the ingredients of Section 506 IPC are not found in the allegations. Therefore, even if the matter travelled further before the Trial Court, it is clear that the matter will not end in conviction and as such, the Petitioner/accused person may be discharged.

5. In this connection, the learned Sr. counsel has cited the case of *Hari*

Kishen Sharma v State & Anr in Crl. M.C. 692/2014 para 22, wherein the Hon'ble Delhi High Court considering a case on similar nature involving Section 506 IPC has vide order dated 24.09.2018 allowed an application under Section 482 Cr.P.C and has quashed the proceedings before the Trial Court.

6. Also heard Mr. T.T. Diengdoh, learned Sr. counsel assisted by Mr. C.C.T. Sangma, learned counsel who has firstly led this Court to the prayer made in this application and has submitted that the Petitioner has made a prayer for setting aside and quashing the impugned order dated 28.06.2019 as well as all subsequent proceedings in GR. Case No. 127 of 2015. However, the said impugned order can be assailed by way of an appeal before the Court of the Judge, District Council Court and Section 482 Cr.P.C. says that if there is an alternative remedy, then the party should take recourse to that remedy. It is further submitted that Section 482 Cr. P.C. should be used sparingly by the courts.

7. It is again submitted that under Section 482 Cr.P.C, the court is not to go into the evidence. Rightly or wrongly the Petitioner has been charged and it is only after the trial of the case can the innocence or guilt of the Petitioner be established.

8. Mr. S. Sengupta, learned Addl. Sr. PP appearing for the State Respondents No. 1 and 2 has submitted that at this stage, it would be proper that evidence be led and argument advanced and if the prosecution has no case then the Petitioner will be discharged.

9. Before adverting to the contentions of the parties, it would be prudent to look into the scope and ambit of Section 482 Cr.P.C. as to whether the Petitioner is entitled to approach this Court under this provision under the facts and circumstances of the case relatable to the impugned order dated 28.06.2019.

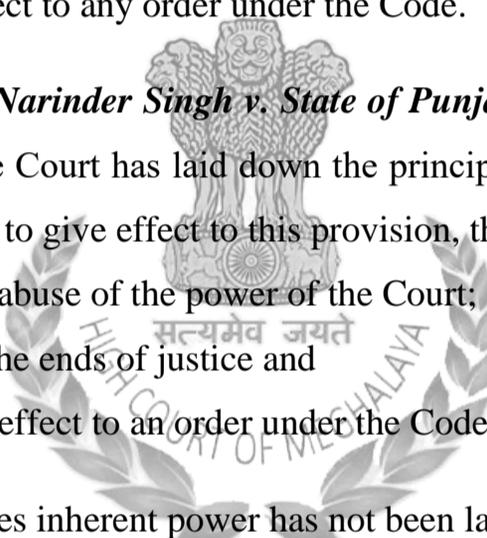
10. Section 482 reads as follows:

“482. Saving of inherent powers of High Court. - Nothing in this

Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

11. Section 482 of the Cr.P.C was added by the Code of Criminal Procedure (Amendment) Act, 1923 though it is an exact reproduction of Section 561-A of the Code of Criminal Procedure, 1898. This is a provision where the inherent power of the High Court can be applied to render complete justice in cases where illegality is apparent. The inherent powers of the High Court under this section include power to quash FIR or criminal proceeding pending before the High Court or any court subordinate to it to secure ends of justice, prevent abuse of the power of the court and to make such orders as may be necessary to give effect to any order under the Code.

12. In the case of *Narinder Singh v. State of Punjab: (2014) 6 SCC 466*, the Hon’ble Supreme Court has laid down the principles by which the High Court may be guided to give effect to this provision, that is;

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- i) Prevent abuse of the power of the Court;
 - ii) Secure the ends of justice and
 - iii) To give effect to an order under the Code.

13. What constitutes inherent power has not been laid down as the Code is silent on this issue. However, what can be culled out from various judicial pronouncements particularly that of the Apex Court will give an idea as to how this provision has been resorted to under the facts and circumstances of a particular case.

14. In the case of *State of Karnataka v. M. Devendrappa & Anr: (2002) 3 SCC 89*, a three Judge Bench of the Hon’ble Supreme Court while elucidating on the exercise of power of the High Court under Section 482 has opined at paragraph 6 that:

“6.No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties

imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of High Courts. All Courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae, esse non potest (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone Courts exist.....”

15. In the case of **Amit Kapoor v. Ramesh Chander & Anr: (2012) 9 SCC 460**, the Hon’ble Supreme Court citing the case of (Janata Dal v. H.S. Chowdhary) at paragraph 23 has observed as follows: -

“23. In Janata Dal v. H.S. Chowdhary & Ors. [(1992) 4 SCC 305], the Court, while referring to the inherent powers to make orders as may be necessary for the ends of justice, clarified that such power has to be exercised in appropriate cases ex debito justitiae, i.e. to do real and substantial justice for administration of which alone, the courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the powers requires a great caution in its exercise. The High Court, as the highest court exercising criminal jurisdiction in a State, has inherent powers to make any order for the purposes of securing the ends of justice. Being an extra ordinary power, it will, however, not be pressed in aid except for remedying a flagrant abuse by a subordinate court of its powers.”

16. What emerges from the observation above is that the High Court has got ample power to exercise its inherent jurisdiction when it comes to righting a wrong for securing ends of justice and also to prevent abuse of the process of the Court.

17. Coming to the case in hand, a prayer was made for quashing of criminal proceedings before the Court of the learned Judicial Magistrate First Class,

Sub-Ordinate District Council Court, Jowai after charges have been framed against the Petitioner herein particularly Section 506 IPC.

18. The main thrust of the contention of the Petitioner is that the same was an abuse of the process of the court, inasmuch as, there is a land dispute between the parties for which the Complainants in a bid to harass the Petitioner has made unsustainable allegations against him. Though, the charge sheet was filed indicating that prima facie case under Section 188/506 IPC, on being petitioned by the Petitioner, the learned Trial Court had found it fit to drop the charge under Section 188 IPC, however the charge u/s 506 IPC was maintained relying on the statement of the Complainant. This Court is therefore called upon to address the issue of abuse of the process of the court and to direct that the charges framed and proceedings thereto be set aside and quashed.

19. The learned counsel for the Respondents No. 3 and 4 has raised the issue of maintainability of this application contending that the Petitioner has recourse to other remedies available in the Code of Criminal Procedure by way of appeal before the Judge, District Council Court and as such, this petition is liable to be rejected.

20. The counsel for the State Respondent has only endorsed the submission made by the learned Sr. counsel for the Respondents No. 3 and 4.

21. This Court will first answer to the contention raised by the Respondents No. 3 and 4 by citing the judgment of the Hon'ble Supreme Court in the case of *Sanjay Kumar Rai v. State of Uttar Pradesh & Anr: 2021 SCC Online SC 367*, at paragraph 16 of the same while reiterating the law laid down in the case of Madhu Limaye ("Madhu Limaye v. State of Maharashtra" (1977) 4 SCC 551) has held as follows: -

"16. The correct position of law as laid down in Madhu Limaye (supra), thus, is that orders framing charges or refusing discharge are neither interlocutory nor final in nature and are therefore not affected by the bar of Section 397 (2) of CrPC. That apart, this Court in the above-cited cases has

unequivocally acknowledged that the High Court is imbued with inherent jurisdiction to prevent abuse of process or to secure ends of justice having regard to the facts and circumstance of individual cases. As a caveat it may be stated that the High Court, while exercising its afore-stated jurisdiction ought to be circumspect. The discretion vested in the High Court is to be invoked carefully and judiciously for effective and timely administration of criminal justice system. This Court, nonetheless, does not recommend a complete hands off approach. Albeit, there should be interference, may be, in exceptional cases, failing which there is likelihood of serious prejudice to the rights of a citizen. For example, when the contents of a complaint or the other purported material on record is a brazen attempt to persecute an innocent person, it becomes imperative upon the Court to prevent the abuse of process of law.”

22. In view of the authority quoted above, this Court is inclined to hold that an application for quashing of an order of framing of charge can be proceeded under Section 482 Cr.P.C as is the case in this present petition.

23. The next issue to be decided is whether the impugned order can be sustained or whether it was an outcome of an abuse of the process of the court. On perusal of the said impugned order, it can be seen that the learned Magistrate First Class has heard the parties and on the basis of the submissions made including the written argument filed have come to a finding that the charge under Section 188 IPC could not be sustained, however on the basis of the statement of the Complainant as mentioned above, the charge under Section 506 IPC was sustained. This Court finds that the order is a reasoned one and cannot be faulted. The fact as admitted by the Petitioner himself that there was an ongoing dispute between the parties relating to a land dispute would only lend credence to the fact that there could have been exchange of words or threats which can only be substantiated by due process of law in a proper trial on evidence being led. This Court is not at liberty to go into the details of the evidence as to whether the case would end up in conviction or acquittal.

24. The Hon'ble High Court in the case of **Amit Kapoor**(supra) at

paragraph 27, relevant excerpts of which are extract herein are held as follows:-

“27.1 Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.15. Coupled with any or all of the above, where the Court

finds that it would amount to abuse of process of the Code or that interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae i.e. to do real and substantial justice for administration of which alone, the courts exist.”

25. The case of ***Hari Kishen Sharma***(supra) relied upon by the learned Sr. counsel for the Petitioner is distinguishable from the facts and circumstances of this case, inasmuch as, in the said case, the Hon’ble Delhi High Court has dealt with a matter which was at the stage of filing of charge sheet, whereas in the case where the Petitioner is the accused, the impugned order clearly indicates that after considering the argument of the parties before charge, the Court has found it fit that charges under Section 506 IPC be framed, which was accordingly done so and the matter to proceed for recording of evidence. In reiteration of the observations made above, this Court will not interfere with the process at this particular juncture.

26. In view of the above, this Court on consideration of the matter in its entirety, relying on the authorities cited above, is of the opinion that the Petitioner has not been able to convince this Court that the impugned order suffers from any legal vice and as such, the same is sustained, the instant petition is hereby rejected.

27. Matter disposed of. No cost.

28. Registry is directed to send back the case record.

Judge

Meghalaya

01.12.2021

“N. Swer, Stenographer”