

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.Petn. No. 72 of 2021

Date of Decision: 29.11.2021

Shri. Soumen Chakraborty & Anr. Vs. State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Ms. E. Gurung, Adv.
For the Respondent(s) : Mr. B. Bhattacharjee, AAG. with
Ms. R. Colney, GA.

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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. Heard Ms. E. Gurung, learned counsel for the petitioners as well as Mr. B. Bhattacharjee, learned AAG for the State respondents.

2. This is an application under Section 482 Cr.P.C filed by the petitioners herein. Being aggrieved by the proceedings in GR. Case No. 5 (S) 2017 pending before the Court of the learned Judicial Magistrate First Class, Shillong, it is not denied that the said GR. Case No. 5 (S) 2017 is at the stage of framing of charges.

3. The learned counsel for the petitioner No. 1 along with the petitioner No. 2 who is the mother of the petitioner No. 1 owns landed property at Shillong which property in their family since the year 1914. The said property is situated at Burnside, Rilbong, Shillong. It is the contention of the petitioners that there are some persons who are trying to persuade the petitioners to sell the said landed property to the extent that they were threatened over the phone resulting in an FIR lodged by the petitioners, which FIR was registered as P.S. Case No. 87 (9) of 2015 under Section 506 IPC.

4. It is the further contention of the petitioners that a counter FIR was filed by one Shri Bajop Pyngrope of Upper Laban, Shillong against the petitioners herein on the allegation that the petitioner No. 2 had executed a deed of special power of attorney in favour of the said informant and has requested him to negotiate for sale of the said landed property, for which he has also requested the informant to give her an amount of ₹ 20,000,00/- to be refunded on or before 4th September, 2015. However, it is said that the petitioners have turn back on their promise and have decided not to dispose the said landed property by way of sale, which became an offence for breach of trust and cheating, etc.

5. The FIR lodged by the said Bajop Pyngrope was registered as Laban P.S. Case No. 88 (9) of 2015 under Section 406.420/468 IPC and as submitted by the learned counsel for the petitioners, on investigation being completed, the charge sheet was forwarded to the Court concerned and the matter is now before the learned Judicial Magistrate First Class, Shillong for consideration of charges.

6. The petitioners herein has assailed the proceedings in the said GR Case No. 5 (S) 2017 on the basis of some factual discrepancy asserting that there was no document executed between the petitioner No. 2 and the said informant and the alleged amount of ₹ 20,000,00/- was also not given to the petitioner No. 2. Continuation of the said proceedings, in their opinion will vitiate the proceedings as there is no basis for proceeding against the petitioners herein.

7. It is therefore prayed that this petition may be allowed and after hearing the parties to set aside and quash the said proceedings assailed.

8. Also heard Mr. B. Bhattacharjee, learned AAG who at the outset has placed before this Court the decision of the Hon'ble Supreme Court in the case of **Saranya vs. Bharathi & Anr: (2021) 8 SCC 583** particularly pointing to paragraph 11 of the same which is quoted herein below:

“11. In Deepak; (2019) 13 SCC 62 to which one of us (Dr. Justice D.Y. Chandrachud, J) is the author, after considering the other binding decisions of this Court on the point, namely, Amit Kapoor v. Ramesh Chander; (2012) 9 SCC 460; State of Rajasthan v. Fatehkaran Mehdu; (2017) 3 SCC 198; and Chitresh Kumar Chopra v. State (NCT of Delhi); (2009) 16 SCC

605, it is observed and held that at the stage of framing of charges, the Court has to consider the material only with a view to find out if there is a ground for “presuming” that the accused had committed the offence. It is observed and held that at that stage, the High Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. It is further observed and held that at this stage the High Court is not required to appreciate the evidence on record and consider the allegations on merits and to find out on the basis of the evidence recorded the accused chargesheeted or against whom the charge is framed is likely to be convicted or not”.

9. Learned AAG has further submitted that at the stage of framing of charge, this Court may restraint itself from interfering with the due procedure set in place before the Trial Court as it is apparent from the annexures to this instant petition, wherein the extract of the charge sheet including the seizure list was annexed, showing that the I/O had seized the cheque book of the petitioner No. 1 and also the said special power of attorney dated 25.03.2015 executed between the petitioner No. 2 herein and the said informant. It is therefore prayed that this case is liable to be dismissed at this juncture.

10. On consideration of the submission made, noting the annexures to the instant petition as mentioned above and also the fact that the said authority cited is relevant to the point in issue, this Court at this stage is bound not to interfere with the due process of law on being convince that prima facie there is no abuse of the process of the Court, which abuse is *sine-qua-non* for maintaining an application under Section 482 Cr.P.C.

11. This being the case, this petition fails at this juncture, the same is hereby dismissed as devoid of merit.

12. Matter disposed of. No cost.

Judge

Meghalaya
29.11.2021
“D. Nary, PS”