

GAHC010116282015



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

Case No. : Crl.Pet./377/2015

BIDYUT DEY
S/O SRI BIKASH RANJAN DEY R/O VIP COLONY, KRISHNANAGAR NEAR
MORNING GLORY SCHOOL, HOJAI DIST. NAGAON, ASSAM. PIN - 782435.

VERSUS

THE STATE OF ASSAM AND ANR

2:SMTI. BABLI ROY
W/O LT. CHANDRA SEKHAR ROY R/O HAFLONG ROAD
LUMDING
P.S. LUMDING
DIST. NAGAON
ASSAM

Advocate for the Petitioner : MR.M A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

:::BEFORE:::

HON'BLE MR. JUSTICE ROBIN PHUKAN

Date of hearing & verdict : 30.07.2022

VERDICT (ORAL)

Heard Mr. I. Rafique, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent.

2. This petition, under Section 482 of the Code of Criminal Procedure *read with* Article 227 of the Constitution of India, is preferred by the petitioner, namely, Shri Bidyut Dey, for quashing the F.I.R. of Lumding P.S. Case No. 41/2014, dated 17.02.2014, under Sections 120B/420/500 of the Indian Penal Code, and also for quashing and setting aside the proceeding arising out the said F.I.R.

3. It is to be noted here that in respect of the said F.I.R., the I.O. has completed investigation and laid Charge-Sheet against the petitioner to stand trial in the Court under Sections 120B/420/500 of the Indian Penal Code.

4. The factual background, leading to filing of this petition, is briefly stated as under:

"About 8 (eight) years back, the petitioner met Smti Purnima Roy, daughter of the informant- Smti Babli Roy and in due course, they became good friends. Thereafter, they decided to get married and they got their marriage registered before the Marriage Officer, Nagaon, on 15.07.2013, and a certificate to that

effect, bearing Certificate No. 223/2013, dated 15.07.2013, was also issued. Thereafter, Smti Purnima Roy preferred to stay with her parental abode instead of staying with the petitioner and her mother always pressurized the petitioner for financial help and they forced the petitioner to live with them, which he refused and though he tried several occasion to bring her back to the matrimonial home, the same failed to yield any result. And thereafter, on 17.02.2014, the informant had arranged social marriage (ring ceremony), but the petitioner told her that the marriage is not possible at that stage and thereafter, Smti Babli Roy, the informant and mother-in-law of the petitioner, lodged one F.I.R. on 17.02.2014 alleging that the petitioner married her daughter on 15.07.2013, before the Marriage Officer, but one social marriage was fixed on 17.02.2014 and the petitioner informed her telephonically to cancel the marriage as the same was not possible at that stage. Upon the said F.I.R., Lumding P.S. Case No. 41/2014, under Sections 120B/420/500 of the Indian Penal Code, has been registered and investigated upon and after completion of investigation, the I.O. laid Charge-Sheet against the petitioner to stand trial in the Court under Sections 120B/420/500 of the Indian Penal Code."

5. Being highly aggrieved, the petitioner preferred this petition for quashing the F.I.R. and the subsequent proceeding on the ground that the F.I.R. and the Charge-Sheet does not disclose any offence and as such, the same are liable to be set aside and since he married the daughter of the complainant, there cannot be a marriage for second time in the name of social marriage and no question of committing the offence under Sections 420 of the Indian Penal Code arises and there is no ingredient of criminal conspiracy and no whisper is either there in the F.I.R. or in the Charge-Sheet as to how the offence is committed

and also no ingredients of the offence under Section 500 of the Indian Penal Code is made out and it is the outcome of *mala fide* intention of the respondent No. 2 with the view of wreck vengeance upon the petitioner and that marriage certificate is *prima facie* evidence of solemnization of the marriage between the parties and in view of the same, the petitioner cannot be prosecuted and therefore, it is contended to allow the petition.

6. It is to be noted here that on receipt of notice, respondent No. 2 entered appearance and filed one affidavit on 05.10.2016 stating that being the informant of the police case, she has no objection in the event of quashing or compounding the criminal proceeding and as such, this Court can pass necessary order for quashing police case and Charge-Sheet.

7. Mr. I. Rafique, learned counsel for the petitioner, submits that the F.I.R. was lodged by the informant to wreck vengeance upon the petitioner and on bare perusal of the F.I.R. and the Charge-Sheet, no offence under Sections 120B/420/500 of the Indian Penal Code are made out against the petitioner and the allegations are absurd and improbable and there is a certificate of marriage between the parties and the marriage was solemnized before the Marriage Officer, Nagaon, and as such, there is no question of solemnization of social marriage again and that the petitioner is innocent and therefore, it is contended to allow the petition.

8. On the other hand, Mr. P. Borthakur, learned Additional Public Prosecutor, submits that since the respondent No. 2 has submitted an affidavit stating that

she has no objection in the event of quashing the F.I.R. and the Charge-Sheet, the State has no objection in the event of allowing the petition.

9. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the Marriage Certificate, dated 15.07.2013, and the F.I.R., dated 17.02.2014, and also the affidavit filed by the respondent No. 2, dated 05.10.2016, and I find sufficient force in the submission of Mr. I. Rafique, learned counsel for the petitioner.

10. It is to be noted here that in the F.I.R., dated 17.02.2014, the informant alleged that the marriage of her daughter, Smti Purnima Roy, was solemnized before the Marriage Officer, Nagaon, on 15.07.2013. Thereafter, on 15.01.2014, the petitioner, along with some of his friends, came to the house of the informant to fix the date of marriage and perform the formal engagement (ring ceremony) as per their social custom. At around 7.00 p.m., on 16.02.2014, while she was busy with ceremonious activities of the marriage to be held on 17.02.2014, the accused informed over phone that the ceremony should be cancelled as it was no possible for him to get married on that time.

11. A careful perusal of the allegation made in the F.I.R. and also the materials collected so far in the Charge-Sheet after investigation, even if taken at their face value, it cannot be said that any offence under Sections 420/500 of the Indian Penal Code is made out against the petitioner here in this case. The marriage of the petitioner with the daughter of the informant was already

solemnized before the Marriage Officer on 15.07.2013 and a certificate, being Certificate No. 223/2013, dated 15.07.2013, which is annexed with the petition as Annexure-A, bears the testimony of the said fact and the same has not been denied by the respondent also. Merely because the petitioner informed the informant to cancel ring ceremony to be held on 17.02.2014, to the considered opinion of this Court, would not satisfy any of the ingredients of the offence under Section 420 of the Indian Penal Code let alone the offence under Section 500 of the Indian Penal Code. There is no whisper in the F.I.R. about making any defamatory statement by the petitioner and no ingredients of the offence under Section 120B of the Indian Penal Code also appears to be made out against the petitioner.

12. In the case of **State of Haryana & Ors. Vs. Bhajan Lal & Ors.**, reported in **1992 AIR 604**, the Hon'ble Supreme Court, in paragraph 8.1, has held as under:

"(a) 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;

.....

(c) 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;

.....

(g) 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;

the Court may exercise the power under Section 482 Cr.P.C. and the extraordinary power under Article 226 of the Constitution of India to quash the FIR or Complaint.

13. Having considered the allegation made in the F.I.R. and also in the Charge-Sheet, this Court is of the considered opinion that the case is covered by point No. (a), (c) and (g) of paragraph No. 8.1 of the case of **Bhajan Lal (surpa)**.

14. Besides, the respondent No. 2, in her affidavit, dated 15.10.2016, clearly stated that she has no objection in the event of quashing the F.I.R. and the Charge-Sheet.

15. In the result, I find sufficient merit in this petition and accordingly, the same stands allowed. The F.I.R. of Lumding P.S. Case No. 41/2014, dated 17.02.2014, under Sections 120B/420/500 of the Indian Penal Code, and all subsequent proceeding pending before the Court of learned SDJM, Hojai, stands quashed.

16. The parties have to bear their own costs.

JUDGE

Comparing Assistant