

GAHC010049832022



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

Case No. : Crl.Pet./214/2022

THE STATE OF ASSAM AND ANR
REP. BY THE PRINCIPAL SECRETARY, HOME AND POLITICAL
DEPARTMENT, ASSAM, DISPUR-6.

2: COMMISSIONER OF POLICE
KAMRUP (M)
GUWAHATI-1
ASSAM

VERSUS

ABDUL KHALEQUE
S/O LT. SOHRAB ALI
PRESENTLY RESIDING AT B-503, GOMTI APARTMENT, MS FLATS, BABA
KHARAK SINGH MARG, NEW DELHI-110001.

Advocate for the Petitioner : MR. M PHUKAN

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE HITESH KUMAR SARMA**

ORDER

Date : 11-03-2022

This is an application under Section 482 of the Cr.PC seeking quashment of the order dated 05.03.2022 passed by the learned Sub-

Divisional Judicial Magistrate (S)-I, Kamrup (Metro) in CR Case No. 1598/2022.

[2] Heard Mr. D Saikia, learned Advocate General for the State of Assam appearing for the petitioners assisted by Mr. M Phukan, learned Public Prosecutor, Assam.

[3] The fact leading to the aforesaid complaint case and passing of the impugned order is that, the informant/ respondent No. 1 had filed an FIR in Dispur Police Station on 29.12.2021 with a request to register the same for commission of offences under Sections 153/153A of the IPC as well as under any other appropriate provisions of law against Dr. Himanta Biswa Sarma, who happens to be the Chief Minister of the State of Assam. The respondent No. 1 has alleged that the Officer-In-Charge of the Dispur Police Station did not register a case on the basis of the FIR, thus, violating the provision prescribed in Section 154 of the Cr.PC, following which, he had taken resort to the provisions of Section 154(3) of the Cr.PC and approached the Deputy Commissioner of Police (East), Commissionerate of Police, Guwahati with a prayer to investigate the case by himself or to direct any other competent officer to investigate into the case after registering the FIR. This effort of the respondent No. 1 also got frustrated while the FIR was not registered and the case was not investigated into. Thereafter, the respondent No. 1 has approached the learned court below with an application under Section 156(3) of the Cr.PC vide CR Case No. 1598^C/2022 seeking an order to forward the same to the Officer-In-Charge of the Dispur Police Station with a further direction to register the FIR under Sections 153/153A of the IPC.

[4] The learned Sub-Divisional Judicial Magistrate, aforesaid, vide the impugned order, allowed the prayer made by the respondent No. 1 and directed

the Officer-In-Charge of Dispur Police Station to register a case on the allegations mentioned in the complaint and to investigate into it fairly and to submit the report in final form.

[5] The learned Advocate General for the State of Assam appearing for the petitioners has questioned the propriety of the impugned order. He has submitted that the entire allegation in the FIR is based on the speech dated 10.12.2021 at Morigaon in which the respondent No. 2/Dr. Himanta Biswa Sarma allegedly made communally sensitive statements. It has been alleged in the FIR that the respondent No. 2 had given wanton provocation to people to commit act of rioting against a particular community of the State. It is also alleged in the FIR that by his such provocative speech, aforesaid, he intended to promote enmity, hatred and illwill towards the muslim population of Assam. Referring to the transcribed Assamese version as well as the translated English version of the speech of the respondent No.2/ Dr. Himanta Biswa Sarma as annexed with the petition, it has been submitted by the learned Advocate General that there is not a single word in the statement in respect of any particular community, not to speak of muslim community to create the feeling of enmity, hatred, illwill, etc as well as to provoke the people for act of rioting against any community.

[6] The further submission made by the learned Advocate General for the State of Assam is that the learned court below, while passing the order impugned in this application, although stated that he had gone through the documents annexed with the aforesaid application under Section 156(3) of the Cr.PC yet, evidently, the transcription of the speech was not there with the complaint which is the foundation of the complaint itself, and therefore, there was no scope for the learned Magistrate to examine the speech to take a view

on the matter. The cassette containing the speech of the respondent No. 2 as placed before the learned court below by the respondent No. 1 apparently was not gone through by the learned court below and inspite of that the order reflects that the learned court below has gone through the **all the documents**, which probably included the cassette also.

[7] The learned Advocate General, Assam has further submitted that although the learned court below has referred to the decision of the Hon'ble Supreme Court in the case of ***Lalita Kumari vs. State of Uttar Pradesh***, reported in **(2014) SCC 1**, yet the learned court below has overlooked the fact that the said decision itself said that illustrations given therein are not exhaustive and rather illustrative.

[8] Mr. Saikia, learned Advocate General, Assam has also submitted that on receipt of the FIR dated 29.12.2021, the same was entered in the General Diary and a preliminary enquiry was made as per the provisions of Section 157(1)(b) of the Cr.PC, and finding no material to initiate an investigation, the matter was closed with intimation to the higher ups in the Police Department. He has also submitted that the fact that a preliminary investigation was conducted under Section 157(1)(b) of the Cr.PC was not in the notice of the learned court below resulting in passing of the impugned order. It has further been submitted, on behalf of the petitioners, that the ***Lalita Kumari*** (supra) has not made Section 157 of the Cr.PC inapplicable so far registration as well as investigation of a case/FIR is concerned. According to the learned Advocate General, Assam these aspects were not looked into by the learned court below while passing the impugned order.

[9] The facts narrated in the application under Section 156(3) of the Cr.PC upon which the impugned order is passed by the learned court below did not

contain any statement as to the action taken by the Investigating Police Officer under Section 157(1)(b) of the Cr.PC. Therefore, it is submitted that the impugned order is passed by the learned court below on incomplete information. It is the further submission of the petitioner, referring to the decision of the Hon'ble Supreme Court in the case of ***Bilal Ahmed Kaloo vs. State of A.P.*** reported in **(1997) 7 SCC 431** that applying the ratio laid down therein the offences alleged in the instant case are not attracted against the respondent No. 2 and therefore, there is no question of registration of a case on the basis of the facts alleged.

[10] Whatever it may be, on consideration of the contents of the petition, facts leading to the passing of the impugned order by the learned court below, and on hearing the submissions made by the learned Advocate General, Assam for the petitioners, this Court is of the view that serious issues having enormous legal implications have been raised in the instant application requiring this Court to examine the matter thoroughly and in detail.

[11] In view of the above, issue notice upon the respondents.

[12] Petitioners to take steps for service of notice upon the respondents under registered post with A/D or under any other prescribed mode within a period of seven days.

[13] The scanned copy of the duplicate record maintained by the office of the learned Chief Judicial Magistrate in accordance with the order dated 05.03.2022 passed in the aforesaid CR Case be called for.

[14] Bring this order to the notice of the Registrar (Judicial) of this Court, who shall, in turn take steps to call for the aforesaid scanned copy.

[15] List the matter on ***1st April, 2022***.

[16] The learned Advocate General for the petitioners has pressed for an

interim order staying the further proceeding order dated 05.03.2022 passed by the learned Sub-Divisional Judicial Magistrate (S)-I, Kamrup (Metro) in CR Case No. 1598/2022.

[17] Considering the submissions made by the learned Advocate General, Assam, referred to above, and in view of the observation made in para 10, this Court is inclined to stay the operation of the impugned order dated 05.03.2022 passed by the learned Sub-Divisional Judicial Magistrate (S)-I, Kamrup (Metro) in CR Case No. 1598/2022.

JUDGE

Comparing Assistant