

(2012) 02 GAU CK 0055

Gauhati High Court

Case No: Criminal Petition No. 143 of 2009

Samsul Hoque and others

APPELLANT

Vs

Upendra Ch. Nath and another

RESPONDENT

Date of Decision: Feb. 4, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 202, 257, 438, 482
- Penal Code, 1860 (IPC) - Section 147, 149, 307, 384, 395

Citation: (2012) 2 GLD 405

Hon'ble Judges: Iqbal Ahmed Ansari, J

Bench: Single Bench

Advocate: A.S. Choudhury, Mr. R. Ali, Mr. M.N. Ahmed, Ms. S. Kanungoe, Mr. G.U.Ahmed and Mr. L. Rahman, for the Appellant; D. Das, for the Respondent

Final Decision: Dismissed

Judgement

I.A. Ansari, J.

None has appeared on behalf of the petitioners. However, Mr. D. Das, learned Additional Public Prosecutor, Assam, is present, on behalf of the opposite party No. 1. This is an application, made u/s 482, Cr PC, seeking to get set aside the order, dated 03-03-2009, passed, in Complaint Case No. 36C/2008, by the learned Additional Chief Judicial Magistrate, Barpeta, whereby the learned Magistrate has declined to allow the complainant to withdraw the case and directed issuance of non-bailable warrant of arrest against the accused-petitioners.

2. While considering the present application, it needs to be noted that having examined the complainant and having held an inquiry u/s 202, Cr PC, the learned Additional Chief Judicial Magistrate, Barpeta, in complaint Case No. 36C/2008, passed an order, on 24-01-2008, taking cognizance of the offences u/s 147/149/447/427/307/395/384, IPC and summons were directed to be issued to the accused fixing the case, on 17-03-2008, for appearance of the accused-petitioners.

3. Thereafter, to an application was made by the accused-petitioners in this Court, u/s 438, Cr PC, seeking pre-arrest bail in connection with the said complaint case. The bail application gave rise to Bail Application No. 2041 of 2008, which was disposed of, on 14-05-2008, with direction to the accused-petitioners to surrender, in the learned Court below, making it clear that if the accused-petitioners, on their appearance in the learned Court below, file any application for bail, the learned Court below shall consider and dispose of the same in accordance with law.

4. However, the accused-petitioners remained absent and did not appear in the learned trial Court in connection with the case aforementioned, whereupon an order was made, on 10-11-2008, directing issuance of non-bailable warrants of arrest against the accused fixing 03-01-2009 for their appearance. Thereafter, a petition made by the complainant of the case, seeking to withdraw his complaint on the ground that he had filed the case on instigation by others and that he would not like to proceed with the case.

5. In the order, dated 03-03-2009, which stands impugned, the learned Court below has pointed out that the complaint discloses commission of offences u/s 147/149/447/427/307/395/384, IPC, which make the case a sessions triable case and, in such a case, there is no, scope for the complainant to withdraw the case and, therefore, directed issuance of non-bailable warrants of arrest against the accused, fixing 20-04-2009, for appearance of the accused-petitioners.

6. Though the case, which has given rise to the impugned order, dated 03-03-2009, was registered on the basis of the complaint, the fact of the matter remains that the allegations, made in the complaint, make out a sessions triable case, which could not have been withdrawn by the complainant. The petitioners, in their present application, made u/s 482, Cr PC, have referred to Section 257, Cr PC, to contend that the complainant did have the right to withdraw the complaint. Suffice it to point out, in this regard, that Section 257, Cr PC applies to a case, which is triable as a summons procedure case by a Magistrate, and, hence, the provisions, embodied in Section 257, Cr PC, cannot be invoked in a case, which is exclusively triable by the Court of Session. The complainant-petitioners' petition seeking to withdraw his complaint was, thus, wholly misconceived and untenable in law.

7. Because of what have been discussed and pointed out above, it is abundantly clear that the impugned order is consistent with the materials on record and the law relevant thereto. This Court does not find that the impugned order suffers from any infirmity, legally or factually. This criminal petition, therefore, fails and the same shall accordingly stand dismissed. Send back the LCR.