

:: IN THE COURT OF SESSIONS JUDGE :: UDALGURI::

Present : Shri C. B. Gogoi
Sessions Judge,
Udalguri,

Criminal Revision No. 04/2019

Sri Pronoy Deep Borah..... Revisionist.

—Versus—

State of Assam..... Respondent.

Appearance:--

For the Revisionist – Mr. Tarun Ch. Boro, Advocate

For the Respondent – Mr. Arabinda Basumatary, PP

Date of Argument : 13-03-2020

Date of Judgment : 13.3.2020

J U D G M E N T

1. This is an application U/S 397/399 Cr.P.C. filed by Pronoy Deep Borah praying for setting aside the impugned order dated 10.6.2019 passed by learned SDJM(S), Udalguri in connection with GR case No. 1253/18 arising out of Mazbat PS case No.67/2018 U/S 448/325/34 IPC.

2. The facts of the case, in brief, is that petitioner is a permanent resident of village No.2 Naharbari, P.S. Mazbat, Mouza-Orang, Dist.- Udalguri. It is stated that on 25.11.2018 he lodged an FIR in Mazbat PS alleging that on 24.11.2018 at about 3 PM three accused persons namely, babul Deka and his son and an unknown person entered into his compound and cut trees. When the informant prevented them in cutting the trees accused Babul Deka equipped with dao caused cut injury on his fingers causing grievous injury. Accordingly, police registered a case being Mazbat PS case No.67/2018 U/S 448/325/34 IPC. But, after completion of investigation police submitted final

report in the court of learned Chief Judicial Magistrate, Udalguri, who in turn sent the case record to the court of SDJM(S), Udalguri for disposal.

3. Having come to know about this fact, on the notice issued to him, petitioner appeared and filed objection against accepting the final report. However, the court accepted the final report and closed further proceeding in the case. Thereby ignored the protest/objection raised by the revision petitioner.

4. On being highly aggrieved and dissatisfied, present revision petition has been filed on the following amongst other grounds:-

(i) That the impugned order dated 10.6.2018 passed by the learned SDJM(S), Udalguri was illegal, in correct and irregular not sustainable in law and fact. In the incident alleged by revision petitioner he suffered injury on 2nd, 3rd, 4th, and 5th fingers of his right hand which were deep cut extended to the muscle and bone of the fingers. As a result of the injuries sustained, revision petitioner was admitted at Orang hospital on 24.11.2018 and after doing stitches, the doctor referred him to Tezpur Medical College and Hospital. Accordingly, he has received treatment at Tezpur Medical College and Hospital on 25.11.2018 vide OPD No.61064/2018 and AIIMS at New Delhi on 26.6.2019. Though the cut fingers are gradually healed but he could not fist the fingers due to cut injuries on bone. It is further stated that he has sufficient medical documents to substantiate his stand and he raised all these points in his objection petition, but the learned SDJM(S) accepted the final report submitted by police by passing a cryptic order.

(ii) It is further stated that I.O. did not make proper investigation and properly recorded statement U/S 161 Cr.P.C. of relevant witnesses. So, the order dated 10.6.2019 passed by learned SDJM (S) is unsustainable in law and fact. Therefore, the present petition for setting aside the impugned order by condoning the delay of 45 days in filing the revision petition.

5. After hearing the parties, this court allowed the condonation petition vide order dated 4.3.2020 in Criminal Misc (J) case No.5/2019.

6. **Point for determination:**

Whether the impugned order dated 10.6.2019 passed by learned SDJM(S) in GR case No.1253/18 is illegal, incorrect and unsustainable in law and fact requiring interference by this court?

Decision and reasons thereof:

7. I have heard the contents of the learned lawyers appearing for both sides and carefully considered the entire facts of the case.

8. At first instance, the learned counsel appearing for the revision petitioner vociferously contended that this is a case where police failed to discharge its responsibility in proper manner and without making proper investigation as required by law and casually submitted final report though it was a clear case of filing charge-sheet, but to the astonishment of the revision petitioner, the court of learned SDJM(S), Udalguri also accepted the final report submitted by police without proper application of mind. The report was accepted by learned SDJM(S) very casually and mechanically by ignoring the medical documents produced by revision petitioner in support of his case. As a result, the petitioner has been suffering a lot. He has to run from pillar to post seeking adequate punishment of the guilt but, contrary to his expectation he did not received due justice from court.

9. Having heard the arduous arguments of learned counsel for both sides and on careful consideration of the revision petition as well as the contents of FIR, the medical documents submitted by the revision petitioner, this court found substance in the contention of the learned counsel appearing for the revision petitioner.

10. The very contents of FIR reveals that the on the very day of incident i.e. on 25.11.2018 the revision petitioner lodged an FIR in Mazbat PS narrating the incident but police did not take any action which forced the petitioner to inform the matter to the Superintendent of Police, Udalguri and on the strength of the note of the Superintendent of Police, Udalguri, the police registered the case and investigated. But the I.O. finally submitted final report stating that no evidence has been found against the accused named in the FIR.

11. As a result of the said incident, the revision petitioner had to run from hospital to hospital for his treatment and finally took treatment even in AIIMS at Delhi. To this effect, revision petitioner has submitted certain documents and photos of the scene and injuries suffered by him on his right hand. But, in spite of lodging protest petition the learned SDJM(S), Udalguri accepted the final report submitted by police.

12. On perusal of the impugned order dated 10.6.2019, it transpires that the learned SDJM(S), Udalguri rejected the objection petition and accepted the final report on the ground that the revision petitioner was at fault. Moreover, he could not produce any medical documents to substantiate injuries on his fingers. It is also stated that the wounds were pre-stitched. Therefore, hold the view that there is no sufficient material for proceeding U/S 2(d) of Cr.P.C.

13. On perusal of Section 2(d) Cr.P.C. it appears that there are two parts in Section 2(d) Cr.P.C. The first part " complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence. Therefore, the first part shows the complaint is made before Magistrate, but the second part shows it does not include a police report. Explanation to Section 2(d) says that if report made by a police officer discloses commission of a non- cognizable offence it shall be deemed to be a complaint; and the police officer who made the complaint shall be deemed to be a complainant.

14. But, in the instant case, the FIR was lodged before police and it was the I.O. who submitted the final report. Therefore, it is not a complaint at first instance. Secondly, the offences alleged in the FIR were not non cognizable offences but cognizable offences. As such, the learned SDJM(S) appears to have misconceived Section 2 (d) Cr.P.C.

15. As per Section 190 (b) Cr.P.C. the learned SDJM(S) ought to have took cognizance of the offence even though police submitted final report on the facts of the case alleged.

16. In the instant case, after analysing the impugned order and the relevant portion of law, it appears that there is a prima-facie case of commission of cognizable offences by accused persons. But having gone through the text of the impugned order it is seen that the magistrate did not apply his judicial mind while passing the impugned order. The cognizance of offence means application of judicial mind to the offence stated in the complaint or police report based on allegation made and documents produced by prosecution. But, as it appears, the learned SDJM(S) took hyper-technical view and ignore the protest petition filed by the revision petitioner.

17. Section 397 Cr.P.C. empowers the High Court and court of Sessions to call for the record and examine the same and after examination as to the correctness, legality and propriety of the findings or order or as to its irregularity the court may correct the same in revision.

18. In the present case, having examine the impugned order dated 10.6.2019 passed by learned SDJM(S), Udalguri it is seen that learned SDJM(S) Udalguri ought to have considered the protest petition lodged by revision petitioner and examined him and his witnesses to ascertain the authenticity of the incident and pass appropriate order to that effect. But in the impugned order this seems to have not been done by the learned SDJM(S). On perusal of records a prima-facie case appears to have been made out for proceeding against the accused persons. But this vital aspect has been over looed/ignored.

19. Therefore, this court is of the view that the order dated 10.6.2019 is prima-facie incorrect as the revision petitioner was not given opportunity to present his case and did not ascertain the authenticity of his objection. As such, the said order is prima-facie incorrect requiring revision by this court. Accordingly, the impugned order dated 10.6.2019 is set aside.

20. Situated thus, the revision petition is allowed with a direction to learned SDJM(S),Udalguri to consider the protest petition of the revision petitioner and to examine him alongwith the witnesses produced by him to substantiate his case and based on documents submitted and evidence adduced proceed to take decision in accordance with law.

21. Send back the case record to the court of learned SDJM(S) alongwith a copy of this judgment.

22. Judgment is signed, sealed and delivered on this 13th day of March, 2020 at Udalguri.

(C.B.Gogoi)
Sessions Judge,
Udalguri, Assam.

Dictated and corrected by me
and each page bears my signature.

(C.B.Gogoi)
Sessions Judge,
Udalguri, BTAD.