

IN THE COURT OF ADDL. CHIEF JUDICIAL MAGISTRATE, NALBARI

State C.R. No.198/2016

u/s 211 of I.P.C

State of Assam

-Vs-

Smti. Ranju BaishyaAccused

PRESENT : Smti Sorbani Bhattacharjee, A.J.S,

Additional Chief Judicial Magistrate, Nalbari.

ADVOCATES APPEARED:

For the state : Mr. Sonabar Ali, Ld. A.P.P,

For the accused : Md. Jeherul Islam,

Mr. Rajdeep Patgiri, Ld. Defence Advocate,

Dates of evidence : 25.08.17, 01.11.17, 06.01.18,

05.06.18 and 25.07.2018.

Date of argument : 17.11.2020.

Date of judgment : 21.11.2020

J U D G M E N T

1) The proceeding in this case was initiated on the basis of a NON FIR case bearing No. 2/2015 U/S 211 of IPC. The fact of the initiation of the instant proceeding is that on 20.10.2015 accused Smti Ranju Baishya lodged an ejahar

before Kamarkuchi outpost alleging that since 2009 she had been working as mid-day meal cook of Bihdia L.P. school and since then the Head master of the said school namely Sri Jogeswar Kalita is harassing her sexually showing indecent gesture to her. It is further alleged in the complaint that despite informing the higher authorities they did not take any step against Sri Kalita and even she was sexually harassed in her house by the Head master. complainant S.I., Dwarika Mohan Deka filed this complainant against the accused person namely Smti. Ranju Baishya.

2) On the basis of the said ejahar case was registered being Nalbari P.S. Case No. 729/2015, u/s 354(A) of I.P.C., and the police, after investigation and having found no material in respect of the allegation, has submitted final report vide F.R. No. 02/2015 dated 26.10,2015. After going through the materials during investigation of the said case, the police has come to the conclusion that accused Smti Ranju Baishya, the informant of the said case, i.e. Nalbari P.S. Case No. 234/05, has filed the case with false allegation and misled the police authority and as such the instant non-F.I.R. Case No. 05/2015 u/s 211 of I.P.C. is filed which was numbered as C.R. case No.198/2018. Cognizance was taken u/s 211 of I.P.C against the accused person Smti Ranju Baishya.

3) In due course accused appeared in the court complying with the summons issued to him and copies of relevant documents were furnished to him U/S 207 of CrPC. The particulars of offence u/s 211 of I.P.C was read over and explained to the accused Smti Ranju Baishya to which she pleaded not guilty and claimed to be tried.

4) The prosecution in support of its case examined altogether six witnesses including the complainant i.e., I.O. After closure of prosecution evidence, the statement of defence of the accused person u/s 313 of Cr.P.C was recorded wherein she took the plea of innocence and false implication. Defence declined to adduce any evidence. I have heard the arguments advanced by

learned counsels of both the sides and also perused the evidence available on record,

5) **POINT FOR DETERMINATION:**

Whether the accused person on 20.10.2015 filed an ejahar at Kamarkuchi outpost, which was registered as Nalbari P.S., Case No.729/2015 with intent to cause injury to one Sri Jogeswar Kalita for having committed offence of sexual harassment knowing at that time that there was no just or lawful ground for such proceeding or charge against Sri Jogeswar Kalita and thereby committed an offence punishable u/s 211 of IPC?

DISCUSSION, DECISION AND REASONS THEREOF:

6) PW-1 SI Dwarika Mohan Deka deposed that on 26.10.2015 he was working as Sub-Inspector at Kamarkuchi O.P. On that day, the accused person lodged an ejahar before the O/C of Nalbari P.S., and same was registered as Nalbari P.S. case No.729/2015 u/s 354(A) of IPC and the O/C Nalbari P.S., entrusted the case to him for investigation. Accordingly, he visited the place of occurrence and recorded statement of the witnesses. From the evidence of the witnesses he came to know that it was a false case. Hence, he submitted Kamarkuchi O.P. non FIR case No.02/2015 u/s 211 of IPC part (III) against the accused person.

7) PW1 during his cross-examination deposed that accused Ranju Baishya lodged an FIR alleging that Lankeswar Kalita committed sexual harassment upon her. Regarding the incident he recorded the statement of the witnesses including accused Ranju Baishya. He denied all the suggestions put forwarded by the Ld. Counsel for defence side.

8) PW2 Musstt. Joygun Begum @ Bibi deposed that she knows the accused person and complainant. The accused person is the helper of cook in the school in which she works. The incident took place on 18.06.2015. Soneswar

Kalita was the Head master of Bihdia Adarsha L.P., School. There was a dispute between the informant and the accused person regarding money.

9) PW 2 during cross-examination deposed that the house of the accused Ranju Baishya is at village Bezkuchi. She further deposed that she did not know anything about the incident which took place in the house of accused Ranju Baishya. She denied the suggestion put forwarded by the Ld. Defence counsel that she has stated falsely in favour of the Headmaster.

10) PW-3 Rashidar Rahman deposed that he knows the complainant and the accused person. Soneswar Kalita was the Head master of Bihdia Adarsha L.P., School. The accused person was the cook of that school. He further deposed that the accused person falsely implicated the Head master of sexual harassment but as the incident was a false one therefore the village people and school committee dismissed the accused person from her job.

11) PW-3 during cross-examination he deposed that the accused person lodged a case and thereafter she was dismissed from her job. He did not know the contents of the FIR lodged by the accused person. He was not a member of the Management Committee of School. He denied the suggestion that he deposed falsely in favour of the Headmaster.

12) PW-4 Atowar Rahman deposed that he knows the complainant and the accused person. He further deposed that while the accused person was working as cook, an occurrence of food poisoning took place in school and the students called for a strike but he does not know about any kind of misbehaviour done with the accused person. PW-4 during cross-examination deposed that he did not know anything about the accused person lodging an FIR against the Headmaster of the School.

13) PW-5 Sri Harihar Das, the President of the Managing Committee of the Bihdia Adarsha Prathamik Vidyalaya deposed that at that time the accused Ranju Baishya was working as cook at Bihdia Adarsha Prathamik Vidyalaya. He deposed that he heard that there was some illicit relationship between the accused person and the headmaster of the school and the accused person filed an application against the headmaster before the Managing Committee. A meeting was called and it was decided that the General committee will decide the future course of action. Thereafter, meeting of the General Committee was held and the accused person was removed from her job and another cook was appointed in her place. PW-5 during cross-examination deposed that the accused Ranju Baishya filed an 'ejahar' against the headmaster and police recorded his statement in that case. He further deposed that he does not know about the truth of the allegations against the headmaster stated by Ranju Baishya in her 'ejahar'. He cannot say whether the allegations made by Ranju Baishya are false and he cannot say whether the headmaster was innocent.

14) PW6 Lankeswar Kalita deposed that he knows the informant and the accused person. He heard that a quarrel took place. He does not know anything more about the incident. His house is near the school. He know the president of SMC of the School. The president told him that the matter has been amicably settled at SMC meeting. Defence declined to Cross-examine the PW.

15) The essential ingredients of the offence under section 211 of IPC are as follows:-

- i)** Accused instituted a criminal proceeding;
- ii)** There was no just or lawful ground for such proceeding or the charge was false;
- iii)** Accused knew at the time of making the charge that there was no lawful ground;
- iv)** He made the charge intending to cause injury to the person against whom the charge was made.

18. From the evidence on record, it is apparent that there is no consistency in the evidence of the PW's. According to PW-1 (complainant) after completion of investigation of the Nalbari PS case NO. 729/2015 he found the allegations made by the accused Smti Ranju Baishya against Jogeswar Kalita as false and he lodged the non- FIR case no. 2/2015 against her. As per the evidence of PW-2 there was some dispute between Jogeswar Kalita and accused regarding some money. As per the evidence of PW-3 accused lodged ejahar falsely against Jogeswar Kalita but how he came to know that the allegations of the ejahar was false is not revealed by him. In his cross examination he has admitted that he does not stay in the school at all times and in his absence if anything had happened he has no knowledge about it. He also admitted that he cannot say if Jogeswar Kalita had visited the house of accused and committed any harassment upon her. Thus, from his evidence it is apparent that there is possibility that allegations made in the ejahar by the accused against Jogeswar Kalita can be true. PW-4 expressed his ignorance about the allegations of misbehavior made by the accused. PW-5 has a different story to tell. According to PW-5 he heard that there was some illicit relationship between accused and Jogeswar Kalita. He expressed his ignorance about the truth behind the allegations made by the accused against the Head master. He also expressed his ignorance as to whether Jogeswar Kailta was innocent or not. PW-6 only heard about some quarrel and he expressed his ignorance about the matter. Prosecution failed to examine Sri Jogeswar Kalita, the Headmaster of Bihdia L.P. School in this case against whom the accused Smti Ranju Baishya is alleged to have lodged the case falsely. Complainant (I.O. of Nalbari PS case No. 729/2015) only came to the conclusion after investigation that the case lodged by the accused against one Jogeswar kalita was false. Mere filing of an FIR can never be considered as having intention to prosecute falsely and only on the basis of the investigation in the said case and coming to the conclusion that the said case is baseless and ended on final report, cannot be a ground to initiate a proceeding against the informant, i.e. the accused person in the instant case U/S 211 of IPC. Prosecution failed to show that accused person had no lawful ground for proceeding or that the charge was false.

Prosecution also failed to prove in this case that accused made the charge intending to cause injury to Jogeswar Kalita.

19. As per the section 195 (1) (b) of Cr.P.C, no Court shall take cognizance of offence punishable under section 211 of IPC except on the complaint in written of that Court or by such officer of the Court as that Court may authorise in writing in this behalf or of some other Court to which that Court is Subordinate.
20. In Criminal Revision No. 174/1994, Abdul Khalique Khan and another-vs- State of Assam, Hon'ble Gauhati High Court, vide its judgment and order dated 01.08.2001, was pleased to observe that Section 195 Cr. P.C. Provides that no Court shall take cognizance of offence u/s 211 I.P.C. except on the complaint in writing of that Court or of some other Court to which that Court is subordinate. It was further observed that in the said case, admittedly, the complaint was not filed by the Court, which accepted the Final report, as a matter of fact, nothing has been recorded to show that the Court permitted the S.I. of police to file the complaint. It was further observed that the learned Magistrate, has taken cognizance of the offence without applying his mind and in contravention of the provisions of section 195 Cr.P.C. and accordingly, the revision was allowed and the said proceeding was quashed.
21. In the instant case also, the final report was accepted and cognizance was taken on the basis of the non-FIR case, being numbered as 02/2015, filed by Sri Dwarika Mohan Deka, the I.O. of Nalbari PS case no. 729/2015. The evidence reveals that Sri Jogeswar Kalita had never filed any complaint against the accused person alleging that she had falsely implicated him and lodged the F.I.R. on false allegation. When the prosecution through the I.O. has suo moto initiated the instant proceeding, it is their bounden duty to establish the fact that the accused person intentionally lodged a false complaint for falsely prosecuting Jogeswar Kalita and misled the police.

22. It appears that the prosecution has failed to prove the ingredients of the offence U/S 211 of IPC against the accused beyond all reasonable doubt. Thus, under the above facts and circumstances, the accused cannot be made guilty of the offence under section 211 of IPC and deserves acquittal. Accordingly, accused person namely Smti. Ranju Baishya is acquitted of the offence u/s 211 I.P.C and she is set at liberty forthwith. The bail bond of the accused and her surety shall remain in force for a further period of six months as per amended CrPC.

**Given under my hand and seal of this court on this 21st day of
November, 2020 at Nalbari.**

Smti Sorbani Bhattacharjee

Addl. Chief Judicial Magistrate

Nalbari

APPENDIX

PROSECUTION WITNESSES:-

PW1 – Sri Dwarika Mohan Deka (Complainant),

PW2 – Joygun Begum @ Bibi.

PW3 - Md. Rashidar Rahman.

PW4 - Md. Atowar Rahman.

PW5 - Sri Harihar Das.

PW6 - Sri Lankeswar Kalita.

PROSECUTION EXHIBITS:-

Ext 1 – Complainant petition.

Ext 1(1) – Signature of the complainant SI Dwarika Mohan Deka.

WITNESSES FROM THE DEFENCE SIDE:-

None

DEFENCE EXHIBITS:

Nil

COURT WITNESSES: None

COURT EXHIBITS:- Nil

Additional Chief Judicial Magistrate,

Nalbari, Assam