IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

PRINCIPAL SEAT AT GUWAHATI

Crl.Pet./74/2021

Sri Rana Goswami,
Son of Late Nilakanta Goswami,
Resident of Rajabari, Jorhat,
Dist.- Jorhat, Assam, 785015.

*……..**Petitioner***

-***Versus***-

1. The State of Assam,
   Represented by P.P. Assam.

2. S.I. Probin Neog,
   Investigating Officer,
   Selehghat Police Outpost,
   P.S. Teok, Dist. Jorhat, Assam.

…….Respondents

- B E F O R E -

HON'BLE MR. JUSTICE ROBIN PHUKAN

Advocate for the petitioner	:	Mr. Z. Kamar (Sr. Adv.), Mr. P.D. Choudhury.
Advocate for the respondents	:	Mr. P. Borthakur (Addl. P.P.)

Date on which judgment is reserved	:	**02.02.2026**
Date of pronouncement of judgment	:	**23.04.2026**
Whether the pronouncement is of the operative part of the judgment?	:	N/A
Whether the full judgment has been pronounced?	:	Yes

JUDGMENT & ORDER (CAV)

Heard Mr. Z. Kamar, learned Senior Advocate, assisted by Mr. P.D. Choudhury, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Addl. P.P. for the respondents.

2. In this petition, under Section 482 Cr.P.C., the petitioner has prayed for setting aside and quashing the entire criminal proceedings of G.R. Case No. 903/2016 arising out of Jorhat P.S. Case No. 636/2016, pending before the court of learned S.D.J.M(S), Jorhat and the order dated 28.10.2020, passed by the learned S.D.J.M(S), Jorhat taking cognizance of the offences under Section 468/471 I.P.C., and all subsequent orders, passed thereafter.

3. The background facts, leading to filing of the present petition, are briefly stated as under:-

> "On 02.04.2016, an F.I.R. (ANNEXURE-1) was lodged with the Officer-in-Charge, Jorhat Police Station by one Sri Ishwar Prasanna Bordoloi and three others, stating inter-alia, amongst others, that the petitioner, a candidate of the Indian National Congress, in the forthcoming Assembly

Elections, in a press conference held on 17/03/2016, at Jorhat Press Club claimed that he had passed B.Com. Examination from Dibrugarh University, in the year 1981 and his Roll number, in B. Com. Examination, was 858. The affidavit filed by the petitioner in his nomination also claimed that he has completed B.Com from J.B. College, Jorhat under Dibrugarh University and passed in the year 1981. But, subsequently, the informant, on query, came to know that the petitioner had not passed the B.Com. Examination in the year 1981. The informants got a copy of the Mark Sheet (Against the Registration No. 9334 Roll No. 858, College -J.B. College, Examination B.Com) as furnished by the Office of the Dibrugarh University, wherein it is categorically stated that the petitioner has scored 25 marks in English Paper and his Mark Sheet shows that he has failed in the B.Com. Examination against the aforesaid Roll Number. One Sri Pratap Jyoti Dutta, Digambor Road, Jorhat had filed an application under the Right to Information Act, 2005 before the Office of Registrar, Dibrugarh University and the Dibrugarh University, vide its letter dated DU/RG/PILO/B/5001 dtd. 28/03/2016 furnished the reply with the Mark Sheet of the petitioner, bearing Registration No. 9334, Roll No. 858, College J.B. College, Jorhat had acquired 25 marks in English subject and was declared failed. The informants also alleged that the petitioner has made false statement in his affidavit, manufactured forged Mark Sheet and has

deceived/cheated the voters of the Jorhat Assembly Constituency. From the reporting in the Sentinel Paper, dated 02/04/2016, it has come to know that the petitioner has presented a Mark Sheet where he has claimed to score 21 marks in English and 9 in Internal Assessment which is totally contradictory to the statement of the Authority of the Dibrugarh University which shows that forgery was committed by the petitioner.

Upon the aforesaid FIR, the Officer-in-Charge, Jorhat Police Station had registered a case being Jorhat P.S. No. 636/16, under Section 468/471 of the Indian Penal Code, and started the investigation of the case. During investigation, the Investigating Officer (I/O) recorded the statement of the petitioner and seized the certified copies of the B.Com. final Mark-Sheet, Admit Card and Pass Certificate (ANNEXURE-2 Series) from the residence of the petitioner on 16-11-2016, for further investigation and also received a Mark-Sheet (ANNEXURE-3) which was provided to the informant as well as R.T.I. activist, by the Dibrugarh University, wherein, the petitioner was declared as failed. However, the same is under challenge before the court of the Civil Judge, by way of filing a Title Suit.

Then on completion of the investigation, the I/O has filed the Charge-Sheet in Jorhat P.S. Case No. 636/2016, being Charge-Sheet No. 328/2020, dated 30-06-2020 (ANNEXURE-4) under Section 468/471- I.P.C.

After the Charge-Sheet in Jorhat P.S. Case No. 636/2016 being filed under Section 468/471 of the Indian Penal Code, the learned Chief Judicial Magistrate, Jorhat, transferred the case, i.e. G.R. Case No. 903/2016 to the Court of the Learned S.D.J.M. (S), Jorhat for trial vide order dated 28/10/2020(ANNEXURE-5). Then on the same date i.e. 28.10.2020 the learned S.D.J.M. (S), Jorhat, received the case records of the G.R. Case No. 903/2016, and took cognizance of the offences under Sections 468/471 I.P.C. against the petitioner and thereafter had issued summons vide order dated 28.10.2020 (ANNEXURE-6) fixing the same on 27.11.2020, for appearance.

4. Being highly aggrieved, the petitioner has preferred the present petition on the following grounds that :-

(a) The learned Court below had failed to consider the materials available on records in its proper perspective while passing the order dated 28.10.2020 and all subsequent orders thereof passed in the G.R. Case No. 903/2016 corresponding to Jorhat P.S. Case No. 636/2016;

(b) The learned Court below, while passing the order dated 28.10.2020, failed to consider that the Authorities of J.B. College, Jorhat has admitted the facts to the effect that the petitioner had passed the B.Com. Examination from their College in the year 1981 and the same is supported by the result sheet and mark sheet issued in favour of the

petitioner. Further, the learned Court below has also failed to consider that the T.S. No. 49/2017, filed by the petitioner for a declaration, is pending before the appropriate Civil Court and as such, the Learned S.D.J.M. (S), Jorhat,, erroneously took cognizance against the petitioner vide order dated 28.10.2020.

C. The challenge made in the suit is the mark sheet which was given to some individuals in connection with the R.T.I. Application and the Jorhat police was provided the same mark sheet on the basis of which the police concluded the investigation and submitted the Charge Sheet No. 328/2020 dated 30.06.2020 before the Learned C.J.M, Jorhat and pending disposal of the said title suit, present criminal proceeding is bad in law, and therefore, same is liable to be set aside.

D. The locus standi to file any F.I.R. or any case pertaining to an election matter lies only with the Election Commission and not with any individual person and hence, the Charge Sheet filed and the entire criminal proceeding of the G.R. Case No. 903/2016, corresponding to Jorhat P.S. Case No. 636/2016, pending in the learned S.D.J.M(S), Jorhat as well as the F.I.R of Jorhat P.S. Case No. 636/2016 is liable to be set aside and quashed.

5. Mr. Kamar, learned Senior Counsel for the petitioner submits that the present petition is preferred by the petitioner for quashing the FIR of Jorhat P.S. Case No. 636/2016, pending before the

learned SDJM(S), Jorhat, and also the order dated 28.10.2020, passed by the learned SDJM(S), Jorhat, in G.R. Case No. 903/2016, taking cognizance of the offences under Sections 468/471 IPC and the subsequent orders till disposal of the Title Suit No. 49/2017, pending before the learned Civil Judge, Jorhat.

5.1. Mr. Kamar also submits that the FIR of Jorhat P.S. Case No. 636/2016, was lodged by four informants with mala fide intention and that the petitioner had appeared in 2 years B.Com. course at J.B. College, Jorhat and he was declared passed in the result, and the Principal of J.B. College had issued the mark sheet showing him as passed and also issued the provisional certificate. But, the informants had lodged the FIR falsely to gain political mileage in a particular political party, and that the petitioner had filed one title suit, being Title Suit No. 49/2017, for a decree declaring that the result of the petitioner as per result sheet dated 11.09.1981, issued by Dibrugarh University under the signature of the defendant No. 3 i.e. the Controller of Examination, Dibrugarh University to different Colleges under Dibrugarh University, including proforma defendant No. 4 i.e. J.B. College, Jorhat in the said title suit and the petitioner's mark sheet under the signature of the said defendant No. 3, sent to the said college and that the result of the plaintiff as disclosed in the said result sheet and also in the mark sheet are correct, and that the petitioner had passed his B.Com. Examination held in 1981 and that the B.Com. degree he holds is a valid one; and also for a decree of declaration that the information submitted by the office of the defendant No. 2 i.e. the Registrar, Dibrugarh

University, vide letter No. DU/RG/PILO/B/5001, dated 28.03.2016, in response to an RTI application by the applicant Pratap Jyoti Dutta of Digambar Road, Jorhat, based on tabulation sheet was wrong; and also for a permanent injunction against defendant Nos. 1, 2 and 3 to correct their tabulation sheet and to issue a regular B.Com pass certificate to the petitioner; and in that view of the matter, the learned CJM, Jorhat ought not to have taken cognizance of the offence of the charge-sheet filed by the I.O. in Jorhat P.S. Case No. 636/2016, which is now pending before the learned SDJM(S), Jorhat.

5.2. Mr. Kamar further submits that during investigation, the I.O. did not examine the Principal of J.B. College, Jorhat and only on the basis of an RTI application and the reply furnished to the informants of Jorhat P.S. Case No. 636/2016, the I.O. had submitted the charge-sheet, and that the informants have no *locus standi* to file an FIR in connection with the matter pertaining to Election Commission, and under such circumstances, Mr. Kamar has contended to allow this petition by quashing the entire proceeding of Jorhat P.S. Case No. 636/2016, corresponding to G.R. Case No. 903/2016, pending before the learned SDJM(S), Jorhat.

5.3. To bolster his submission, Mr. Kamar has also referred to three decisions of Hon'ble Supreme Court in the following cases:-

(i) **Pradip Kumar Kesarwani vs. the State of Uttar Pradesh & Anr.**, reported in **2025 Supreme (SC) 1667 and**

(ii) **Anukul Singh vs. State of Uttar Pradesh & Anr.**, reported in **2025 Supreme (SC) 1732.**

(iii) **Shanti Kumar Panda vs. Shakuntala Devi** reported in **(2004) 1 SCC 438;**

6. Per contra, Mr. Borthakur, learned Addl. Public Prosecutor for the respondents, has vehemently opposed the petition. Mr. Borthakur submits that the I.O. after proper investigation, had submitted the charge-sheet, upon which the learned CJM, Jorhat had taken cognizance of the offence under Sections 468/471 IPC, and that the matter is now pending for trial before the learned SDJM(S), Jorhat. Mr. Borthakur also submits that the petitioner has failed to demonstrate any ground, not to speak of a plausible ground, to quash the proceeding pending before the learned SDJM(S), Jorhat.

6.1. Mr. Borthakur further submits that the law, in relation to the quashing of an FIR and proceeding, is well settled in a catena of decisions of Hon'ble Supreme Court, and if the present case is examined under the propositions laid down by Hon'ble Supreme Court in the said cases, no case for quashing the proceeding could be demonstrated by the petitioner and under such circumstances, Mr. Borthakur has contended to dismiss the petition.

7. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the petition and the documents placed on record, and gone through the decisions referred by Mr. Kamar, learned Counsel for the petitioner.

8. The law with regard to quashing of an FIR and criminal proceeding is well settled in a catena of decisions of Hon'ble Supreme Court, including the decisions in **Anukul Singh (supra); State of Haryana vs. Bhajan Lal, reported in AIR 1992 SC 604**; **A.P. Mahesh Cooperative Urban Bank Shareholders Welfare Association vs. Ramesh Kumar Bung and Ors.**, reported in **(2021) 9 SCC 152**; **Pradeep Kumar Kesarwani vs. State of U.P. & Anr.**, reported in **2025 LiveLaw (SC) 880**; and **Neeharika Infrastructure Private Limited vs. State of Maharashtra & Ors.**, reported in **(2021) 19 SCC 401**.

8.1. Notably, a three Judges Bench of Hon'ble Supreme Court in para 33 of **Neeharika Infrastructure Private Limited** (supra), held as under:

> **"33. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482CrPC and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/charge-sheet is filed under Section 173CrPC, while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/ complaint/**

FIR in exercise of powers under Section 482CrPC and/or under Article 226 of the Constitution of India, our final conclusions are as under:

33.1. Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence.

33.2. Courts would not thwart any investigation into the cognizable offences.

33.3. It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on.

33.4. The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the "rarest of rare cases" (not to be confused with the formation in the context of death penalty).

33.5. While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.

33.6. Criminal proceedings ought not to be scuttled at the initial stage.

33.7. Quashing of a complaint/FIR should be an exception rather than an ordinary rule.

33.8. Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere.

33.9. The functions of the judiciary and the police are complementary, not overlapping.

33.10. Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences.

33.11. Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.

33.12. The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by

the learned Magistrate in accordance with the known procedure.

33.13. The power under Section 482CrPC is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court.

33.14. However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in *R.P. Kapur* [*R.P. Kapur* v. *State of Punjab*, 1960 SCC OnLine SC 21: AIR 1960 SC 866] and *Bhajan Lal* [*State of Haryana* v. *Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426], has the jurisdiction to quash the FIR/complaint.

33.15. When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482CrPC, only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR.

33.16. The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482CrPC and/or under Article 226 of the

Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438CrPC before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report /charge-sheet is filed under Section 173CrPC, while dismissing/disposing of the quashing petition under Section 482CrPC and/or under Article 226 of the Constitution of India.

33.17. Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482CrPC and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the

application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

33.18. Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."

8.2. In the case of **Pradip Kumar Kesarwani(supra)** while dealing with the issue, Hon'ble Supreme Court has held as under:-

"20. The following steps should ordinarily determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:–

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the materials is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable

person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal – proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising there from) specially when, it is clear that the same would not conclude in the conviction of the accused. [(See: *Rajiv Thapar* v. *Madan Lal Kapoor* (Criminal Appeal No. 174 of 2013)]

8.3. In the case of **Anukul Singh (supra)** Hon'ble Supreme Court, in para No. 11.4, has held as under:-

"11.4. Nevertheless, an exception has been recognized where the defence relies upon unimpeachable, incontrovertible evidence of

sterling quality -such as documents of undisputed authenticity - which ex facie demonstrate that continuation of criminal proceedings would be unjust and oppressive. This principle was recognized in Suryalakshmi Cotton Mills Ltd v. Rajvir Industries Ltd".(2018) 13 SCC 678, and followed in subsequent decisions.

8.4. In **State of Haryana and Ors. v. Bhajan Lal and Ors.** reported in **1992 Supp(1) SCC 335,** Hon'ble Supreme Court has laid down the following guidelines where the power under Section 482 should be exercised. These are:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) 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.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient

ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) 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."

We find that the High Court ought to have exercised its power under Clause (1), (3) and (5) of the above said judgment.

8.5. In the case of **Madhavrao Jiwajirao Scindia and Ors. v. Sambhajirao Chandrojirao Angre and Ors.,** reported in **(1988) 1 SCC 692**, this Court observed as follows:-

"7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted

allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

8.6. This Court in **Janata Dal v. H.S. Chowdhary and Ors.,** reported in **(1992) 4 SCC 305,** observed as follows:-

"132. The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound

principles."

8.7. The proposition of law, which can be crystallised from the above decisions, is that the accused must be relieved from the prosecution, even if the allegations are taken at their face value and accepted in their entirety do not constitute any offence. The power of quashing should be exercised sparingly with circumspection. The court cannot embark upon an enquiry as to reliability or genuineness or otherwise of the allegations made in the FIR/complaint.

9. In the instant case, the criminal proceeding, which is being sought to be quashed, was initiated on the basis of an FIR lodged by four persons, which is read as under:-

To

The Officer In-Charge, Jorhat Police Station
Dated, Jorhat the 2nd day of April, 2016

Sub : Ejahar

Sir,

With due respect I am to inform you that Rana Goswami, a candidate for Indian National Congress in the forthcoming Assembly Election, in a press conference held on 17th day of March, 2016 at Jorhat Press Club claimed that he has passed B. Com exam from Dibrugarh University in the year 1981 and his Roll NO, in B.Com. Examination was 858, (Copy of the Publication made in the News Paper Dainik Janambhumi dtd. 19/03/2016, is annexed herewith).

Subsequently, in the affidavit filed with the nomination paper Rana Goswami claimed that he has completed Bachelor of Commerce (B.Com.) from J.B. College, Jorhat under Dibrugarh University and passed in the year 1981. But subsequently petitioner on query came to know that said Rana Goswami was not passed the B.Com. Examination in the year 1981. The petitioner got a copy of Mark Sheet (Against the Registration NO. 9334. Roll No. 858. College J.B. College. Examination B. Com.) as furnished from the office of the Dibrugarh University wherein it is categorically stated that candidate Rana Goswami got 25 marks in English Paper and his Mark Sheet shows that he has failed in the B.Com. Examination against the aforesaid Roll Number.

That from the newspaper publication the petitioner came to know that said Rana Goswami has shown a Mark Sheet in a press conference given by him on 01/04/2016. However, office of the Registrar of Dibrugarh University vide Reference No. DU/RG/PILO/B/5001, dtd. 28/03/2016 issued a letter to Pratap Jyoti Dutta, Digambor Road, Jorhat, in reference to the reply of RTI Application. (Copy of the Letter is annexed herewith). In that reply, Public Information cum Law Officer, Devraj Sarmah of Dibrugarh University furnished the Mark Sheet of Rana Goswami, registration No. 9334 of 1978-79. Roll No. 858. J.B. College, Jorhat.

That from the perusal of the Mark Sheet as furnished by the Dibrugarh University Authority, it is crystal clear that he got 25 Marks in English Subject and result was declared as failed, hence it is submitted to make an enquiry with the Dibrugarh University Authority. Further contact

number of the Registrar (D.U.) is 0373-2370231 and said number is furnished to Pratap Jyoti Dutta by the University Authority through the above referred letter.

That from the information as furnished by the Dibrugarh University Authority, it is crystal clear that said Rana Goswami not only made a false statement in the affidavit, but also manufactured forged Mark Sheet for unlawful gain. However, by making false statement through affidavit and public media has deceived/cheated the voters of Jorhat Assembly Constituency.

That from the news paper reporting in The Sentinel dtd. 02/04/2016, it has come to know to the petitioner that said Rana Goswami has presented a Mark Sheet before the Press wherein he claimed that he has secured 21 Marks in English and got 9 Marks in Internal Assessment which is clearly in contradiction with the statement of Authority of Dibrugarh University and from the statement of Rana Goswami it is crystal Clear that there is a manipulation and forgery on his part in the alleged Mark Sheet, shown by him and he is liable to be punish in accordance to the law. (Copy of the News Paper Publication in The Sentinel, dtd. 02/04/2016 is annexed herewith).

That from the above facts and circumstances. it is crystal clear that said Rana Goswami has committed the offence of cheating and forgery along with other offence as punishable in the provision of law.

The petitioner therefore requests you to register a case and to act in accordance to the law.

Yours faithfully:

(1) Ishwar Prasanna Bordoloi
(2) Rintu Goswami,
(3) Kasmir Koustav Borthakur
(4) Gautam Borah

10. It is also to be noted here that after registration of Jorhat P.S. Case No. 636 of 2016, the same was investigated upon and on completion of investigation the I.O., had submitted a charge-sheet, under Section 468/471 of the Indian Penal Code, before the court of learned Chief Judicial Magistrate, Jorhat, who had transferred the case, being G.R. Case No. 903/2016, to the Court of the Learned S.D.J.M. (S), Jorhat for trial vide order dated 28/10/2020 (ANNEXURE-5). It also appears that then on the same date i.e. 28.10.2020, the learned S.D.J.M. (S), Jorhat, received the case records of the G.R. Case No. 903/2016, and took cognizance of the offences under Sections 468/471 I.P.C. against the present petitioner and thereafter had issued summons vide order dated 28.10.2020 (ANNEXURE-6) fixing the same on 27.11.2020, for appearance.

11. Thus, the proceeding is not at the initial stage. After filing of the charge sheet, the learned court below had already taken cognizance of the same and now it is pending for trial. And having examined the grounds so taken in this petition for quashing the entire criminal proceeding, and applying the proposition of law, laid down by Hon'ble Supreme Court in the cases discussed herein above, specially, in view of the guidelines in **Neeharika Infrastructure Private Limited** (supra), to the facts and

circumstances herein this case, this Court is of the opinion that no case for quashing the entire proceeding is made out. Present case also does not fall under Clause (1), (3) and (5) of para No.102 of the decision in the case of **Bhajan Lal(supra).** Mr. Borthakur, learned Addl. Public Prosecutor for the respondents, has rightly pointed out that no plausible reason has been assigned by the petitioner for quashing the aforementioned proceeding, and there appears to be substance in the same.

12. Though Mr. Kamar, learned counsel for the petitioner, has tried his level best to persuade this Court that in view of the pendency of the title suit before the learned Civil Judge, Jorhat and the decision of the said title suit is binding upon the criminal court in view of the decisions of Hon'ble Supreme Court in the case of **Shanti Kumar Panda (supra),** yet the said submission left this Court unimpressed, and the ratio laid down by Hon'ble Supreme Court in the said case would not come into his assistance as the said case is factually distinguishable from the present case and the said proposition of law was laid down by Hon'ble Supreme Court while dealing with an application under Section 145 Cr.P.C. Notably, in a proceeding under Section 145 Cr.P.C., the courts usually consider possession of the disputed land by the parties to the proceeding and the title has always to be adjudicated by Civil Courts and such circumstances Hon'ble Supreme Court has held that the finding of Civil Court is binding upon the parties. And that being so, it would not advance the argument of Mr. Kamar.

12.1. Though the allegations levelled in the FIR and also the relief being sought for in the Title Suit, though appears to be interrelated yet, not interdependent. The criminal court decides criminal liability independently and may convict or acquit based on the evidence before it. While the civil court finding only controls the civil consequences such as who owns what, who is entitled to mesne profits, etc. It is well settled that there is no statutory rule that a finding in one proceeding is final and binding in the other, though a civil court decision may be relevant evidence if it satisfies conditions in Sections 40–43 of the Evidence Act.

12.2. Further, whether the judgement of the Civil Court, is binding, on the Criminal Court, was dealt with by Hon'ble Supreme Court in the case of **K.G. Premshanker Vs. Inspector of Police and another,** reported in **(2002) 8 SCC 87,** wherein it has been held that the decision of the Civil Court, shall be relevant, if conditions of any of Sections 40 to 43, are satisfied. But, it cannot be said, that the same would be conclusive, except as provided in Section 41. If the judgement, order or decree of Civil Court, is relevant, as provided, under Sections 40 and 42, then Court has to decide, to what extent, it is binding, with regard to matters decided therein. It has also been held that, therefore, in each case, it has to be ascertained, whether judgment, decree or order, is relevant and if so, its effect. Further, it has been held that in the criminal case, the prosecution was required to prove, beyond a reasonable doubt, by leading cogent and convincing independent evidence that the sale deeds dated 31.01.1989 executed by Raj Kaur were the result

of fraud, forgery and misrepresentation. On the other hand the civil case was required to be decided on the preponderance of evidence. Merely, on the basis of the Civil Court judgements, it could not be conclusively held, in the criminal trial, that the sale deeds were the result of fraud, forgery and misrepresentation. Under these circumstances, the judgement of the Civil Court cannot be said to be binding, on the Criminal Court, for the purpose of deciding the guilt of the accused, in a criminal case.

12.3. Another aspect of the matter, which should not be lost sight of that here the civil suit is yet to be disposed of. It is also not certain till when the same will continue. It is also not certain what would be the outcome of the said suit. In anticipating a favourable decision in the civil suit in future, the criminal case cannot be kept pending, not to speak of quashing the same. The right of the other party, for speedy justice, cannot be ignored.

13. It is well settled proposition that in criminal case an FIR can be filed by any person. Moreover, the Election Commission has nothing to do with the criminal proceeding and the present matter is never pertains to the Election Commission. Mr. Kamar, in later stage of argument, had fairly admitted the same. And as such the ground so taken in this regard becomes stale.

14. This court has also gone through the other two decisions referred by Mr. Kamar in **Pradip Kumar Kesarwani(supra)** and in **Anukul Singh (supra).** But, this court is unable to agree with the submission of Mr. Kamar and the decision referred by him would

not come into his assistance. Even applying the said proposition, to the given facts and circumstances also this court fails to find any justified ground to quash the proceeding, in view of the proposition laid down in the case of **Neeharika Infrastructure Private Limited** (supra). It is to be noted here that the decision of in **Neeharika Infrastructure Private Limited** (supra) is a three judges bench decision.

15. In the result, this Court finds no merit in this petition and accordingly, the same stands dismissed. Interim order, dated 18.02.2021, staying the proceeding of G.R. Case No. 903/2016, arising out of Jorhat P.S. Case No. 636/2016, stands vacated.

J U D G E

Comparing Assistant