

GAHC010030142024



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

**Case No. : Crl.Pet./173/2024**

ARVIND KUMAR BHATRA  
S/O LATE BAJRANG LAL BHATRA  
R/O UMA PLACE  
S.C. ROAD, ATHGAON  
P.S. BHARALUMUKH  
GUWAHATI-781001,  
DIST. KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM AND ANR  
REP. BY THE PP, ASSAM

2:SRI ANIL KUMAR SHARMA  
S/O LATE BAJRANG LAL BHATRA  
R/O UMA PLACE

S.C. ROAD  
ATHGAON  
P.S. BHARALUMUKH  
GUWAHATI-781001

DIST. KAMRUP (METRO)  
ASSA

**Advocate for the Petitioner : MR A TEWARI**

**Advocate for the Respondent : PP, ASSAM**

**BEFORE  
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

**ORDER**

**Date : 17.02.2024**

Heard Mr. A. Tewari, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent No. 1.

This is an application under Section 482 of the Code of Criminal Procedure, 1973 praying for quashing of the order dated 30.12.2023, passed by the learned Chief Judicial Magistrate, Kamrup(M), Guwahati in PRC Case No. 328/2023 as well as the Charge-Sheet No. 09, dated 31.01.2023, and the F.I.R. dated 04.06.2018 of the Bharalumukh P.S. Case No. 443/2018, under Sections 406/417/419/420/468 of the Indian Penal Code.

Issue notice to the respondents, returnable within 4 (four) weeks.

Since Mr. Borthakur, learned Additional Public Prosecutor, has entered appearance and accepted notice on behalf of State respondent No. 1, issuance of formal notice to the said respondent is hereby dispensed with. However, he shall be provided with requisite extra-copy of the petition during the course of the day.

Learned counsel for the petitioner shall take steps for service of notice on respondent No. 2 by registered post with A/D as well as by usual process within a week from today.

Also, call for the scanned copy of the record from the learned Court below.

It is submitted by Mr. Tewari, learned counsel for the petitioner, that both the accused/petitioner and the informant are brothers and there are all total 45 numbers of civil disputes pending, which are basically the property dispute. But the present case has been lodged against the present petitioner with some false and concocted allegation. More so, the learned Court below, vide order dated 30.12.2023, took the cognizance against the present petitioner under Section 419 IPC in view of the order of Hon'ble Apex Court passed in **Onkar Nath Mishra & Ors. Vs. State (NCT of Delhi)**, reported in **(2008) 2 SCC 61**, with the following observations in the order:-

*“Further from the materials on record, I find that in the instant FIR as well as from the materials laid there is no such deception by the accused to the informant or any other witnesses thereby inducing them to deliver any property or to destroy/alter whole or part of valuable security or anything which is signed or sealed or capable of being converted into valuable security.”*

Accordingly, the learned counsel for the petitioner has submitted that there was no material to take cognizance against the present accused/petitioner under Section 419 IPC and in that regard, he also relied on a decision of co-ordinate Bench of this Court, reported in **2007 2 GLR 567 (Aparajita Nath Vs. State of Assam)**, and hence, prayed for stay of the further proceeding till disposal of the present petition.

In this context, Mr. Borthakur, learned Additional Public Prosecutor, has submitted that the learned Court below has rightly took cognizance of this case finding *prima facie* materials against the present petitioner under Section 419 IPC, however the other Sections, i.e. Sections 406/420 IPC, are already been

dropped as there was no material to attract those Sections.

Considering the submissions made by the learned counsels for both sides and also considering the facts and circumstances of the case, it is provided that the further proceeding in PRC Case No. 328/2023, pending before the Court of learned Chief Judicial Magistrate, Kamrup(M), Guwahati, shall remain stayed till returnable date.

List the matter after 4 (four) weeks.

**JUDGE**

**Comparing Assistant**