

GAHC010186602024



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

Case No. : WP(C)/4668/2024

SUKANYA DAS
W/O MR. KRISHNA BORDEURI,
R/O BYLANE NO. 03, GORCHUK
CHARIALI,
DIST. KAMRUP (M), ASSAM, PIN-781035

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
HOME (A) DEPARTMENT, PIN-781006

2:THE DIRECTOR GENERAL OF POLICE

ASSAM
ULUBARI
DIST. KAMRUP (M)
ASSAM
PIN-781007

3:ASSISTANT INSPECTOR GENERAL OF POLICE (WELFARE)

ULUBARI
DIST. KAMRUP (M)
ASSAM
PIN-78100

Advocate for the Petitioner : MR. M K CHOUDHURY, MR. M SARMA,MR P BHARDWAJ

Advocate for the Respondent : GA, ASSAM,

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 13/09/2024

Heard Mr. M.K. Choudhury, learned senior counsel assisted by Mr. M. Sarma, learned counsel for the petitioner. Perused the averments made in the writ petition.

The petitioner herein has been subjected to a criminal proceeding arising out of Dibrugarh PS case No. 936/2016. According to the petitioner, on the same set of fact, a departmental proceeding has also been initiated against her, although the same was not permissible.

The petitioner is also aggrieved by the letter dated 05/09/2024 issued by the respondent no. 3 directing her to appear before the said authority for recording her statement in connection with the departmental proceeding. Mr. Choudhury submits that the respondent no. 3 did not have the authority or jurisdiction under the law to summon the petitioner for recording her statement in a departmental proceeding.

On a pointed query, Mr. J.K. Goswami, learned Additional Senior Government Advocate, Assam, also could not appraise this Court as to under what authority of law, the respondent no. 3 has summoned the petitioner to record her statement in a departmental proceeding.

It is trite that in a departmental proceeding, on evidence is adduced on behalf of the department, it would be open for the delinquent to defend his/her interest by producing evidence, if so desired. Under the circumstances, on what basis the petitioner has been asked to appear for recording her statement remains a mystery, in the facts and circumstances of the present case. Until and unless there is clarity on the aforesaid aspect of the matter, the operation of the impugned letter dated 05/09/2024, as modified by the subsequent letter dated 09/09/2024, issued by the respondent no. 3, cannot be permitted to operate.

As such, issue notice of motion returnable on 03/10/2024.

Since Mr. J.K. Goswami, learned Additional Senior Government Advocate, Assam, has appeared and accepted notice on behalf of all the respondents, no formal notice is required to be sent in this case. However, extra copies of the writ petition, requisite in numbers, be furnished to the learned departmental counsel within one week from today, so as to enable him to obtain instruction and file affidavit.

Heard on the prayer of interim relief.

Having regard to the facts and circumstances of the case, operation of the letter dated 05/09/2024, as modified by the letter dated 09/09/2024, shall remain stayed until further order.

In so far as the prayer made by the petitioner for stay of the departmental proceeding is concerned, the said prayer is kept open and shall be considered on the returnable date.

List this matter again on 03/10/2024.

JUDGE

sukhamay

Comparing Assistant