

GAHC010234542024



2026:GAU-AS:2675

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

Case No. : Crl.Pet./1360/2024

DHYANJEET DUTTA
S/O SRI RANJAN DUTTA
R/O MILAN NAGAR, P.S. AND DIST. JORHAT, ASSAM, PIN-785001.

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PP, ASSAM

2:SRI BASTAB TAMULI
S/O LATE PABITRA TAMULI
R/O TILLIKIAM BEZGAON
P.S. PULIBOR
DIST. JORHAT
ASSA

Advocate for the Petitioner : MR P KATAKI, MS. A LALA,MS S BARPUJARI,MRS R BEGUM

Advocate for the Respondent : PP, ASSAM, MR. DARAK ULLAH, AMICUS CURIAE (R-2)

BEFORE
HONOURABLE MRS. JUSTICE SHAMIMA JAHAN

ORDER

23.02.2026

1. Heard Mr. P. Kataki, learning counsel for the petitioner and Mr. M. P. Goswami, learning Additional Public Prosecutor appearing for the state and Mr. Darak Ullah, learned Amicus Curiae appearing for respondent No. 2.

2. By this application, the petitioner has challenged the legality and validity of the order dated 17/9/2024 passed by the learned Sessions Judge, Jorhat in Sessions Case No. 4 of 2024 by which the charges were framed against the petitioner under Section 302/201/120(B) of IPC. The petitioner has also challenged the proceedings of Sessions Case No. 4 of 2024 pending in the aforesaid court.

3. The petitioner has challenged the said order of framing of charge as well as the proceedings initiated by the learned Sessions Judge in the said case on the ground that there are no materials against him been collected by the Prosecution during the investigation and that the charges were framed without there being any materials on record.

4. The case started with the lodging of the ejahar on 01/08/2022 by the wife of the deceased wherein it was revealed that the deceased, who was working for 2 years in a dhaba was found in an unconscious state lying in a bed inside the dhaba with injuries on his body being caused by iron rod. Thereafter, a local doctor was called who administered an injection and on being asked, the owner that is Mr. Debraj Dutta said that her husband was fine before she came. It was also alleged in the FIR that Mr. Debraj Dutta brought a cream to apply on her husband. On suspicion, that the owner is involved in the incident that the FIR was lodged against the owner.

5. Police registered the case under Section 324 and investigated the case. A day next, the son of the deceased lodged an ejahar, stating *inter alia* that the owner of the dhaba poured hot water on the body of the deceased due to which, the deceased received injuries and that the deceased died at 1 PM on 02/08/2022. It was also alleged therein that the deceased died due to physical assault made by the owner of the dhaba.

6. On completion of the investigation, submitted charge-sheet on 11/6/2023 both against the owner of the dhaba under Section 302 IPC with Section 120B/201 IPC and the petitioner under the same Sections.

7. Mr. Kataki, learned counsel for the petitioner submits that the police while submitting the charge-sheet had stipulated therein that the petitioner has been arrested and forwarded to judicial custody who helped the main accused to escape. The learned counsel submits that apart from the said statement, there is no material against the petitioner in the charge-sheet or in the FIR or in the statement of the witnesses recorded under Section 161 of the Cr.P.C. In absence of any material whatsoever, the learner counsel submits that the court of Sessions Judge, Jorhat framed charges against the petitioner under Section 302/120B/201 IPC.

8. Mr. M. P. Goswami, learned Additional Public Prosecutor appearing for the state submitted that in the statement of the driver recorded under Section 161 of the Cr.P.C. it finds mention that the main accused person i.e. the owner of the dhaba spoke with the petitioner while he left Jorhat and was going towards Numuligarh. He has also pointed out that after speaking with the petitioner by the owner of the dhaba, the petitioner also called him up in the cell phone of the driver of the vehicle which was hired by the owner of the dhaba and spoke with him as to where he is and where he was going.

9. Mr. Goswami has placed the note made by the police officer wherein it was stated that the petitioner had helped the owner of the dhaba in fleeing from the place of occurrence.

10. Mr. Darak Ulla, the learned Amicus Curiae appearing for respondent No. 2 also submits that the petitioner and the owner of the dhaba are cousin brothers

and they spoke with each other while the owner was fleeing from the place of occurrence after the occurrence took place.

11. I have heard the counsels and have gone through the records.

12. It is noticed that in the FIR i.e. in two numbers of FIR, one lodged by the wife of the deceased and the other lodged by the son of the deceased, only the owner of the dhaba was stated to be the accused person. The owner is stated to have poured hot water as well as assaulted the deceased in the dhaba. Although, the FIRs need not be encyclopedia of the offense, the police during investigation are entitled to find out the evidence in connection with the case as well as the accused persons connected with the case. But in the instant case, apart from the statement that the petitioner, who helped the main accused to escape, nothing further has been stipulated in the charge-sheet barring the charge found against him.

13. It is provided under Section 173(5) of the Cr.P.C. that the report of the police officer forwarded to the Magistrate should contain all documents which the prosecution proposes to rely, as well as the statements recorded under Section 161 of all the persons whom the prosecution proposes to examine as its witnesses. Section 173(5) is quoted here in below:

“Section 173(5) of the Code of Criminal Procedure (CrPC), 1973, requires police to submit specific documents to the Magistrate when filing a final report (charge sheet) in cases requiring arrest (Section 170). This includes all relevant documents the prosecution relies on and statements of witnesses under Section 161, ensuring the accused has access to evidence.”

14. Further, under Section 227 of the Cr.P.C, it is provided that upon consideration of the record of the case and the document submitted therewith and after hearing the submissions, if the Judge considers that there is no

sufficient ground for proceeding, the Judge can discharge the accused. And under Section 228 of the Cr.P.C. if upon consideration and hearing of as aforesaid, if the Judge finds that there is ground for presuming that accused has committed an offense would frame charge there under which will be read and explained to the accused.

15. In the instant case, the statement of the witnesses examined under Section 161 of the Cr.P.C. by the police, none of them have stated anything against the present petitioner. The only statement against the present petitioner is in the statement of the driver of the vehicle which was hired by the owner of the dhaba, who stated that on 02/08/2022, in the afternoon at around 3 o'clock, the owner of the dhaba hired his vehicle to take him towards Golaghat and that at around 7:30 PM, the owner of the dhaba used the cell phone of the driver and spoke to the petitioner. The driver stated that the owner of the dhaba spoke with the petitioner about something without specifying as to what they spoke about.

16. The driver further stated that the petitioner called the in his mobile phone again and asked the driver as to where he is and where he is going to which he replied to the petitioner. The driver further stated that he told everything to the petitioner to the effect that the owner of the dhaba wanted initially to go to Golaghat but he changed his mind and he wanted to go to Numuligarh for which he got in touch with another driver with another vehicle and let the owner of the dhaba go in the said vehicle.

When the accused person i.e. the owner of the dhaba was examined by the police under Section 161 of the Cr.P.C., the owner of the dhaba said that on the day when he fled from the place of occurrence, he spoke with the petitioner and that after he came to know that the petitioner got arrested, the owner of the

dhaba surrendered himself before the police station.

17. Although, it is provided that under Section 228 of the Cr.P.C. the Judge upon consideration of materials on record can frame charge against the accused person which would include both statement of the witnesses arrayed by the Prosecution as well as the statement of the accused recorded under Section 161 of the Cr.P.C, however, in the present case, there is *prima facie* no material against the petitioner, inasmuch as neither the driver nor the accused person had said as to what the owner of the dhaba spoke with the petitioner. In absence of the said materials, framing charge under Section 201 or 302 or 120(B) is not made out.

18. Under Section 201 of the IPC it is provided that if someone has knowledge to believe that offense has been committed causes any evidence to disappear with the intention to screen the offender from legal punishment is stated to have committed the offence under Section 201. Section 201 is quoted here in below:-

“Section 201 of the Indian Penal Code (IPC) penalizes anyone who, knowing or believing an offense was committed, causes evidence to disappear or gives false information to shield the offender. It aims to prevent the obstruction of justice and applies even if the person helping is not the main perpetrator.”

19. In the instant case, it is seen that the petitioner although spoke with the owner of the dhaba, who is stated to be the main accused in the instant case but in what way he had rendered evidence to disappear or in what way he had tried to screen the offender from legal punishment is not discernible from the materials on record. Only one sentence that the petitioner has helped the main accused would not be sufficient without any substantive materials to that effect.

20. In view of the same, the charge framed against the petitioner under

Section 302/120B/201 IPC is interfered with and the order dated 17/9/2024 passed by the learned Sessions Judge, Jorhat in Sessions Case No. 4 of 2024 is set aside and quashed, qua only the petitioner, namely, Dhyanjeet Dutta for the ends of justice.

21. Accordingly, this criminal petition stands disposed of.

JUDGE

Comparing Assistant