

GUWAHATI - 781008 THROUGH THE OFFICER-IN-CHARGE
PALTAN BAZAR POLICE STATIO

Advocate for the Petitioner : MR.H S KALSI
Advocate for the Respondent : MR.F KHANR- 6-8

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI
ORDER

23.03.2023

In the history of the Judicial System, frivolous litigation is not something unknown. In fact, it relates back to the starting of the judicial process of adjudication of disputes. However, the facts of the instant case, the crux of which would be narrated hereinbelow is absolutely shocking and would form a class of its own in the category of frivolous cases.

2. One Ms. Beolin Kharbhih is the petitioner in the instant case who claims to be a distant relative of one Sankar Prasad Nath, Ex-Deputy Superintendent of Police, CID, Assam. A case has been projected by the petitioner that the said Officer was entrusted with some sensitive cases involving politically influential persons of Assam and Meghalaya for which he was receiving threats. The petitioner claims that on that account, the said Sankar Prasad Nath had lodged an FIR on 29.03.2007 but no action was taken. Unfortunately, on 09.06.2007, the said officer was killed in a hit and run case and the petitioner claims that no proper investigation was done.

3. The petitioner further claims that the wife of Sankar Prasad Nath, Ms. Anjali Nath had also died under "mysterious circumstances" and during her lifetime, she had also lodged an FIR against respondent nos. 7 and 8 and their accomplice but no action was taken. The petitioner claims to have submitted many representations for proper investigation which was not paid heed to and the present writ petition has been filed against the closure of the aforesaid investigation.

4. Regarding the connection of the petitioner with the aforesaid Sankar Prasad

Nath, she has stated that her mother Smt. Direl Kharbhih was the earlier wife of Sankar Prasad Nath, who were subsequently divorced without any issues. Subsequently, the petitioner's mother again re-married from which the petitioner was born. The relevant pleadings are extracted hereinbelow:

“4. That the petitioner respectfully states that she is a Khasi lady hailing from Shillong, Meghalaya and presently residing at Guwahati. Her mother, Smt. Direl Charbhih was earlier married to the said Sankar Prasad Nath, but they were subsequently divorced. Out of the said wedlock they had no issues. Subsequently the petitioner's mother again re-married and from wedlock she was born. The petitioner also states that though Sankar Prasad Nath and her mother were divorced, Sankar Prasad Nath maintained a cordial relationship with them and therefore they were in touch.”

5. In the writ petition, as many as 26 persons have been made party respondents including Shri HS Thankiew, then advocate of the Meghalaya High Court who is presently an Hon'ble Judge of the said High Court, as respondent no. 14. However, no specific allegation has been made against him. Nonetheless, the said respondent no. 14 had filed IA(C) No. 3733/2017 for striking off names which was accordingly done as per order dated 17.11.2017 passed by this Court.

6. This case has been going on since the year 2016 and during the enquiry and investigation, it came to light that no person in the name of Ms. Beolin Kharbhih (petitioner) exists. In this connection, the latest status report was addressed to the learned Government Advocate, Assam vide communication dated 03.03.2023 from which it appears that even after proper investigation, the CID could not find any clue of the existence of the petitioner. Investigation was made by examining the CCTV Footage, business premises with which the petitioner had claimed to be connected and paper publication was also made in the "Assamiya Pratidin" and the "Assam Tribune". All these were made in connection with CID PS Case No. 16/2022 under

Sections 120(B)/419/420/467/468/471/506 of the Indian Penal Code.

7. This Court while taking up the matter on 14.12.2022 after recording that the existence of the petitioner is seriously doubtful had directed Shri HS Kalsi, the learned counsel for the petitioner to take steps to secure the personal appearance of the petitioner on the next date i.e. 21.12.2022.

On the said date i.e. 21.12.2022, Shri Kalsi, learned counsel for the petitioner has taken further time for personal appearance of the petitioner which was accordingly fixed on 19.01.2023.

On 19.01.2023, the learned counsel for the petitioner, Shri HS Kalsi had submitted that the petitioner would be contacted in spite of attempts made by him.

The matter was accordingly listed on 09.03.2023, on which date, the learned counsel for the petitioner, Shri Kalsi had submitted that the notice issued to the petitioner by registered post had returned back with endorsement that "no such person".

8. The matter has been taken for deliberation today.

9. It appears from the records, the status report as well as from other attending facts and circumstances that from the year 2016 till date, a writ petition has been pending in the name of a non-existing petitioner. The petition is seen to be accompanied by the affidavit which has been signed by the petitioner as deponent. Further, a Vakalatnama has been seen to be duly executed. What further intrigues the Court is that there are other documents including applications made under the RTI by the petitioner Ms. Beolin Kharbhih which have been annexed as Annexures 10, 14, 16, 19 and 20 wherein the same signature as appearing in the affidavit and Vakalatnama exist. It further transpires that the petitioner has also annexed a reply by the State Bank of India to an application by the petitioner under RTI.

10. It appears that the petition has been filed in a well planned manner from which

it is apparent that there has been a conspiracy. The Vakalatnama which contains the signature of the petitioner is accepted by Shri HS Kalsi and Shri RS Sadiyal as Advocates. Though it appears that the name of "D. Goswami" was also written in the space, the same has been erased. However, there is no acceptance of the Vakalatnama by Shri D. Goswami.

11. The affidavit-in-opposition filed by the respondent nos. 6, 7 and 8 would also reveal that one Uma Shankar Mishra has instituted a Title Suit against the said respondents in respect of the said land.

12. As indicated above, what is astonishing is that the judicial process has been successfully taken for a ride for the last more than six years by instituting and continuing a case by a non-existing person. The role of the counsel who has appeared for the non-existing petitioner is absolutely important as the counsel had accepted the case of the petitioner by signing the Vakalatnama and taking all steps from time to time on behalf of the non-existing petitioner.

13. In that view of the matter, while the writ petition is dismissed, cost of Rs.50,000/- (Rupees Fifty Thousand) Only is imposed upon each of the counsel who has signed the Vakalatnama for a non-existing petitioner. The cost be deposited in favor of the Benevolent Fund of the Gauhati High Court Bar Association. Further, this Court recommends that the matter be thoroughly enquired by the Bar Council of Assam, Nagaland etc. and appropriate steps be taken against the persons in accordance with law, if found guilty.

14. Let a copy of this order be served upon the Bar Council of Assam, Nagaland etc. to enable taking of steps / action as directed above.

JUDGE

Comparing Assistant