

GAHC010219732023



2026:GAU-AS:5191

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

Case No. : Crl.Pet./1064/2023

PRATYUSH PRATIM DEBNATH AND ANR
S/O DIGANTA KR. NATH
VILL- MILANPUR, WARD NO. 26, P.O. AND P.S. NAGAON, IN THE DISTRICT
OF NAGAON, ASSAM
PIN-782001

2: PRAN KRISHNA MAHANTA
S/O LT. RAGHUDEV MAHANTA
VILL- SUKDAL
BORBARI
P.S. MIKIR BHATA
DIST. MORIGAON
ASSAM

PIN78200

VERSUS

THE STATE OF ASSAM ANR
REP. BY THE LD. PP TO THE GOVT. OF ASSAM

2:ANWARUL HOQUE MAZUMDER
S/O LT. ABBAS ALI MAZUMDER
R/O VILL- ALAKULIPUR
UNDER P.O. BADARPURGHAT
AND P.S. BADARPUR
IN THE DISTRICT OF KARIMGANJ
ASSA

Advocate for the Petitioner : MS M N KONYAK, MR G CHOUDHURY

Advocate for the Respondent : PP, ASSAM, MR H R CHOUDHURY (r-2),S. TALUKDAR (r-2),A S
PRODHANI (r-2)

BEFORE
HON'BLE MRS. JUSTICE MITALI THAKURIA

Advocates for the Petitioners : Mr. G. Choudhury.

Advocates for the Respondent

No. 1 : Mr. P. Borthakur,
Addl. PP, Assam

Advocates for the Respondent

No. 2 : Mr. H. R. Choudhury,

Date on which judgment is reserved : **11-03-2026**

Date of pronouncement of judgment : **07-04-2026**

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. G. Choudhury, learned counsel for the petitioners and Mr. P. Borthakur, learned Addl. PP, Assam for the respondent No. 1. Also heard Mr. H. R. Choudhury, learned counsel for the respondent No.2/informant.

2. This is an application filed under Section 482 CrPC for quashing of the FIR dated 07.05.2019, which was registered as Badarpur P.S. Case No. 121/2019 registered under Section 304(A) of IPC corresponding to G.R. Case No. 1044/2019 along with the Charge Sheet No. 177/2022 filed therein.

3. Mr. Choudhury, learned counsel for the petitioners submitted that a complaint was lodged by one Anwarul Hoque Mazumder, respondent No.2 before the Officer-in-Charge of Badarpur Police Station with the allegation that while his son, namely, Ansarul Hoque Mazumder was proceeding from his house at Alakulipur towards his firm at Debendranagar through PWD road and when he reached near his firm, one of the overhead high voltage electric wire, which was already hanging dangerously low level, suddenly came down further and touched the head of his son, as a result of which, his son died on the spot and after the said accident he was rushed to Railway Hospital, Badarpur, where Doctor declared him dead. Autopsy over his dead body was also conducted at the Civil Hospital on the same day of the accident.

4. It is further alleged by the complainant that there was a long pending panic in the local people about the said dangerously hanging electric wire and one of them made written complaint to the authority of APDCL, Badarpur Sub Division in that regard, but authority concerned did not pay any attention to his complaint.

5. After receipt of the said FIR, a case has been registered as Badarpur P.S. Case No. 121/2019 under Section 304(A) of IPC. After investigation, police accordingly filed the charge sheet on the basis of the said complaint against both the petitioners, who are serving as SDE and Junior Manager, respectively

under the APDCL, Badarpur.

6. It is submitted by Mr. Choudhury that the allegation which has been made in the said complaint does not make out a case against the petitioners. Even though it is stated that there was long pending panic situation in the local people about the said dangerously hanging electrical wire is not true and there was no such written complaint received by the authority concerned. He further submitted that no offence is made out under Section 304(A) IPC and the victim died only due to his own negligence and it is not for the negligent act of the petitioners. The petitioners have been implicated in the instant case by the informant only to harass, humiliate and spite them in the eyes of the eyes of the society and police also submitted the charge sheet against the petitioners without any proper investigation.

7. However, after getting the information about the said incident, the petitioners along with other staff had rushed to the place of occurrence and it was observed that due to heavy thunder and hailstorm on the preceding night some of the electricity posts had bent and due to which only there occurred a slack of electricity over head lines and the victim knowing fully well, about the slackness, which was visible even through the naked eye went underneath the wires and tried to lift the cable and he got pulled to the electricity cable and got electrocuted. But the learned Trial Court without considering this aspect of the case, had misread the provision of law and accordingly, took cognizance against the present petitioners which ought to have been dismissed under Section 203 CrPC, rather than issuing process against the petitioners.

8. He further submitted that prima facie it reveals that there is no case

established against the petitioners to take cognizance or to file charge sheet against them and if the case is allowed to be proceeded, it will be nothing but the abuse of process of the Court. Mr. Choudhury, learned counsel accordingly submitted that it is a fit case wherein the entire criminal proceeding including the FIR and the Charge Sheet can be quashed and set aside by invoking the power under Section 482 CrPC.

9. During the course of argument, Mr. Choudhury, learned counsel raised the point that under Section 151 of the Electricity Act, 2003 no Court can take cognizance of an offence punishable under this Act except upon a complaint in writing made by the appropriate Government or appropriate commission or any of their officer authorized by them or a chief Electrical Inspector or an Electrical Inspector or licensee or the generating company etc. However, Special Court constituted under Section 153 shall be the competent Court to take cognizance of an offence without the accused being committed to it for trial.

10. Mr. Choudhury, learned counsel also referring to Section 161 of the said Act of 2003 submitted that the authorized person can only make enquiry and only after conclusion of the enquiry the matter may be referred to the Court. Thus, he submitted that directly the Court has no power or authority to take cognizance of an offence under the Electricity Act and the Special Court as constituted under Section 153 of the said Act are authorized to deal with cases under Sections 135, 136, 137, 138, 139, 140 and 142 of the said Act.

11. It is submitted by Mr. Choudhury, that merely because both the petitioners are holding the post of SDE and Junior Manager in the electricity department, they cannot be made liable for the death of the deceased. The learned Trial

Court should apply its judicial mind while taking cognizance against any person as summoning of an accused in a criminal case is considered to be very serious matter and the criminal law cannot be set into motion as a matter of course. In support of his submission, he relied on a decision of the Hon'ble Apex Court in the case of **Narendra Kumar A. Baldota Vs. State of Karnataka** reported in **2022 SCC OnLine SC 1880**, wherein the judgment passed in the **Pepsi Food (supra)** case has been reiterated. He basically emphasized on para 26 and 27 of the said judgment, which read as under:

“26. In [Ravindranatha Bajpe v. Mangalore Special Economic Zone Limited and Others](#)¹, this Court held:-

“.....All of them are arrayed as an accused as Chairman, Managing Director, Deputy General Manager (Civil & Env.), Planner & Executor, Chairman and Executive Director respectively. Therefore, as such, in absence of any specific allegations and the specific role attributed to them, the learned Magistrate was not justified in issuing process against accused nos. 1 to 8 for the offences punishable under Sections 427, 447, 506 and 120B read with [Section 34](#) IPC.

26. As observed by this Court in the case of [Pepsi Foods Ltd. v. Special Judicial Magistrate](#), (1998) 5 SCC 749 and even thereafter in catena of decisions, summoning of an accused in a criminal case is a serious matter. Criminal Law cannot be set into motion as a matter of course. In paragraph 1 2021 SCC Online SC 806 28 in [Pepsi Foods Limited](#) (supra), it is observed and held as under:

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

27. As held by this Court in the case of [India Infoline Limited](#) (supra), in the order issuing summons, the learned Magistrate has to record his satisfaction about a prima

facie case against the accused who are Managing Director, the Company Secretary and the Directors of the Company and the role played by them in their respective capacities which is sine qua non for initiating criminal proceedings against them. Looking to the averments and the allegations in the complaint, there are no specific allegations and/or averments with respect to role played by them in their capacity as Chairman, Managing Director, Executive Director, Deputy General Manager and Planner & Executor. Merely because they are Chairman, Managing Director/Executive Director and/or Deputy General Manager and/or Planner/Supervisor of A1 & A6, without any specific role attributed and the role played by them in their capacity, they cannot be arrayed as an accused, more particularly they cannot be held vicariously liable for the offences committed by A1 & A6.”

12. Mr. Choudhury, learned counsel further submitted that the petitioners being the public servants under Section 21 of the BNSS, the sanction is required to before taking cognizance against the present petitioners. In that regard also he relied on a decision of the Hon'ble Supreme Court in the cases of **(i) Manorama Tiwari and other Vs. Surendra Nath Rai** reported in **(2016) 1 SCC 594** and **(ii) D. T. Virupakshappa Vs. C. Subhash** reported in **(2015) 12 SCC 231**.

13. In the case of **D. T. Virupakshappa (supra)** in para 7 of the said judgment it has been held as under:

“7.The issue of 'police excess' during investigation and requirement of sanction for prosecution in that regard, was also the subject matter of [State of Orissa Through Kumar Raghvendra Singh and others v. Ganesh Chandra Jew](#)[2], wherein, at paragraph-7, it has been held as follows:

“7. The protection given under [Section 197](#) is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official

duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public [pic]servant acting or purporting to act as such in the discharge of his official capacity. Before [Section 197](#) can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. ...”

14. Citing the above referred judgment, Mr. Choudhury, learned counsel also submitted that so far the public servant is concerned, cognizance of any offence by any Court is barred by Section 21 BNSS, earlier Section 197 CrPC, unless sanction is obtained from the appropriate authority, if the offence alleged to have been committed towards in discharge of his official duty.

15. But here in the instant case, it is seen that though the petitioners are considered to be the public servant, the prosecution did not obtain any sanction from the appropriate authority before filing of the charge sheet and the Court also took cognizance of the offence of the offences without any prosecution sanction. In that context also, the criminal proceeding against the present petitioners are liable to be set aside and quashed for want of prosecution sanction.

16. Mr. Choudhury, learned counsel further submitted that mere carelessness is not sufficient to prosecute for offence under Section 304(A) IPC and in that context also he relied on a decision of Hon’ble Karnatak High Court in the case of **Daljith Singh Ghai and another Vs. Sate by Station House Officer,**

Wadi Police Station reported in **2004 2 Crimes(HC) 34** wherein in para 6 of the said judgment it has been held that to establish a case under Section 304 (A) IPC there must be rash and negligent act on the part of the petitioner which led to the death of the deceased. The negligence or the omission is the determining factor to call the act as a criminal and in addition to that there must mens rea in criminal negligence. Mere carelessness is not sufficient to prosecute for the offence under Section 304 (A) IPC.

17. Citing the above referred judgment it is also submitted by Mr. Choudhury that prime facie from the materials on record as well as the statement made in the FIR itself it is seen that there is no mens rea or there is no such negligent act committed by the present petitioners to make them responsible for the death of the deceased or to take cognizance against them under Section 304 (A) IPC.

18. Mr. Choudhury, learned counsel accordingly submitted that it is a fit case for setting aside and quashing the entire criminal proceeding pending against the present petitioners and also the charge sheet and the FIR lodged against them by invoking the power under Section 482 CrPC.

19. Mr. H. R. Choudhury, learned counsel for the respondent No.2/informant submitted that the death was caused purely for the negligence of the petitioners, who were holding the post of SDE and Junior Manager respectively in the concerned department. He submitted that prior to the incident the local people had made representation before the petitioner No.1 intimating about the over head electrical wire which was hanging dangerously in low level.

20. He further submitted that two representations were made by the local people intimating the dangerous situation in the locality and those representations are still available in the office record, but inspite of such representations made by the local people, these two petitioners, who are holding the post of SDE and Junior Manager did not take any initiative or never visited to the place of incident. Thus, only for the negligence of the petitioners that unfortunate incident had happened where the informant lost his son, who died instantly on the spot due to electrocution.

21. Mr. H. R. Choudhury, learned counsel further submitted that the petitioners were aware about the dangerous situation in that locality but they had not took any initiative for the repairing of the high voltage line which was dangerously low lying. He further submitted that 197 CrPC is applicable only when the incident occurred while discharging the official duty. But here in the instant case, these two petitioners did not even discharge their official duty to take the benefit of Section 197 CrPC, rather, they neglected to do their official duty and thus, this is not at all a case wherein the cognizance is barred for want of prosecution sanction. All ingredients are present to take cognizance against these two petitioners under Section 304 (A) IPC, and the learned Trial Court had rightly taken cognizance against the petitioners and summons were accordingly issued.

22. Mr. H. R. Choudhury during his argument also produced one photocopy of one representation which was submitted before the petitioner No.1, though it is seen that there is no representation available in the case record, but it seems that the representation was duly received by the Executive Engineer, APDCL and those representations were admittedly made before the unfortunate incident.

23. Mr. Borthakur, learned APP submitted that sanction can be obtained at any point of time, even at the time of recording of evidence, but without recording of any evidence it is not possible to held that whether this act of negligence was there while discharging their official duty. It is the Trial Court who can decide the matter and accordingly the prosecution may also be obtained at the time of trial.

24. It is a fact that there is no such representation is available in the case record, however, from the statement made in the FIR itself it is seen that one representation was made earlier to the incident by the local people apprising the dangerous situation before the authority concerned.

25. He further submitted that these are all questions of fact and only can be determined at the time of trial or after recording of evidence, but prima facie there is a case against the petitioners under Section 304(A) IPC and the learned Trial Court rightly took cognizance against the petitioners. He further submitted that the post mortem report also supports the prosecution case and it is an admitted fact one person died only for electrocution.

26. Heard the submission made by the learned counsel for the parties and I have also perused the scanned copy of the TCR and the annexures filed along with the petition.

27. There is no dispute that one person died only for electrocution as the over head high voltage line was came down and touched the head of the deceased which was lying low dangerously. Post mortem also supports that the death caused due to electrocution.

28. The learned counsel for petitioner basically raised the issue that the Court is barred from taking cognizance in cases under the Electricity Act and it is the Special Court constituted under Section 153 has the authority to conduct cases under Sections 135, 136, 137, 138, 139, 140 and 142 of the Electricity Act. Accordingly, he emphasized on 151 of the said Act which speaks about the bar of the Court in taking cognizance of such kind of matter. But the instant case does not fall under such category of allegation to bar the Court from taking cognizance.

29. It is also an admitted fact that the investigation was done and the charge sheet was accordingly submitted on the basis of the complaint made by the respondent No.2 who lost his son for the said unfortunate incident and the Court took cognizance of the offence considering the materials available in the case record and finding a prima facie case against both the petitioners.

30. It is submitted by Mr. Choudhury, learned counsel for the petitioner that there was no prosecution sanction obtained by the investigating authority at the time of filing the charge sheet, not the Court made any enquiry in regards to the prosecution sanction though I it is admitted fact that both the petitioners are public servant. But Section 197 CrPC reads as under:--

197. Prosecution of Judges and public servants.

(1)When any person who is or was a Judge or Magistrate or a public servant not removable from his officer save by or with the sanction of the Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a)in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State of the State Government :

[Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.] [Added by Act 43 of 1991, Section 2 (w.e.f. 2-5-1991).]

[Explanation. - For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376, [section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB,] or section 509 of the Indian Penal Code.

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members (of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein the expression "State Government" were substituted.

[(3-A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3-B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a Court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the

period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.]

(4)The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.

31. Thus, the Court is barred to take cognizance of an offence against any public servant without prosecution sanction, but in that case also the purporting Act has to be done in discharging of his official duty. But herein in the instant case, it is seen that these two petitioners who are holding responsible post of the concerned department did not discharge their official duty, rather, they are found negligent in their official duty. Thus, it cannot be said that the incident had happened or the offence was committed by the accused petitioners while discharging their official duty to get the benefit of Section 197 CrPC.

32. As per the submission made by the learned APP, Assam no representation is available in the scanned copy of the TCR, which is stated to be submitted before the petitioners/concerned department intimating regarding the dangerously low lying high voltage line in that locality. But during the argument, Mr. Choudhury, learned counsel for the respondent No.2 produced one photocopy of the document which was submitted before the authority concerned as a reminder of the letter dated 29.11.2018 for shifting of PSC Pole intimating the wire which was running over the land of one of the local person. More so, from the FIR itself it is seen that prior to the lodging of the FIR the local people had made a representation and it is stated in the FIR as under:

“It is further to be mentioned here that there was a long pending panic in the local people about the said dangerously hanging electric wire and one of them made written

complaint to the authority of the APDCL, Badarpur Sub-Division, in that regard, but the authority concerned did not pay any heed to his complaint.”

33. Thus, it cannot be out rightly rejected the plea of the respondent No. 2 that the authority concerned were intimated regarding the dangerous situation wherein the local people was panic and it was a long pending panic situation faced by the local people. But instead of such representation, these two petitioners who are holding the post of SDE and Junior Manager of the said department did to take any initiative for improvement of the situation or for any other necessary steps.

34. Thus, prime facie it is seen that there is negligence on the part of these two petitioners and at the same time, it is also a fact that the said incident not had happened at the time of discharging their official duty, nor any offence has been committed by the accused petitioners while discharging their official duty to protect them under Section 197 CrPC, rather it is seen that the incident had happened purely on the negligent act of the accused petitioners for which a person lost his life. However, during trial and after recording of the evidence the Court may find the fact as to whether there was negligence on the part of the petitioners as these are matter of facts, which may reveal at the time of recording of statements. But prima facie materials establish a case against the present petitioners under Section 304(A) IPC.

35. The Hon'ble Supreme Court in the case of **State of Haryana & Ors. Vs. Bhajan Lal & Ors.**, reported in **1992 Supp (1) SCC 335**, has held as under:

“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."

36. But in the instant case, prima facie it is seen that there are materials to establish a case against the present petitioners under Section 304(A) IPC and

considering this aspect of the case, this Court is of the opinion that it is not at all a fit case to set aside and quash the entire criminal proceeding including the FIR dated 07.05.2019, which was registered as Badarpur P.S. Case No. 121/2019 under Section 304(A) of IPC corresponding to G.R. Case No. 1044/2019 along with the Charge Sheet No. 177/2022 against the present petitioners by invoking the extraordinary power conferred under Section 482 CrPC.

37. Accordingly, this criminal petition being devoid of any merit stands dismissed.

JUDGE

Comparing Assistant