GAHC010049832022

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

Case No. : Crl.Pet./214/2022

THE STATE OF ASSAM AND ANR
REP. BY THE PRINCIPAL SECRETARY, HOME AND POLITICAL DEPARTMENT, ASSAM, DISPUR-6.

2: COMMISSIONER OF POLICE
KAMRUP (M), GUWAHATI-1, ASSAM

VERSUS

ABDUL KHALEQUE
S/O LT. SOHRAB ALI
PRESENTLY RESIDING AT B-503, GOMTI APARTMENT, MS FLATS, BABA KHARAK SINGH MARG, NEW DELHI-110001.

2. DR. HIMANTA BISWA SARMA

S/O LATE KAILASH NATH SARMA

RESIDENT OF CHIEF MINISTER'S RESIDENCE,

MINISTER COLONY, GUWAHATI-781006, ASSAM.

Advocate for the Petitioner : MR. M PHUKAN

Advocate for the Respondent : MR SARFRAZ NAWAZ

BEFORE
HON'BLE MR. JUSTICE AJIT BORTHAKUR

For the petitioners : Mr. D. Saikia, Advocate General, Assam
Mr. M. Phukan, Public Prosecutor, Assam

For the respondents : Mr. S. Nawaz, Advocate
Ms. Padmini Baruah, Advocate

Date of hearing : 20.07.2023

Date of Judgment & Order : 03.08.2023

JUDGMENT & ORDER

Date :- 03.08.2023

Heard Mr. D. Saikia, learned Advocate General, Assam and Mr. M. Phukan, learned Public Prosecutor, Assam appearing for the petitioners. Also heard Mr. S. Nawaz, learned counsel for the respondent No.1/informant/ complainant and Ms. Padmini Baruah, learned counsel appearing for the proforma respondent No.2. Perused the scanned copy of the record of C.R. Case No.1598^{C}/2022.

2. By this petition under Section 482 read with Section 397 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), the petitioners have prayed for setting aside and quashing the impugned order, dated 05.03.2022, passed by the learned S.D.J.M. (S)- I, Kamrup (M), Guwahati in C.R. Case No.1598^{C}/2022, whereby the Officer-in-Charge of Dispur Police Station has been directed to register a case on the allegations mentioned in the complaint and to investigate the matter fairly as well as to submit the Final Form at the earliest.

3. The brief facts of the case are that on 29.12.2021, the complainant/respondent No.1, namely Abdul Khaleque, a Member of Parliament, lodged a First Information Report (for short 'F.I.R.') which reads as under-

"***To,***
The Officer-in-Charge,
Dispur Police Station,
Guwahati- 781006
Date- 29th day of December, 2021, Guwahati
Subject: First Information Report.

With due respect, I would like to bring to your attention that on 10th December 2021 at Marigaon, Sri Himanta Biswa Sarma, the Hon'ble Chief Minister of Assam, stated that the eviction exercise at Gorukhuti was a 'revenge' for the incidents of 1983.
Betraying his oath on the Constitution, the Hon'ble Chief Minister Dr. Sarma has maliciously given a communal colour to what was supposed to be an executive exercise. The Gorukhuti eviction saw the brutal killings of Moinul Hoque and Sheikh Farid. Houses of the residents of Gorukhuti were burnt to the ground By calling such horrendous acts as revenge, Sri Himanta Biswa Sarma has not only justified the killings and arson committed there, the legality of which is sub-judice before the Hon'ble Gauhati High Court, but he has gone far ahead and has communalized the whole exercise the target of which was the Muslim population living there.

The rampant human rights violations at Gorukhuti were preceded by multiple utterances of the Hon'ble Chief Minister targeted towards the particular community. The hate created by the Hon'ble Chief Minister's constant denigration of the Muslim community manifested itself in the egregious acts of a civilian -a government hired photographer- who stomped on Moinul Hoque's body while he was on his last breath, having been gunned down by the police.

And by calling the unfortunate events at Gorkhuti an act of 'revenge' for 1983, the Hon'ble Chief Minister is giving wanton provocation to people to commit further acts of rioting against the particular community of the state.

Through such malignant and provocative utterances, the Hon'ble Chief Minister is intending to cause disharmony or feelings of enmity, hatred or ill-will towards the Muslim population of Assam.

The instances of religious enmity in India are numerous and with every passing day, the incidents of communal flare ups are on the rise. The Chief

Minister of a state has the constitutional obligation to protect its citizens irrespective of caste, creed or religion. Instead of doing so and preserving the social fabric of our beloved state, the Hon'ble Chief Minister is aggravating the situation through his vindictive hate mongering.

The Hon'ble Chief Minister of Assam, Sri Himanta Biswa Sarma has clearly committed offences under Sections 153, 153-A of the Indian Penal Code.

I would like to add here that the statement in question was made publicly and has been widely circulated throughout the state including in areas within the jurisdiction of your good office. As such, I request you to register an FIR under Sections 153, 153-A of the Indian Penal Code and any other appropriate sections, investigate the matter and submit police report against Sri Himanta Biswa Sarma. As I was in Delhi to attend the parliament session there is delay of 19 days in lodging the FIR.

Thanking You,
(ABDUL KHALEQUE)"

4. On receipt of the FIR, the Officer-in-Charge, Dispur Police Station, Guwahati conducted a preliminary enquiry which was completed on 29.12.2021 itself. On preliminary enquiry, it was found that there was no sufficient ground for entering into an investigation and it was decided not to enter into an investigation. Accordingly, the Officer-in-Charge duly notified the same to his superior officer, i.e., the Deputy Commissioner of Police (East), Guwahati on 29.12.2021, which was received on 31.12.2021 and the same was further communicated to the Commissioner of Police on 03.01.2022. Thereafter, on 12.01.2022, the complainant submitted another application under Section 154(3) Cr.P.C. before the Deputy Commissioner of Police (East), Guwahati. On 25.02.2022, the complainant filed a Complaint Petition before the Court of learned S.D.J.M. (S)-I, Kamrup (M) under Section 156 (3) Cr.P.C. for issuance of directions to the Officer-in-Charge, Dispur Police Station to register an F.I.R and initiate investigation against Dr. Himanta Biswa Sarma, the Chief Minister of Assam/ Proforma respondent No.2, for the offences as alleged by the

complainant. In the said Complaint Petition, the complainant/respondent No.1 herein alleged that even after passage of more than a month, no F.I.R was registered by the Police authorities despite the complainant making out a clear case of commission of cognizable offences by the proforma respondent No. 2. It was alleged that the speech delivered by him was not innocuous utterances, but were communally motivated statements made with an intention to malign the Bengali speaking Muslim population of the area. It was further alleged that by calling the unfortunate and tragic killing of two individuals including a child and destruction of the homes of thousands of people at Gorukhuti was an act of revenge. The proforma respondent No.2 made his hatred and disdain for victimized Bengali speaking Muslims apparent for all to see.

5. The learned S.D.J.M.(S)-I, Kamrup (M), Guwahati allowed the prayer of the complainant and further, directed the Officer-in-Charge of Dispur Police Station to register a case on the allegations mentioned in the complaint and investigate the matter fairly and to submit the Final Form at the earliest as stated above.

6. Mr. D. Saikia, learned Advocate General, Assam appearing for the petitioners, submitted that the compact disc containing the recorded video of the alleged speech in vernacular Assamese, which is annexed to the instant petition as Annexure-6 in printed script having not disclosed any cognizable offence did not justify registration of a case under Sections 153 and 153-A of the IPC at all when verified with the contents of the whole text of the speech in question. Mr. Saikia further submitted that on a bare perusal of the impugned order, dated 05.03.2022, it is noticed that the learned S.D.J.M.(S)-I, Kamrup (M) at Guwahati neither appreciated the video clip nor perused the printed

transcript of the speech before arriving at the conclusion that the speech in question disclosed cognizable offences. Mr. Saikia submitted that in the first F.I.R., dated 29.12.2021 lodged before the Officer-in-Charge of Dispur P.S. as well as in the application under Section 154(3) filed before the Deputy Commissioner of Police (East), Guwahati on 12.01.2022 did not contain the transcript/CD/pen drive of the speech in question. Thus, Mr. Saikia submitted that the opinion arrived at by the learned Court below to the effect that the Complaint Petition prima facie disclosed commission of cognizable offences was apparently an incorrect and perverse finding due to the simple reason that the learned S.D.J.M.(S)-I had not gone through the detail text of the speech delivered by the proforma respondent No.2. Referring to Section 156(3) Cr.P.C., Mr. Saikia submitted that the learned S.D.J.M.(S)-I, Kamrup (M), Guwahati wrongly observed that the veracity of the allegations is not something which can be enquired prior to the registration of the F.I.R. inasmuch as such proposition is against the settled law on the subject propounded in a catena of decisions rendered by the Hon'ble Apex Court. Mr. Saikia submitted that the complaint, if taken in its face value and read in its entirety, even then no offence under any of the provisions of the IPC has been disclosed against the proforma respondent No. 2. Mr. Saikia submitted that the respondent No.1 has not challenged the translated printed version of the speech vide Annexure-6 in any manner and as such, the same may be accepted as true and undisputed.

7. According to Mr. Saikia, the learned Advocate General, the complainant had concocted and fabricated the actual speech and thereby misled the Court to get a favourable illegal order. Mr. Saikia strenuously argued that the complainant/respondent No.1 herein has made a wrong statement on oath that the proforma respondent No. 2 had made a communally motivated statement

with an intention to vilify the Bengali speaking Muslim population of Gorukhuti area and that by calling the unfortunate and tragic death of two individuals as well as destruction of the houses of thousands of evicted people was an act of revenge. It has been submitted that on preliminary enquiry, the police found that the proforma respondent No. 2 did not make any such statement while delivering the speech and nowhere passed any objectionable remarks against any particular community. Therefore, Mr. Saikia submitted that the complainant/ respondent No.1 did not approach the learned Court below with clean hands by making false statements. It has been further submitted that the record shows that the allegations made in the Complaint Petition were nothing but a manipulation of the actual speech, derived from the compact disc annexed with the Complaint Petition delivered by the proforma respondent No. 2. Mr. Saikia, therefore, submitted that on a fair reading of the allegations made out in the F.I.R. and the undisputed speech clearly establish that there was no element of any cognizable offence and as such, the police had rightly decided not to register and investigate the matter invoking Section 157(1)(b) Cr.P.C. Concluding his argument, Mr. Saikia, learned Advocate General, submitted that application of mind is necessary to exercise the power under Section 156(3) Cr.P.C. and credibility of information has to be invariably weighed by the Magistrate before making an order for registration of a case and investigate into it. However, the learned Magistrate utterly failed to exercise sound judicial mind on the Complaint Petition made under Section 156(3) Cr.P.C. and as such, the erroneous and illegal order was passed directing the police to register and investigate the Complaint Petition itself. In support of his argument, Mr. Saikia relied on the ratio of the decisions rendered in the judgments of- *1) Bilal Ahmed Kaloo Vs. State of A.P., reported in (1997) 7 SCC 431; 2) Priyanka Srivastava*

and Anr. Vs. State of U.P. and Ors., reported in (2015) 6 SCC 287; 3) Maksud Saiyed Vs. State of Gujarat and Ors., reported in (2008) 5 SCC 668; 4) Manju Surana Vs. Sunil Arora and Ors., reported in (2018) 5 SCC 557; 5) Ramdev Food Products Pvt. Ltd. Vs. State of Gujarat, reported in (2015) 6 SCC 439 and 6) Lalita Kumari Vs. Government of U.P. and Ors., reported in (2014) 2 SCC 1.

8. Mr. M. Phukan, learned Public Prosecutor, in his short argument, submitted that a bare reading of the allegations made in the F.I.R. and the full text of the speech delivered by the proforma respondent No.2, it is clearly revealed that no any offence, which may legally be accepted to be cognizable offence is disclosed. Mr. Phukan further submitted that the speech in question did not have any reference to any community, rather it was addressed to the humble people of the state in general to boost up the harmony of the social fabric stressing on their glorious history and sacrifice made by their predecessors etc. Mr. Phukan, learned Public Prosecutor, submitted that the F.I.R. in its face value also does not disclose any cognizable offence.

9. Ms. Padmini Baruah, learned counsel for the proforma respondent No.2, submitted that the text of the speech in question did not in its face value satisfy the ingredients of the offences under Sections 153 and 153-A of the IPC or any other penal cognizable offence and as such, the learned Magistrate had no legal reason to direct the Officer-in-Charge of Dispur P.S. to register a case on the allegations made in the complaint filed under Section 356(3) Cr.P.C. and investigate into it.

10. *Per contra,* Mr. S. Nawaz, learned counsel for the respondent No.1/informant/complainant, opening his argument submitted in detail on the procedure for registration of a case. In this regard, Mr. Nawaz submitted that if

the Officer-in-Charge of a police station refuses to register an F.I.R. under Section 154 Cr.P.C., then the informant can approach the Superintendent of Police under Section 154(3) Cr.P.C. by an application in writing and even if that does not yield any satisfactory result in the sense that the F.I.R. is still not registered, or that even after registering it, no proper investigation is held, it is open to the aggrieved person to file an application under Section 156(3) Cr.P.C. before the learned Judicial Magistrate concerned praying for a direction to register the F.I.R. and thereafter, to undertake a proper investigation. In this regard, Mr. Nawaz cited the law laid down by the Hon'ble Supreme Court in *Sakiri Vasu Vs. State of U.P., reported in (2008) 2 SCC 409.* It has been further submitted with reference to the proposition of law laid in *Priyanka Srivastava (supra)* that the complainant has to first exhaust his remedy under Sections 154(1) and 154(3) Cr.P.C. before invoking Section 156(3) Cr.P.C. in the case of non-registration of an F.I.R. which discloses a cognizable offence. It has been submitted that it is a clear position of law that any judicial Magistrate before taking cognizance of the offence, can order investigation under Section 156(3) Cr.P.C. and as such, registration of an F.I.R. involves only the process of entering the substance of the information relating to the commission of a cognizable offence in a book kept at the police station as indicated in Section 154 Cr.P.C. Mr. Nawaz, learned counsel, submitted that the respondent No.1/informant had taken recourse to Sections 154(1) and 154(3) Cr.P.C. and he had also filed an affidavit to that effect along with the receipt copies of his F.I.R. under Section 154(1) and application under Section 154(3) Cr.P.C. and accordingly, the learned Magistrate having satisfied that all the necessary requirements of law were made and that the complaint disclosed cognizable offences directed the Officer-in-Charge of Dispur Police Station to register the case and investigate into the

allegations made in the F.I.R./Complaint Petition, where the relevant contents of the speech delivered by the proforma respondent No.2 were stated as required under Section 156(3) Cr.P.C. Mr. Nawaz submitted that the petitioners have totally misread the law on preliminary enquiry for the reason that in *Lalita Kumari (supra),* it has been clearly stated that it is mandatory to register an F.I.R. under Section 154 Cr.P.C. if the same discloses commission of a cognizable offence, which precondition is satisfied in the instant case and as such, there was no scope for preliminary inquiry by the police without registration of the F.I.R. Mr. Nawaz submitted that no preliminary enquiry is permissible without registration of an F.I.R. which discloses a cognizable offence and the only option that is open to the Officer-in-Charge of a police station is to invoke Section 157(1)(b) Cr.P.C. to form an opinion that there is no ground for entering into an investigation and then only he is authorized under law not to investigate the case. Further, Mr. Nawaz submitted that Section 157 Cr.P.C. does not stop with the decision not to investigate the case, but as per Sub-section 2 of Section 157 Cr.P.C., the Officer-in-Charge of a police station is mandated to notify the informant that he would not investigate the matter. However, Mr. Nawaz submitted that in the instant case no information was given to the informant/complainant/ respondent No.1 as required under Section 157(2) Cr.P.C. On the other hand, Mr. Nawaz submitted, the Officer-in-Charge of a police station may foreclose the F.I.R. before initiating investigation under Section 157(1)(b) Cr.P.C. or he may investigate the matter and if he finds no material, he can file a Final Report seeking closure of the matter. It has been submitted that there is absolutely no statutory requirement that the Public Prosecutor must be heard prior to directing registration of an F.I.R. In this regard, Mr. Nawaz, learned counsel, relied on the proposition of law laid in

Sakiri Vasu (supra) and *Priyanka Srivastava(supra)*. Mr. Nawaz, learned counsel for the respondent No.1, submitted that the instant petition being devoid of any judicial merit, the same may be dismissed and the case may be registered and investigated by police as directed by the learned Magistrate. In support of his submission, Mr. Nawaz also relied on the ratio of the judgments rendered in- *1) State of Haryana Vs. Bhajan Lal, reported in 1992 Supp (1) SCC 335 and 2) Ashwini Kumar Upadhyay Vs. Union of India, reported in 2023 LL (SC) 405.*

11. Keeping in view the above rival contentions, Section 156 Cr.P.C. is extracted hereinbelow-

> "*156. Police officer's power to investigate cognizable case.*
>
> *(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.*
>
> *(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.*
>
> *(3) Any Magistrate empowered under section 190 may order such an investigation as above- mentioned."*

12. The above quoted Section 156 Cr.P.C. gives a statutory power to an Officer-in-Charge of police station or his subordinate under his direction to investigate into cognizable offences without even receipt or recording of an F.I.R. It is pertinent to be mentioned that when a First Information Report is refused to be lodged or when the statutory power of investigation for some reason or other is not conducted, the jurisdictional Magistrate can pass an order for investigation by police under Section 156(3) Cr.P.C. on a complaint. Such investigation starts with making an entry in a book maintained at the police station by its Officer-in-Charge recording therein the substance of the

information relating to the commission of the reported cognizable offence. The investigation started thereafter ends up with the report filed by the police as indicated in Section 173 Cr.P.C. The various steps to be followed in investigation under Section 156 Cr.P.C. have been elaborated in Chapter XII Cr.P.C.

13. The next pertinent question is whether registration of an F.I.R. under Section 154(1) Cr.P.C. is mandatory and whether preliminary inquiry is permissible before such registration?

14. In *Lailta Kumari (supra),* the Apex Court held that on receipt of F.I.R., its registration is mandatory if it discloses any cognizable offence as the general rule and if it does not disclose a cognizable offence, a preliminary inquiry may be conducted to ascertain whether cognizable offence is disclosed or not. The Hon'ble Court has succinctly illustrated as to in which cases a preliminary inquiry is to be conducted, depends on the facts and circumstances of each case and further, while ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound.

15. It may further be noted that Section 154(1) Cr.P.C. mandates the Officer-in-Charge of a police station to register the F.I.R., if he receives information relating to commission of a cognizable offence. The police officer cannot hold an enquiry to ascertain the truth, credibility or otherwise of the allegations contained in the information. Therefore, the police have to register an F.I.R. first and then proceed for 'investigation' within the meaning of Section 2(h) Cr.P.C. The expression 'cognizable offence' defined in Section 2(c) Cr.P.C. means an offence for which, and 'cognizable case' means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time

being in force, arrest without warrant.

16. In the instant case, a perusal of the contents of the F.I.R. reveals that the informant/respondent No.1 lodged the same on 29.12.2021 with the Officer-in-Charge of Dispur P.S. against the proforma respondent No.2 based on a reported statement made publicly on 10.12.2021, which was widely circulated in electronic media throughout the state, that is, based on hearsay evidence after 19(nineteen) days of the alleged statement publicly made. Accordingly, the Officer-in-Charge of the said Police Station made a General Diary Entry No.1849, dated 29.12.2021 under Section 44 of the Police Act instead in the F.I.R. register maintained under Section 154(1) Cr.P.C. It is noticed that based on the aforesaid G.D. Entry, an enquiry was conducted by an entrusted Police Officer and thereafter, submitted his report on the F.I.R./Complaint, dated 29.12.2021, to the Deputy Commissioner of Police, East District, Guwahati City Police Commissionerate, Kamrup(M), Assam vide Annexure-2. The said report vide Annexure-2 stated as hereinbelow reproduced (relevant paragraph)-

> "***As entrusted I conducted discreet enquiry into the allegation and in course of enquiry the following fact is found which is presented below. During enquiry the audio clipping of the comments given in a public meeting in Morigaon district is collected for ascertaining the truth of the allegation if any cognizable offence is made out on prima facie basis. The enquiry has been conducted thoroughly taking note of every aspect meticulously. However after making a thorough enquiry and detailed examination of the speech made by the honourable CM, I found no any offence appeared to be committed by the honourable CM of Assam for creating disharmony among the different communities of Assam in absence of specific reference to the name of any particular community. The speech so delivered carried neither any provocation nor incitation against one community with others. The statement so delivered carried only the past history what the bonafide assamese people had faced. The entire version delivered by honourable CM of Assam was of creative nature wherein no matter was there affecting interest of the other community.***
>
> ***During enquiry no Ingredients of cognizable offence is found available in***

the allegation submitted by the honourable MP Abdul Khaleque for which the case had not been registered."

17. The above preliminary Report, dated 29.12.2021, was eventually forwarded to the Commissioner of Police, Guwahati on 03.01.2022 vide Annexure-2A.

18. With regard to requirements of mandatory registration of F.I.R., the Hon'ble Supreme Court in *Lalita Kumari (supra)* issued certain directions as hereinbelow extracted-

"***Conclusion/Directions***

120. *In view of the aforesaid discussion, we hold:*

120.1. *The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.*

120.2. *If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.*

120.3. *If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.*

120.4. *The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.*

120.5. *The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.*

120.6. *As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:*

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily

explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. *While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.*

120.8. *Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."*

19. As noted above, the informant/respondent No. 1 in his F.I.R. vide Annexure-1 specifically prayed for registering the F.I.R. 'under Sections 153, 153-A of the Indian Penal Code and any other appropriate Sections' against the proforma respondent No.2.

20. For convenience, the aforesaid statutory penal provisions are extracted hereinbelow-

"***153. Wantonly giving provocation with intent to cause riot-if rioting be committed—if not committed.—****Whoever malignantly, or wantonly, by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.*

153A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.—

(1) Whoever—

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony

between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, [or]

[(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,]

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Offence committed in place of worship, etc.— (*2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]*"

21. A perusal of the above penal provisions, it may be said that to make out a case under Section 153 of the IPC, the ingredients to be established are (i) that the accused did an act, which was illegal; (ii) that he gave provocation to others by such act; (iii) that he did so malignantly or wantonly; and (iv) that he did so with the intention that such provocation will cause the offence of rioting or knowing it to be likely that such provocation will cause the offence of rioting. The essence of the aforesaid offence is malicious intention to incite one community against another community. On the other hand, Section 153A of the IPC presupposes an intention to cause disorder or incite the people to commit violence. Such intention covers a case where a person by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, disharmony or feeling of enmity, hatred or ill will between different religions, racial language or regional groups or castes or communities or acts prejudicial to the maintenance of harmony or is likely to disturb the

public tranquillity. Thus, the gist of the offence is the intention to promote feelings of enmity or hatred between different classes of people.

22. The law is very clear and well settled that the requirements of Section 154 Cr.P.C. is only that it must disclose the commission of a cognizable offence to set the investigating machinery into action. In the instant case, it appears that the informant neither reproduced the actual public speech in verbatim nor some selective sentences thereof in verbatim stated by the proforma respondent No. 2 purportedly at a public meeting at Morigaon, in his F.I.R. except quoting one word 'revenge' for the incidents of 1983 in the context reference to eviction drive undertaken by the district administration at Gorukhuti in Morigaon district of Assam. The said F.I.R. was not supported by any annexure of printed or electronic transcript of the public speech allegedly delivered by the proforma respondent No.2, who is the Head of the Government of the state.

23. A perusal of the F.I.R., Annexure-1, it is noticed that the informant/respondent No.1 narrated the speech in conjecturable manner, *inter alia,* terming as '**maliciously given a communal colour'** with reference to alleged '**brutal killings of Moinul Hoque and Sheikh Farid'**, '**Houses of the residents of Gorukhuti were burnt to the ground'**, '**By calling such horrendous acts as revenge'**. It has been further alleged that the proforma respondent No.2 in his speech '**not only justified the killings and arson committed there, the legality of which is sub-judice before the Hon'ble Gauhati High Court, but he has gone far ahead and has communalized the whole exercise- the target of which was the Muslim population living there'** appears to be a presumption and conjecture of the informant probably due to the populace evicted from Gorukhuti by the district

administration, where massive public protest gave rise to violent law and order situation in the area. The informant also alleged that the '**hate created'** by the proforma respondent No.2 entailed '**-a government hired photographer-who stomped on Moinul Hoque's body'** and that by calling the unfortunate events an act of '**revenge'** for 1983. In the words of the informant, the proforma respondent No.2 '**giving wanton provocation to people to commit further acts of rioting against the particular community of the state'** and '**to cause disharmony or feelings of enmity, hatred or ill-will towards the Muslim population of Assam.'** Reading and analysing the contents of the F.I.R. meticulously as a whole, thus, it is not decipherable as to how the proforma respondent No. 2 provoked any enmity **between two communities** in absence of clear identification of the purported such communities so as to result in either the offence of 'rioting', which is defined in Section 146 of the IPC or promoting any form of enmity between different groups on grounds of religion, race, place of birth, residence, language etc. and prejudicial to maintenance of harmony. Therefore, does the narrative so made by the informant in the F.I.R., Annexure-1, disclose any culpable mental state of the proforma respondent No. 2 behind his alleged public speech apparently derived from widely circulated/published electronic media reports, is punishable under any cognizable penal provisions of law? If one reads the whole undisputed printed script of the speech vide Annexure-6, the answer is certainly negative.

24. However, the informant approached the Deputy Commissioner of Police (East), Commissionerate of Police, Guwahati by filing an application under Section 154(3) Cr.P.C., dated 12.01.2022, vide Anexure-3 and thereafter, by filing another Complaint Petition supported by an affidavit under Section 156(3)

Cr.P.C. before the Court of learned Chief Judicial Magistrate, Kamrup(Metro), Guwahati, whereupon C.R. Case No. 1598^{C}/22 was registered on 28.02.2022 vide Annexure-4 praying for a direction to register the petition by the Officer-in-Charge, Dispur P.S. even after the Police Officer, who after conducting an enquiry into the allegations with reference to Dispur P.S. GDE No.1849, dated 29.12.2021, had submitted his report to the higher authority vide Annexure- 2 reporting to the effect, as extracted hereinabove explaining as to why the F.I.R. was not registered.

25. With regard to Annexure-4 filed under Section 156(3) Cr.P.C., by the informant/complainant/respondent No.1 herein before the Court of learned Chief Judicial Magistrate, Kamrup (M), Guwahati referred to above, it appears that the informant/respondent No.1 more persistently gave a narrative of the Gorukhuti eviction drive by the District Administration under the provisions of the **Assam Land and Revenue Regulation, 1886** and referred to **PIL No.65/2021** pending in this High Court; **Sipajhar P.S. Case No.758/2021** and thereby questioned the legality of the eviction drive at Guwahati as well as raised objection against the purported communally provocative speech of the proforma respondent No.2. The aforesaid Complaint Petition was supported by an affidavit of the informant/respondent No.1. On 05.03.2022, the learned Sub-Divisional Judicial Magistrate-I, Kamrup (M), Guwahati to whom the case was made over for disposal, after hearing the learned counsel for the complainant only and without giving an opportunity of being heard to the learned Public Prosecutor passed an order which reads as hereunder-

> "***Present: Sri. B. Baruah, AJS, SDJM 1, Kamrup (M)***
> ***Dated: 05.03.2022***
>
> ***Complainant Abdul Khaleque is absent with steps showing cause vide***

petition bearing number 3162 and the prayer of the complainant to dispense with his personal presence is allowed and he is also allowed to be represented by his engaged counsel S.A. Borbhuyan for the day as prayed for.

The complainant has come before this Court u/s 156(3) of Cr.P.C. with a prayer to forward his petition to the Officer-in-Charge, Dispur Police Station for registering a case in relation to the offences punishable u/s 153/153A of IPC allegedly committed by Dr.Himanta Biswa Sarma, the incumbent Chief Minister of Assam.

The complainant has submitted an affidavit (Annexure-4) showing compliance of the provisions of Sec 154(1) and sec 154(3), Cr.P.C as mandated under law laid down by the Hon'ble Supreme Court in Priyanka Srivastava Vs State of Uttar Pradesh, (2015) 6 SCC 287.

The complainant has also submitted copies of the ejahar dated 29/12/2021 lodged u/s 154(1) Cr.P.C. filed before the Officer-in-Charge, Dispur Police Station as Annexure 2 and the application u/s 154(3) Cr.P.C. filed before the Deputy Commissioner of Police (East) dated 12/01/2022 as Annexure 3.

I have gone through the documents annexed.

Heard the Ld. Counsel for the complainant.

The Ld. Counsel for the complainant has submitted that despite the compliance of sec 154(1) and 154(3) of Cr.P.C., the police has not registered the FIR and as such prayed for passing necessary direction to the police to register the FIR.

I have considered the submission put forward by the Ld. Counsel for the complainant.

It is pertinent to mention here that in Lalita Kumari vs State of Uttar Pradesh, (2014) 2 SCC 1, the Hon'ble Supreme Court of India has unequivocally held that it is mandatory to register an FIR u/s 154 of the Cr.P.C., if the information discloses the commission of a cognizable offence.

The instant petition u/s 156(3) Cr.P.C. filed by the complainant is in the format of a complaint as per sec 2(d) of Cr.P.C: The complainant alleges that Dr.Himanta Biswa Sarma made inflammatory speech on 10.12.2021 at Morigaon designed to flare up communal passion which intended to disturb

the already fragile social and communal fabric of the state. The speech was allegedly circulated via Electronic and Social Media across the State. The extract of the speech delivered by Dr.Himanta Biswa Sarma has been submitted as Annexure 1. Prima facie the petition discloses commission of a cognizable offence.

The speech, it has been alleged, was transmitted electronically across entire Assam and in such a situation, territorial fetters did not exist for the O.C., Dispur P.S. to register the FIR. It was, thus, mandatory for the police to have registered the FIR and investigate the case.

The veracity of the allegations is not something which can be enquired prior to the registration of the FIR. By failing to even register the FIR, it appears that the police has failed in the discharge of its duty.

Hence, this Court is of the considered opinion that it is a fit case to invoke Sec 156(3) of Cr.P.C.

Before proceeding further, an important question, however has come to my mind. Is sanction required even for the purpose of passing a direction under sec 156(3) of Cr.P.C, considering the fact that sanction under sec 196(1) Cr.P.C. is required for prosecution of offence punishable under sec 153A of IPC and sanction under sec 197 of Cr.P.C. would be required for prosecuting the incumbent Chief Minister of a State?

Heard the Ld. Counsel for the complainant on this point.

The Ld. Counsel for the complainant has humbly submitted that the necessity of a sanction whether under sec 196 or 197 of Cr.P.C would become operation only at the stage of cognizance and not at the stage of registration of an FIR.
It is important to mention here that the Hon'ble Supreme Court of India has held in Anil Kumar vs. M.K.Aiyappa, (2013) 10 SCC 705 that the Special Judge/Magistrate cannot refer a matter u/s 156(3) against a public servant without a valid sanction order. This requirement of sanction even for purpose of invoking section 156(3) of Cr.P.C. has since been questioned and the matter has been referred to a larger bench in Manju Surana vs. Sunil Arora & Ors. (2018) 5 SCC 557.

The Ld. Counsel for the complainant has fairly pointed out that this dictum was in the context of necessity of sanction u/s 19 of Prevention of Corruption Act vis a vis commission of offences under the said Act. It does not apply for commission of offences under the Indian Penal Code or in

respect of necessity of sanction required under sec 196 and/or Section 197 of Cr.P.C.

The contention of the Ld. Counsel for the complainant finds validation in a decision by a Three Judges Bench of the Hon'ble Supreme Court in Ramdev Food Products Ltd. vs. State of Gujrat, AIR 2015 SC 1742 where the Hon'ble Apex Court has made it crystal clear that the observations in Anil Kumar (supra) apply only to the category of cases mentioned in Para 120.6 in Lalita Kumari (supra). These cases are as follows:
(a) Matrimonial disputes/family disputes.
(b) Commercial offences. (c) Medical Negligence cases.
(d) Corruption cases.
(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the delay.

The case in hand does not fall under any of the aforesaid categories. Law as laid down by the Hon'ble Supreme Court is very clear on this point.

Therefore, I am of the considered opinion that the necessity of sanction in respect of offences under Section 153, 153A IPC, allegedly committed by the present Chief Minister of Assam, Dr. Himanta Biswa Sarma will not arise at pre-cognizance stage under section 156(3) of Cr.P.C.

After considering all aspects, the prayer under section 156(3) Cr.P.C. is allowed. The O.C. Dispur P.S. is directed to register a case on the allegations mentioned in the complaint and investigate the matter fairly and to submit the Final Form at the earliest.

Office to make necessary arrangements for sending the petition u/s 156(3) Cr.P.C. along with a copy of the instant order to the O.C. Dispur P.S. for information and compliance.

A copy of the case record be retained for further reference.

This case stands disposed with the aforesaid direction."

26. The translated copy of the speech delivered by the proforma respondent No.2 at Morigaon is extracted hereinbelow-

"***Respected families of our martyrs and the families of the victims of harassment living in the district and the people present here,***

On this particular day in 1979, Khargeshwar Talukdar had left us. Khargeshwar Talukdar was the person who had vowed to protect the State by driving out all the foreign immigrants, and following his call, the people of the State came out in unison, and he had left us in the early morning on the 10th of December. Khargeshwar Talukdar was not the last one. Khargeshwar Talukdar embarked on a journey of self sacrifice. And right in front of us 850 youths left us by sacrificing their lives. Every year, we celebrate this day on December 10 as Martyrs' Day, remembering the bravery and unconditional love of those martyrs towards the nation. Today, the Yuva Morcha of the Bharatiya Janata Party has decided to celebrate this day centrally at Morigaon. Today, at this moment, we pay special tribute to those brave hearts once again. The Morigaon District is one of the districts in Assam which is known for its struggle for self-reliance, whether it is the movement for economic reform or the movement for protecting national identity. This district has bathed in blood, and even then, the people of this district have taken the risk of protecting the nation even by shedding their blood. Approximately 88 people, including Hemram Pator, Tilak Deka, Gunabhiram Bordoloi, and then Gajen Saikia, Putul Ingti, and, during the agitation for protecting our identity, Jatindra Mohan Das, Jaleswar Das, Laxmikant Deka, Prathamik Deka, and others, gave their lives to protect the Assamese community. I would like to offer my heartiest thanks and gratitude to the Yuba Morcha of Assam for organizing the Martyr's Day in this district, which gives me immense opportunity to offer my sincerest gratitude to the brave souls and to bow down before the members of the families of those brave hearts. I once again offer my sincerest gratitude to the families of the martyrs for being present here and responding to our invitation. Their kind gesture is a blessing and a source of inspiration for us. The victims of harassment and the members of their families are a lifelong inspiration for us. They are also present among us. I offer my heartfelt thanks and gratitude to all of them. Respected all, from 1979 to 1985, the people of Assam fought for protecting their identity. The Assamese people even came out to the streets to protect and save the nation and to make itself free from all negative forces. Thousands of youths silently sacrificed their lives for the nation. People from outside the state, including then-Prime Minister Atal Bihari Vajpayee, also attempted to protect Assam from a potential threat. In 1985, during the Assam movement, an attempt was made to find a successful solution for protecting the national identity of the Assamese. Signing the Assam Accord was a testimony, and various efforts were made to make Assam an immigrant-free state by updating the National Register of Citizens. It is really unfortunate for us that every time the Assamese have made efforts to save the nation, even by shedding their blood, the community starts facing some new crisis again.

Khargeshwar Talukdar had sacrificed his life in 1979, and when we are remembering him in 2021, none of us can say whether our Assamese

community is really safe, even after signing the Assam accord and updating the National Register of Citizens. We are not in a better environment in 2021 than we were in 1979. We have been stepping into a worse environment today. The forces which had tried to weaken the historic Assam Movement have sprung up once again and their efforts to weaken the Assamese community are still on, but the only difference is that the forces have new identities today. Efforts were on to update the National Register of Citizens, but by making conspiracies one after another, they virtually ended the value as well as the purpose of that Citizen Register. The Left Wing once opposed the Assam Movement. Whenever the State Government takes steps to protect the identity of the Assamese people, the left wings raise their voices against them again and again. That day also, during the eviction drive at Gorukhuti, in Sipajhar, we once again got an opportunity to witness their brutal and unabashed nature. In the same manner they once opposed the Assam Movement, they are opposing us today also. Right in front of us, political forces have sprung up to destroy the nation politically. The UDF is born; it is fuelled by the so-called left-wing leaders only. We have seen conspiracies prevail all over the State. It is unfortunate that some of the places are not even safe for our daughters and sisters. We can witness incidents of rape and killing of our daughters and sisters one after another. They are losing their chastity at the hands of the people against whom we once conducted the Assam movement.

In 1983, the Assamese youth were brutally killed in the land of Gorukhuti. Today, in the year 2021, I feel proud that the people of Assam have been able to take some revenge against the brutal killing of the unarmed youths who were stabbed to death. But that's not sufficient. The danger has not yet subsided. The sky in Assam is still covered by dark clouds. Conspiracies are still going on against the people who want to take action for the development of the State. The Assamese are still rendering their services amidst adversity. Such adverse situations worsen when the leftists also raise their voices against us and spread news against us on the National and International platforms. When Gorukhuti was evicted, they did not write what was the truth of our lives: that the land of Gorukhuti belonged to the Assamese people; that there was a 4,000-year-old Shiva Temple; that the priest of that Shiva temple was repeatedly stabbed and left to die; and that the wife of that priest was converted forcibly. Those things were not mentioned by the national and foreign media for us. The news that the youths of Assam were repeatedly stabbed and killed at Gorukhuti was not broadcast by the national and international media. Today, the Assamese people have much more challenges before them than they had in 1979. The challenges are there both inside and outside. If there had been social media during 1979, they would have circulated the news of the Assam Movement in the same exaggerated manner. In such a situation, we must try out every possible way so that we can protect our Assamese Community amidst all

adversities. We must recognize the value of the sacrifices made by our martyrs, we must safeguard our nation and our land despite many challenges and I would like to request all the people of Assam that we should always remember that the brave martyrs who had left us, have still not received recognition for their sacrifices. Turning the ideologies of our martyrs into reality is still a far cry. These ideologies are yet to be preserved. We Assamese people should again take resolution that in order to protect our nation, even if we have to face any obstacle as towering as the Himalayas, we have to come forward by overcoming such obstacles. We must take such firm resolution once again on 10th of December. Respected people, State Government led by the Bharatiya Janata Party has been making continuous efforts during last five years to give due recognition to the values of the Assam Movement and to pay tribute to the sacrifices made by the martyrs. In these last five years, we have been trying to protect the Assamese community to some extent by taking action at various places including Kaziranga. In the last six months, whether it is Gorukhuti, Sipajhar or Lumding, we have been trying to protect our land belonging to the Assamese community one by one. Despite the criticism that we have faced in our own nation or abroad, I want to tell the people of Assam that we will continue to strive towards our goal and we will overcome all the obstacles that come on our way. I would like to thank the families of the martyrs once again. In the year 1921, the Assembly election was held and the seat which was then won by swahid Khargeswar Talukdar, was offered to Maulana Badaruddin Ajmal by the Congress Party. I talked to some of my friends of Congress party that could it not have been possible to keep the seat at Bhawanipur in favour of Congress? Was it necessary to disparage the soul of Swahid Khargeswar Talukdar by giving the seat to Ajmal? They were ready to do anything in the lust of power. But within six months, we have recovered it from the clutch of communal forces at Bhawanipur and by doing so; we have once again restored the existence and the dignity of the community. I want to make it clear that we cannot say how much successful it will be for the community. We are confronting many challenges but we will fight for the sake of our community each and every moment and we will do our best to protect our land within these five years. We will overcome all the obstacles no matter what comes on our way. We will fight against all the challenges to secure our community. Respected people, today is a very sacred day for us as we remember our martyrs with gratitude on this day. On this day itself, the State Government will create a trust for the welfare of the martyr's families. We are carrying forward the construction of national martyr's trust in Guwahati at a fast pace and I would like to tell that we will complete the construction within the next year and we will also start a beautiful project covering 100 bighas of land at Bhawanipur in order to immortalize the sacrifices of the martyrs of our land. And this project will make every generation to remember the sacrifices of our eight hundred martyrs including Swahid Khargeswar Talukdar. The families of the martyrs are facing many problems and our government will

put efforts to resolve their problems as much as possible. They neither sacrificed their lives for any gain nor they made sacrifice for the sake of their families. But they sacrificed their lives for the sake of our community. I expect that we the people of Assam living in different areas of our state should approach the families of the martyrs. We should stand with them and should put at least an effort to return the values of the sacrifices made by our martyrs with honour and reverence. We are committed to resolve the issues of the martyrs' families which they have stated before us. I once again acknowledge the responsibility of our government to the martyrs' families. Today, we have started the trust with Rs.5 crores and I will try to increase the amount of money to Rs.50 crores for the welfare of the families within 5 years so that with the amount of interest that we will receive from the said money, we can help them in respect of their health and education and can support them in their good and bad days. The government is not only the members of this trust but the martyrs' families and the leaders of the movement should also come together so that we all can stay in touch with the families. We also need to think regarding the matter that if we can make any reservation for the families of the martyrs' in government services so that their families can continue to get benefits later. I will try to give you an honest answer by discussing with the Cabinet in this regard. I am giving assurance to all of you today itself. Once again, I would like to thank and extend my gratitude to the members of the Bharatiya Janata Party specially the members of Yuva Morcha for celebrating the Martyrs' day in such a beautiful way. I want to say one thing that the sacrifices of our martyrs will be our guiding forces and we need to take resolution to complete the unfinished work that our martyrs left behind. We have to overthrow and combat all our enemies and to restore the dignity of our land once again. We must protect our land and our community. Once again, I would like to thank and extend my gratitude to you all. The families of our Food Movement's martyrs namely Putul Saikia and Gajen Ingti did not get any justice by the government, I conclude my speech with a promise to give justice to these two families as well. Say with me together…Jai Aai Axom. Jai Aai Axom. Jai Aai Axom."

27. Now, in the above backdrop of facts and circumstances, **the moot question that falls for consideration in the instant petition is whether the aforesaid impugned order, dated 05.03.2022, passed by the learned S.D.J.M. (S)- I, Kamrup (M), Guwahati in C.R. Case No.1598/2022 is liable to be quashed and set aside**. A perusal of the impugned judicial order under Section 156(3) Cr.P.C., it is noticed that the

learned S.D.J.M. (M) No.1, Kamrup(M), Guwahati while passing the impugned order relied on the submission of the complainant/respondent No.1 only and apparently without scrutinizing the 'petition', Annexure-4 herein and the above speech which the proforma respondent No.2 actually delivered vide Annexure-6 herein, annexed with the said petition and held the erroneous opinion that prima facie the petition disclosed commission of a cognizable offence and accordingly, the direction was passed to the Officer-in-Charge, Dispur P.S. to register a case on the allegations contained in the complaint etc. It may be noted that the complainant/respondent No.1 filed the complaint under Section 156(3) Cr.P.C. praying as follows-

"***-PRAYER-***

In the premises aforesaid, it is fervently prayed that your honour may be pleased to admit this petition, forward the same to the Officer in Charge, Dispur Police Station and direct him to register an FIR under Sections 153, 153 A and/or any other appropriate provision of the Indian Penal Code, investigate it and submit Final Form expeditiously and/or pass any such order as your honour may deem fit for the ends of justice."

28. Thus, it is noticed that the complainant/respondent No.1 prayed for a direction to the Officer-in-Charge, Dispur P.S. to register the allegations contained in the Complaint Petition itself only under Section 156(3) Cr.P.C. vide Annexure-4 addressed to the learned Court instead of the F.I.R., dated 29.12.2021, lodged with the Officer-in-Charge, Dispur P.S. vide Annexure-1, whereas the police, after making an entry in the General Diary, mentioned above, had already submitted a report on the same day, that is, on 29.12.2021 vide Annexure-2 reporting that no cognizable offence was disclosed which is extracted in Paragraph No. 16 above. It may be mentioned that a petition under

Section 156(3) Cr.P.C. cannot strictly be construed as a complaint in terms of Section 2(d) Cr.P.C. warranting registration of a complaint case. On reading of the allegations made in the aforesaid Complaint Petition and in the F.I.R., it is crystal clear that each one contains apparently different narration of facts overlapping each other clouding the multifarious allegations generated therein, which cannot be construed to have disclosed any cognizable offence to the police, requiring to be mandatorily registered.

29. *In Bhajan Lal (supra),* the Hon'ble Supreme Court held that where the allegations made in the F.I.R. 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 may be quashed in exercise of the inherent jurisdiction of the High Court under Section 482 Cr.P.C. Further, **where the allegations in the F.I.R. and other materials, if any accompanying in the F.I.R.,** do not disclose a cognizable offence except under an order of Magistrate within the purview of Section 155(2) Cr.P.C. may also be quashed.

30. In *Bilal Ahmed Kaloo (supra)* the Hon'ble Supreme Court quoting *Balwant Singh Vs. State of Punjab, reported in 1968 Cri. L.J. 736* held that *mens rea* is a necessary ingredient for the offence under Section 153-A of the IPC. In *Ramdev Food Products Pvt. Ltd. (supra),* it has been held that direction for investigation under Section 156(3) Cr.P.C. by the Magistrate can be issued where there is availability of a credible information or weighing the interest of justice, it is considered appropriate to so direct. In *Manju Surana (supra),* the Hon'ble Apex Court held that `**there is no doubt that even at the stage of Section 156(3) Cr.P.C., while directing an investigation, there has to be an**

application of mind by the Magistrate.' In *Priyanka Srivastava (supra)* it has been held that it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. It has been further held that he has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. In appropriate case, the learned Magistrate can **verify truth and veracity of allegations made**, having regard to the nature thereof.

31. In the case in hand, a comparative approach to the allegations made in the F.I.R. vide Annexure-1, Complaint Petition vide Annexure-4 and the entire speech in vernacular delivered at a public meeting at Morigaon by the proforma respondent No. 2 vide Annexure-6, which is accepted without objection from the side of the respondent No.1, it transpires that there was no any elements constituting the offences under Sections 153/153-A of the IPC or any other cognizable penal offence. In other words, Annexure-6, the whole text of the speech in question did not bear any word or sentence which can be termed as communally inflammatory speech attracting any penal cognizable offence. So, this Court is of the opinion that while passing the aforesaid impugned order, unfortunately, the learned Magistrate while exercising his judicial mind committed an error of judgment on the documents placed on record and passed the impugned erroneous order without proper consideration of the allegations made in the F.I.R./petition under Section 156(3) Cr.P.C. and its accompanying most vital electronic document recording the entire speech in question. Further, the learned Magistrate omitted to give an opportunity of hearing on the petition to the respondent No. 2 herein, who was impleaded as an accused despite the same was registered on 28.02.2022 as a complaint case being C.R. Case No.

1598^{C}/2022 and without service of notice on him, who is the Chief Minister of Assam. Further, the complainant did not even implead the Officer-in-Charge of Dispur P.S. and/or the State represented by the Home Department who were necessary parties against whom the complainant sought redressal of his grievance. Therefore, the learned Magistrate seems to have hurriedly passed the impugned order on 05.03.2022 on the same day of receipt of the petition on transfer to his Court for disposal, after hearing the complainant side only, which certainly occasioned gross failure of justice and abuse of the process of the Court.

32. For the above stated reasons and in the light of the ratio of the decisions of the Hon'ble Apex Court referred to above on Section 156(3) Cr.P.C., **the petition stands allowed** setting aside the impugned order, dated 05.03.2022, passed by the learned S.D.J.M. (S)- I, Kamrup (M), Guwahati in C.R. Case No.1598^{C}/2022.

The Criminal Petition stands disposed of.

JUDGE

Anupam

Comparing Assistant