

GAHC040009872023



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

Case No. : Crl.Petn./132/2023

Kannge Panyang
S/o Shri Malung Payang,
Permanent Resident of Ledum Village, PO Bilat and PS Ruksin Pasighat, District East
Siang, Arunachal Pradesh.

VERSUS

THE STATE OF AP and Anr.
Through its Public Prosecutor. 2:XYZ
Age: 0
Occupation

Advocate for the Petitioner : Dicky Panging

Advocate for the Respondent : J. Tsering, P P of AP

:::BEFORE:::
HON'BLE MRS. JUSTICE MITALI THAKURIA

ORDER (ORAL)

26.07.2023

Heard Mr. D. Panging, learned counsel for the petitioner. Also heard Mr. J. Tsering, learned Public Prosecutor for the State respondent.

2. This is an application under Section 482 of the Code of Criminal Procedure, 1973, praying for setting aside and quashing the order dated 20.06.2023, passed by the learned District & Sessions Judge, Pasighat, in Criminal Misc. App. No. 19/2023 of PSG SC (POCSO) Case No. 09/2018.

3. The present petitioner is the accused in PSG SC (POCSO) Case No. 09/2018. The case is registered only on the basis of an F.I.R. lodged before the Pasighat Police Station against the present petitioner alleging *inter alia* that on 21.07.2017, the petitioner entered into the rented house of the complainant's daughter with criminal intimidation and attempted to physically molest and rape her. The said case is, accordingly, Charge-Sheeted under Sections 448/506/354(A)(1)(i)/376(i)/511 of the Indian Penal Code *read with* Section 8 of the POCSO Act, and the case is presently pending before the Court of learned

District & Session Judge, Pasighat. During the course of trial, the prosecution examined as many as 10 (ten) prosecution witnesses including the victim, complainant and the Investigating Officer in support of their case. After closure of the evidence of prosecution, the statement of the present accused/petitioner under Section 313 Cr.P.C. was also recorded. But, from the entire evidence on record, it appears that the victim had some problems of being unconsciousness, breathing problems and mental issues like hysteria and delusion etc. The victim herself deposed that she used to get sick and sometimes loss her consciousness and she also deposed that she writes imaginary things in her diary. P.W.-5 also narrated the health problem of the victim in her deposition. Considering these factors, the accused/petitioner filed Criminal Misc. App. No. 19/2013 under Section 311 Cr.P.C. to summon the psychiatric doctor from Bakin Pertin Hospital for explaining about the symptoms of hysteria patient as there is reasonable doubt arises that she might have an attack of hysteria at the time of alleged incident. But, the learned District & Session Judge, Pasighat, dismissed the petition and also imposed a fine of Rs. 10,000/- on the present accused/petitioner.

4. On being highly aggrieved and dissatisfied with the order passed by the learned District & Session Judge, Pasighat, the present petition has been filed for setting aside and quashing the order dated 20.06.2023, passed by the learned District & Sessions Judge, Pasighat, in Criminal Misc. App. No. 19/2023 of PSG SC (POCSO) Case No. 09/2018.

5. It is submitted by the learned counsel for the petitioner, Mr. D. Panging, that the learned Court below failed to appreciate the fact that the prosecution witnesses categorically stated about the unconsciousness, breathing problem and mental issues like hysteria etc. of the victim, but the same has not been considered by the learned District & Session Judge, Pasighat, and rejected the prayer for calling the psychiatric doctor as a witness complying the provision under Section 311 Cr.P.C. Further it is submitted that from the prosecution witnesses also, it is seen that the victim has some health issues including some mental issues like hysteria etc. and she used to write some imaginary things in her diary and for which, the examination of a psychiatric doctor was essential. But, the learned District & Session Judge has rejected the prayer without considering the health issues of the victim including the mental issues of the victim.

6. In this context, Mr. J. Tsering, learned Public Prosecutor, has submitted that the present petition is filed against the order of the learned District & Session Judge and hence, the petition ought to have been filed under Section 397 Cr.P.C. and not under Section 482 Cr.P.C., which is not maintainable. It is further submitted that the health issues of the victim, i.e. her breathing problem, feeling unconsciousness or the other problem, cannot be the only ground to held that she is a psychiatric patient and the accused/petitioner also could not furnish any documents to prove that the victim is a psychiatric patient and need a consultancy with the psychiatric doctor and there cannot be any reasonable ground to examine any psychiatric doctor complying the provision

under Section 311 Cr.P.C. and thus, the learned District & Session Judge, Pasighat, rightly passed the order rejecting the prayer of the present accused/petitioner. In this context, the learned Public Prosecutor has relied on a decision of the Hon'ble Apex Court reported in **2021 0 Supreme(SC) 362 (The State represented by the Deputy Superintendent of Police Vs. Tr N. Seenivasagan)**.

7. After hearing the submissions made by the learned counsels for both sides, I have perused the case record, annexures filed along with the petition as well as the order dated 20.06.2023, passed by the learned District & Sessions Judge, Pasighat, in Criminal Misc. App. No. 19/2023 of PSG SC (POCSO) Case No. 09/2018.

8. It is seen that the learned District & Session Judge, Pasighat, has discussed in his order that there is no reference or relevancy of any problem of history of suffering from hysteria in the Charge-Sheet nor there is any evidence that the victim has ever visited to any psychiatric doctor for her examination.

9. More so, her health issues like unconsciousness or breathing problem etc. cannot be the ground that she was suffering from any psychiatric problem or hysteria, as claimed by the accused/ petitioner. She may write some imaginary things in her diary and the same may be her imagination which she may write in her diary, however there is no evidence that the alleged incident took place in

her imagination or during subsistence of her unconsciousness or any psychiatric problem. Further, the psychiatric doctor can say or may be aware about the symptoms of hysteria or other psychiatric problem, but without any medical evidence or without any material the inference cannot be taken that the victim was suffering from any mental issues at the relevant time of incident.

10. The Court may at any stage of enquiry, trial or any other proceeding can summon a person as a witness or can examine any person and also can recall or re-examine any person who has already been examined if it is essential for the just decision of the case complying provision under Section 311 Cr.P.C.

11. But, here in the instant case, it is seen that the accused/petitioner came with a plea that the victim is a psychiatric patient and has filed the petition under Section 311 Cr.P.C. only to examine a psychiatric doctor without having any proof or any evidence that the victim was suffering from any mental issues like hysteria etc., though it is admitted fact that she has some health issues like breathing problem and unconsciousness which does not amount to any psychiatric symptoms.

12. Further, it is rightly discussed by the learned District & Session Judge that the allegation of sexual assault was not committed at the time of unconsciousness of the victim or during the time of attack of her hysteria and direct allegation brought against the present accused/petitioner regarding the

sexual assault on her.

13. In view of the discussions made above and also considering the entire circumstances of this case, I find that the learned District & Session Judge, Pasighat, committed no illegality or mistake while rejecting the prayer of the accused/petitioner to call the psychiatric doctor as a witness invoking the power under Section 311 Cr.P.C. Resultantly, I do not find any merit in this petition and accordingly, the stands dismissed.

JUDGE

Comparing Assistant