

GAHC040013462022



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

Case No. : Crl.Petn. 116/2022

1: Ravina Sakhong and 2 Ors.
D/o Shri Noboy Sakhong,
R/o Village Najang, PO/PS Nafra, West Kameng Dist. Arunachal Pradesh 790001

2: Noboy Sakhong
S/o Lt. Pimo Sakhong

R/o Village Najang
PO/PS Nafra
West Kameng Dist
Arunachal Pradesh 790001

3: Pema Dajangju
S/o Shri Khiongso Miji

R/o Village Khellong
PO/PS Nafra
West Kameng Dist
Arunachal Pradesh 79000

VERSUS

1: THE STATE OF AP
Through Public Prosecutor.

Advocate for the Petitioner : Jyoti Zongluju

Advocate for the Respondent : P P of AP

**BEFORE
HONBLE MR. JUSTICE NANI TAGIA**

ORDER

Date : 23.01.2023

Heard Mr. Chetan Joshi, learned counsel for the petitioners. Also, heard Ms. T. Jini, learned Additional P.P. for the State.

2. This is an application under Section 482 of the Code of Criminal Procedure, 1973, praying for quashing of the F.I.R. in Nafra P.S. Case No. 6/2022, dated 03.05.2022 registered under Section 376 Indian Penal Code read with Section 6 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 and a Charge-sheet filed consequently thereto dated 07.06.2022 before the Sessions Court/Special Judge, West Kameng District in Case No. SC(Bdl) POCSO Case No.4/2022 titled as 'State Vs. Pema Dajangju'.

3. Petitioner No.1 is the victim, Petitioner No.2 is the father of the victim/petitioner no.1 and Petitioner No.3 is the accused.

4. An F.I.R. dated 03.05.2022 was lodged before the Officer-Incharge of Police Station, Bomdila by the victim/petitioner no.1 against petitioner no.3 alleging that while the petitioner no.1 was studying in Class-VII and aged 16 years, the petitioner no.3 has committed rape on her. Pursuant thereto, formal F.I.R. No. 6/2022 dated 03.05.2022 was registered by the Nafra Police Station against petitioner no.3, under Section 376 of the Indian Penal Code read with Section 6 of the POCSO Act, 2012.

5. Consequent upon the investigation of the F.I.R. registered, Charge-sheet dated 07.06.2022 was filed against petitioner no.3/accused being

Charge-sheet No. 2/2022, under Section 376 Indian Penal Code read with Section 6 of the POCSO Act before the Sessions Court/Special Judge, Bomdila.

6. The status of the case against the petitioner no.3 registered as SC(Bdl) POCSO Case No.4/2022, under Section 376 IPC read with Section 6 of POCSO Act is stated to be in the stage of recording of evidences and many witnesses have been examined and cross-examined including the victim/petitioner no.1. It has been further stated that there are now only 4 more witnesses to be examined from the prosecution's side.

7. It is in the aforesaid stage of trial of the SC(Bdl) POCSO Case No.4/2022 that this application under Section 482 of the Code of Criminal Procedure has been filed for quashing of the F.I.R. No. 6/2022 as well as the Charge-sheet No. 2/2022 before this Court in exercise of the inherent power under Section 482 of the Cr.P.C., contending that the parties have amicably settled the matter by an affidavit affirmed by the victim/petitioner no.1 dated 29.10.2022, (Annexure-A/2 to the petition) and a Memorandum of Understanding (undated) stated to be signed by and between the father of the victim and the accused in presence of the 2 witnesses named therein, (Annexure-A/3 to the petition).

8. From perusal of the affidavit sworn by the victim/petitioner no.1, it is noticed that the victim/petitioner no.1 is aged 17 years.

9. Upon hearing the learned counsel for the petitioners as well as the learned Additional P.P. for the State, it is noticed that the petitioners are seeking quashing of the criminal prosecution, which involves an offences under Section 376 IPC read with Section 6 of POCSO Act on the basis of the

mutual settlement arrived at between the victim, victim's father and the accused.

10. Since, quashing of the criminal prosecution is sought for by the parties on the basis of the mutual settlement arrived at by and between them wherein, it involves an offences under Section 376 IPC read with Section 6 of POCSO Act, I am of the view that in a prosecution which involves offences, including the offences of rape cannot be quashed in exercise of the inherent power before this Court, under Section 482 of the Cr.P.C., in view of the law laid down by the Hon'ble Supreme Court in the case of ***State of Madhya Pradesh Vs. Laxmi Narayan & Ors.***, reported in ***(2019) 5 SCC 688***, wherein, it has been held that power under Section 482 of the Cr.P.C. for quashing of the criminal prosecution for the non-compoundable offences under Section 320 of Cr.P.C. should not be exercised in those cases, which involves heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc., by holding that such offences are not private in nature and have a serious impact on society.

11. In view of the above, I find no merit in this criminal petition and this application stands dismissed for the reasons recorded above.

Interim order passed earlier stands vacated.

JUDGE

Comparing Assistant