

GAHC040015452022



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

Case No. : Crl.M.Appln. 5/2022

1: Jyoti Kamda and 3 Ors.

W/o- Shri D. Riba, Gynecologist Consultant, R.K Mission Hospital, P.O-R.K Mission, P.S- Itanagar, Papumpare district, A.P- 791113.
Mob. 7005685456

2: Leena Ligu

W/o- Dr. W. Sumnyan
Junior Gynecologist Consultant
R.K Mission Hospital
P.O-R.K Mission
P.S- Itanagar
Papumpare district
A.P- 791113.
Mob. 7005662971

3: Bengia Mala Kop

W/o- Shri Soul Kop
Senior Gynecologist (Selection Grade)
TRIHMS)
PO/PS- Naharlagun
Papumpare district
A.P-791110
Mob- 9436041965

4: Prasanta Kumar Deka

S/o- Late Govinda Ram Deka
HoD
Gynecology and Obstetrics
TRIHMS
PO/PS- Naharlagun
Papumpare district

A.P- 791110
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VERSUS

1:THE STATE OF AP and Anr.
Represented by the public prosecutor, Arunachal Pradesh.

2:Dagang Tayu
Presently residing at C-sector
Itanagar
PO/PS- Itanagar
Papumpare district
A.P-79111

Advocate for the Petitioner : Duge Soki

Advocate for the Respondent : P P of AP

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

16.01.2023

Heard the learned counsel Mr. D. Soki appearing for the petitioners. Also Mr. T. Ete, the learned Addl. Public Prosecutor, State of Arunachal Pradesh representing respondent no.1.

2. This is an application under Section 482 of the CrPC praying for quashing the orders dated 09.05.2022, 30.08.2022 and 03.11.2022 passed by the learned Special Judge (POCSO), Yupia in POCSO Case No.04/2021 in respect of ITA WPS Case No.68/2020.

3. The question that arises in this application is as to whether after framing of charge only, the trial court can exercise the power under

Section 319 of the CrPC to proceed against other persons appearing to be guilty of offence.

4. The relevant portion of the order dated 09.05.2022 is quoted as under:

“Before parting with the order, this court feels that some more accused are in the case, specially doctors who had refused to give treatment to the minor victim girl at TRIHMS Hospital. Therefore, the I.O of the case is directed to conduct further investigation in the case and shall identify the doctors who were present in the room on that day, when the minor victim along with elder sisters appeared for treatment. As per the statement of the elder sister, who accompanied the victim on that day, there were three doctors, one female and two male. Meantime, on the requisition of I.O of the case, the TRIHMS Authority has furnished two documents being letter dated 08.01.2021 from CMS, TRIHMS addressed to I.O of the case wherein names of three doctors were given to be doctors on duty on that day at OPD Emergency, and letter dated 18.01.2021 of MS, TRIHMS addressed to I.O of the case, wherein names of give doctors were given to be Gynecologist on duty on that day as per the roster. The I.O shall take necessary steps for identification of those doctors from these listed doctors through victim, and elder sister of victim, as per the provisions of law, thereafter the findings shall be submitted before this court in form of supplementary charge sheet in the case, so that accused doctors can also be prosecuted in the case.”

5. In order to buttress his argument, Mr. Soki has relied upon three decisions of the Supreme Court. In the Constitution Bench Judgment in *Hardeep Singh Versus State of Punjab and Others*, reported in (2014) 3 SCC 92, the Supreme Court has held as under:

“78. It is, therefore, clear that the word “evidence” in Section 319 CrPC means only such evidence as is made before the court, in relation to

statements, and as produced before the court, in relation to documents. It is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under Section 319 CrPC is to be exercised and not on the basis of materials collected during the investigation."

6. In *Vinubhai Haribhai Malaviya and Others Versus State of Gujarat and Another*, reported in (2019) 17 SCC 1, the Apex Court has held that once the trial begins with framing of charges, the stage of investigation or inquiry into the offence is over as a result of which no further investigation into offence should be ordered.

7. In *Sagar Versus State of Uttar Pradesh and Another*, reported in (2022) 6 SCC 389, the Supreme Court has reiterated its view taken in *Hardeep Singh* (supra).

8. I have given my anxious considerations to the submissions made by the learned counsels of both sides.

9. In the case in hand, only the charge has been framed and summons has been issued to the prosecution witnesses. No evidence has been recorded. Section 319 of the CrPC uses the word "evidence". If it appears from the evidence that any other person not being *charge sheeted*, is guilty of offence, such a person could be tried together with the *charge sheeted* accused.

10. The power under Section 319 of the CrPC is a discretionary and extra-ordinary power, which should be sparingly exercised and should be exercised only in those cases where the circumstances of the case so warrant.

11. For the aforesaid reasons, the orders dated 09.05.2022 whereby the

trial court ordered further investigation, the order dated 30.08.2022 exercising power under Section 319 of the CrPC in respect of the petitioners are bad in law as because those orders are not based on evidence recorded by the trial court.

12. Therefore, the relevant portions of the orders dated 09.05.2022 & 30.08.2022 and the order dated 03.11.2022 summoning the petitioners are set aside.

With the above observations, the criminal miscellaneous application stands allowed and disposed of.

JUDGE

Comparing Assistant