



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

Case No. : Crl.Pet./16/2022

NASIR UDDIN AND ANR
SON OF ABUL KASHEM
R/O VILL- DUWAMARI, WARD NO. 8,
P.S. LAHARIGHAT, DIST. MORIGAON, ASSAM

2: BAHARUL ISLAM
SON OF ABDUL KASHEM
R/O VILL- DUWAMARI
WARD NO.8

P.S. LAHARIGHAT
DIST. MORIGAON
ASSA

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE PP, ASSAM

2:MS. FATEMA KHATUN
D/O LATE ABUL HASEM
R/O VILL- 2 NO. BORBARI
P.S. LAHARIGHAT

DIST. MORIGAON
ASSAM

3:MUSST. ROMISA KHATUN
W/O ABDUL HUSSAIN
R/O VILL- 2 NO. BORBARI
P.S. LAHARIGHAT DIST. MORIGAON
ASSA

Advocate for the Petitioner : MR. M A SHEIKH

Advocate for the Respondent : MR. B SARMA(ADDL.PP, ASSAM)

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

JUDGEMENT AND ORDER

Date : 18-01-2023

Heard Mr. M.A. Sheikh, learned counsel for the petitioners. Also heard Mr. B. Sarma, learned Additional Public Prosecutor for the State/respondent No.1.

2. Both the petitioners have filed an application under Section 482 Cr.P.C., 1973 seeking quashment of the proceedings in G.R. Case No. 3131/2019 (corresponding to PRC Case No. 564/2020) under Sections 376/420 IPC arising out of Laharighat P.S. Case No. 334/2019, pending in the court of CJM, Morigaon.

3. The brief facts of the case is that on 29.09.2019, the informant lodged an FIR stating *inter alia* that the accused Baharul Islam, Nasir Uddin, Safia Khatun and Abdul Kashem instigated the informant to divorce her earlier husband and solemnize marriage with accused Baharul Islam. It is also alleged that after marriage, the accused persons tortured the informant and Nasir Uddin forcefully committed bad acts with her. Though, the informant informed the matter to other accused persons but they did not pay heed to her request and ultimately she was driven out from her matrimonial home.

4. After completion of investigation, charge-sheet was submitted against the accused persons Baharul Islam and Nasir Uddin under Section 376/420 IPC and the other two accused persons i.e. Safia

Khatun and Abdul Kashem were not sent up for trial.

5. It is submitted by the learned counsel for the petitioners that the opposite party No. 3 i.e. Romisa Khatun earlier lodged an FIR at Laharighat P.S. with an allegation that the accused persons had eloped her daughter Fatema Khatun. At that time, her daughter was a minor and considering her future, the case was settled and compromised between the parties.

6. It is also the submission of learned counsel for the petitioners that after the said compromise deed, the victim was given in marriage to one Ariful Islam by her mother and her relatives. But after one year of her marriage, she left the house of her husband and went to the petitioner No.2 i.e. Baharul Islam with an intention to stay with him. Immediately, the petitioner No. 2 informed the matter to the O/C Laharighat Police Station by lodging an FIR dated 01.09.2019 and the said matter has also been compromised. Learned counsel for the petitioner further has submitted that thereafter another FIR was also lodged by the victim/Fatema Khatun on 29.09.2019.

7. It is further submitted by the learned counsel for the petitioners that opposite party No.2 lodged an FIR dated 31.08.2019, whereby she expressed that she wanted to continue her matrimonial life with the petitioner No. 2. On the other hand, she filed the impugned FIR dated 29.09.2019 after 29 days of her FIR dated 31.08.2019, which goes to show that the FIR dated 29.09.2019 is totally false and concocted.

8. It is also submitted that the statement in the FIR dated

31.08.2019 and statement in FIR 29.09.2019 are contradictory as such, in G.R. Case No. 3131/2019 (arising out of Lagarighat P.S. Case No. 334/2019 under Sections 420/376 IPC) is liable to be set aside and quashed.

9. On the other hand, the learned Additional Public Prosecutor for the State has submitted that this is a case under Section 376 IPC and the victim has alleged that the petitioner No. 2 had committed rape on her with instigation of other accused persons and that time she was a minor girl. The victim in her statement recorded under Section 164 Cr.P.C. has categorically stated that both the accused persons are involved in the instant case. So at this stage, the quashment of proceeding pertaining to G.R. Case No. 3131/2019 under Sections 376/420 IPC does not arise at all.

10. I have gone through the scanned copy of the case diary available in the record. Though, it is alleged that another FIR was lodged by the victim and her mother also lodged separate FIR against the present petitioners but no case was registered in the said FIRs lodged at all by the victim/or her mother.

11. I have considered the submissions by the learned counsel for the parties along with the scanned copy of the case diary in connection with G.R. Case No. 3131/2019 as well as the statement of the victim recorded under Section 164 Cr.P.C. by the learned Magistrate.

12. Before the learned Magistrate, the victim has stated that she and the petitioner No. 2, Baharul Islam had love affairs. About one and half years back, Baharul Islam forcefully took her to his house and got

married to her. After marriage, they lived together as husband and wife in the house of Baharul Islam. After 15 days of her marriage, the elder brother of Baharul Islam, namely Nasir Uddin forcefully committed rape on her. When she informed the matter to Baharul Islam, he did not take care of her rather she was assaulted by him and drove her out from his house.

13. From the statement of the victim, it appears that she was a minor, below the age of 18 years at the relevant time of incident. The accused Baharul Islam forcefully took her to his house and got married and after their marriage she was compelled to stay in the house of Baharul Islam and lived together as husband and wife. It is also alleged by the victim that during her stay in the house of Baharul Islam, his elder brother Nasir Uddin also committed rape on her. There is no whisper in the statement of the victim that the victim or her mother wanted to settle the matter on compromise.

14. [Section 482](#) of the Cr.P.C. itself envisages three circumstances under which the inherent jurisdiction may be exercised by the High Court, namely:

(i) to give effect to an order under the [Cr.P.C.](#); (ii) to prevent an abuse of the process of Court; and (iii) to otherwise secure the ends of justice.

15. It is trite that although the power possessed by the High Court under the said provision is very wide but it is not unbridled. It has to be exercised sparingly, carefully and cautiously, *ex debito justitiae* to do real and substantial justice for which alone the Court exists.

Nevertheless, it is neither feasible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court. Yet, in numerous cases, Hon'ble Supreme Court has laid down certain broad principles which may be borne in mind while exercising jurisdiction under [Section 482](#) of the Cr.P.C. Though it is emphasized that exercise of inherent powers would depend on the facts and circumstances of each case, but, the common thread which runs through all the decisions on the subject is that the Court would be justified in invoking its inherent jurisdiction where the allegations made in the Complaint or Chargesheet, as the case may be, taken at their face value and accepted in their entirety do not constitute the offence alleged.

16. In one of the earlier cases in *R.P. Kapur Vs. State of Punjab AIR 1960 SC 866*, Hon'ble Supreme Court had culled out some of the categories of cases where the inherent powers under Section 482 of the Cr.P.C. could be exercised by the High Court to quash criminal proceedings against the accused. These are:

"(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings e.g. want of sanction;

(ii) where the allegations in the first information report or the complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge."

17. In *Dinesh Dutt Joshi Vs. State of Rajasthan & Anr.* reported in (2001) vol.8 SCC 570, while explaining the object and purpose of [Section 482](#) of the Cr.P.C., Hon'ble Supreme Court has observed thus:

"6.....The principle embodied in the section is based upon the maxim: quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest i.e. when the law gives anything to anyone, it gives also all those things without which the thing itself would be unavailable. The section does not confer any new power, but only declares that the High Court possesses inherent powers for the purposes specified in the section. As lacunae are sometimes found in procedural law, the section has been embodied to cover such lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this section are however required to be reserved, as far as possible, for extraordinary cases."

18. In the case of *A. Ravishankar Prasad & Ors.* reported in (2009) vol. 6 SCC 351, has reiterated that the exercise of inherent powers would entirely depend on the facts and circumstances of each case. It has been further observed that the inherent powers should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material.

19. Bearing in mind the object, scope and width of power of the High Court under Section 482 Cr.P.C., the question of consideration is whether on facts in hand, the present petition under Section 482 Cr.P.C. filed by the petitioners have been quashed or not.

20. Having examined the case in the light of the allegations in the charge-sheet, it appears that the petitioners were not available during the course of investigation and they are shown as absconder in the charge-sheet. Though, it is not the part of the investigating officer to declare any accused as an absconder, only the court has the power to declare an accused as absconder after executing P&A. However, it appears from the record that during trial,

NBWA was issued against the present petitioners and subsequently they have preferred this application under Section 482 Cr.P.C. for quashing the charge-sheet.

21. It is manifest from a bare reading of the charge-sheet, placed on record, that the allegations made against both the accused persons is that they have committed rape on the victim, there is prima facie material available in the charge-sheet to proceed with the case.

22. As stated above, in the charge-sheet, both the accused persons are alleged to have committed offence punishable under Section 376/420 IPC. This Court is of the opinion that at this preliminary stage of proceedings, it would neither be desirable nor proper to return a final finding as to whether the essential ingredients of the said Sections are satisfied. For the purpose of the present petition, it will suffice to observe that on a conspectus of the factual scenario, noted above, prima facie, the charge-sheet does disclose the commission of offences by the accused/petitioners under the aforesaid sections of law.

23. In the present case, having regard to the modus operandi adopted by the accused/petitioners and projected in the case as referred to in their petition, this Court has no hesitation in holding that it is not a fit case to exercise of the jurisdiction under Section 482 Cr.P.C.

24. In view of the above, I find no merit in the petition and it is dismissed accordingly. The learned trial court shall now proceed with the case as expeditiously as possible without being influenced by any observations made by this Court.

25. With the above observations, the criminal petition stands dismissed and disposed of accordingly.

JUDGE

Comparing Assistant