

GAHC010049392022



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

Case No. : Crl.Pet./225/2022

TAREK AZIZ LASKAR @ TARIK ALI LASKAR AND ANR
S/O NURUL ISLAM LASKAR
R/O HAILAKANDI TOWN, WARD NO. 2, P.O. AND P.S. HAILAKANDI, DIST.
HAILAKANDI, ASSAM, PIN-788151

2: NURUL ISLAM LASKAR
S/O HARISH ALI LASKAR
R/O HAILAKANDI TOWN
WARD NO. 2
P.O. AND P.S. HAILAKANDI
DIST. HAILAKANDI
ASSAM
PIN-78815

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:LUTFA BEGUM LASKAR
D/O ABDUL AZIM LASKAR
R/O MILIJULI PATH

HOUSE NO. 21
NEAR DGM ROAD

GUWAHATI
P.O. KAHILIPARA
PIN-781019
P.S. DISPUR
DIST. KAMRUP (METRO)
ASSA

Advocate for the Petitioner : MS. S B CHOUDHURY

Advocate for the Respondent : MR. R R KAUSHIK(ADDL.PP, ASSAM)

**BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

JUDGMENT

Date : 09-05-2023

1. Heard Mr. HRA Choudhury, learned Senior Counsel for the petitioners assisted by learned counsel Ms. S.B. Choudhury. Also heard Mr. R.R. Kaushik, learned Addl. P.P. for respondent No. 1 and Mr. S.B. Laskar, learned counsel representing respondent No. 2.

2. The petitioners have filed an application under Section 482 of the Code of Criminal Procedure, 1973 (Cr.PC for short) with prayer for quashing the FIR being Dispur P.S. Case No. 874/2021 (G.R. Case No. 3820/2021) under Sections 120B/376 of the Indian Penal Code (IPC for short) and the Charge Sheet No. 270/2021 dated 31.08.2021 as well as the proceedings in the G.R. Case No. 3820/2021. The petitioners in this case are [1] Tarek Aziz Laskar @ Tarik Ali Laskar and [2] Nurul Islam Laskar. The victim, respondent No. 2 will also be referred to as 'X'.

3. The genesis of the case was that the victim 'X' lodged an FIR against the present petitioners and a third accused namely Rahima Begum Laskar. The victim embarked upon her duty as an Office Assistant in Dispur Polyclinic & Nursing Home from 5th November, 2019. She got acquainted to the petitioner No. 1 through social media, Facebook. The petitioner No. 1 pursued her and he also introduced her to his parents who are arrayed as Accused Nos. 2 and 3 in the FIR. There was a discussion between the victim's parents and the parents of petitioner No. 1 regarding marriage between the petitioner No. 1 and the victim 'X'. The

petitioner No. 1's parents also met the victim in the hospital and the victim also visited them at "Dispur Lodge". Again on 05.02.2020, the accused No. 3 came to Guwahati for routine checkup and met the victim at Dispur Polyclinic & Nursing Home. Thereafter the petitioner No. 1 took the victim 'X' to Dispur Lodge for fixing the date of their marriage. The Accused No. 3 was ailing and the victim 'X' introduced the accused to a Doctor and the victim 'X' helped to provide treatment to the accused No. 3. It is further alleged through the FIR that the petitioner No. 1 in a tacit manner took her to Dispur Lodge for discussion of her marriage and forcefully had physical relation against her will and asked her not to divulge the incident. On the insistence of the victim 'X' all the accused visited her house at Guwahati on 30th September, 2020 and fixed the marriage between the victim 'X' and the petitioner No. 1 in the month of April, 2021. Her parents made an announcement of her marriage with petitioner No. 1 and all her relatives got to know about her marriage. Her parents also incurred expenditure of Rs. 20 lacs by obtaining loans from various sources. The petitioner No. 1 also took the victim 'X' to his residence at Hailakandi and kept her for three days and with the help of accused Nos. 2 and 3 the petitioner No. 1 compelled 'X' to have physical relation during her stay at Hailakandi. When the victim 'X' returned home from Hailakandi, her parents asked the Accused No. 2 i.e. the petitioner No. 2 and the accused No. 3 about fixing the date of marriage between the petitioner No. 1 and the victim, then the accused Nos. 2 and 3 declined to go ahead with their marriage plans, stating that the petitioner No. 1 was still unemployed. Aggrieved by the conduct of the accused and on being cheated by them the victim 'X' lodged an FIR against the petitioners which was registered as Dispur P.S. Case No. 874/2021 under Sections 120B/176 IPC. The Investigating Officer conducted the investigation and submitted charge-sheet against all the three accused under the aforesaid sections of law.

4. The petitioners have admitted that they have met the victim in Dispur Polyclinic & Nursing Home when they came for treatment of accused No. 3. They admitted that the victim 'X' helped them during the treatment of the accused No. 3 and both the families have established a good relation as they hailed from Hailakandi. Subsequent thereto the victim's parents proposed marriage between the petitioner No. 1 and the victim, which was however not accepted by the petitioners as the petitioner No. 1 was not employed at that time.

5. It is vehemently denied that the petitioner No. 1 forcefully had physical relation with the victim. The abetment of the other accused in the offence of forceful sexual assault has also been vehemently denied. The statement of the victim under Section 164 Cr.PC does not corroborate the contents of the FIR. The statement of the victim is marked as Annexure-B. It is contended that the victim was 29 years old at the time of the incident and the petitioner No. 1 was only 25 years old. No one can induce her or force her to sexual intercourse without consent. It is submitted that no case under Section 376 IPC can be made out. It is not believable that parents of a son would hatch a conspiracy along with their son to commit an offence of such a nature. As the petitioners were not at fault, they were granted pre-arrest bail by this Court vide Order dated 29.07.2021 in Case No. AB 1033/2021. The order is marked as Annexure-G. It is submitted that the accused No. 3 passed away on 19.06.2021 as she contracted COVID-19. The petitioners have been suffering from mental harassment as their images have been tarnished due to a false case foisted against them. The petitioner No. 1 was a brilliant student with bright academic career and he is expecting government employment.

6. The learned counsel for the petitioners has relied on the decision of the Hon'ble Supreme Court in -

i. AIR (2021) SC 1919 M/s Neeharika Infrastructure Private Limited v. State of Maharashtra.

ii. Deepak Gulati v. State of Haryana (2013) 7 SCC 675.

7. The learned Addl. P.P. and learned counsel for respondent No. 2 have laid stress in their argument that this is indeed a case under Section 376 IPC. The petitioner had no intention to marry the victim from the inception. He lured the victim into having physical relationship with him on account of false promises of marriage. This is not a case where inherent jurisdiction can be invoked.

8. It has been observed by the Hon'ble Supreme Court in ***M/S Neeharika, Infrastructure Vs. The State of Maharashtra AIR, 2021 (SC) 1918***, that:-

“As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire 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 magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. [See Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305; 1993 SCC (Cri) 36; AIR 1993 SC 892] and Raghbir Saran (Dr.) v. State of Bihar [AIR 1964 SC 1; (1964) 1 Cri LJ 1]. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If

the allegations set out in the complaint do not constitute the offence of which cognisance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint/FIR has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant or disclosed in the FIR that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/FIR is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceeding.”

9. Reverting back to this case, it is held that the petitioners case is that the statement of the victim under Section 164 Cr.P.C is not consistent to the contents of the FIR. The scanned copies of the case record of PRC No. 2337/2001 reveals that this case was pending in the Court of the CJM at the stage of commitment. Charge-sheet was laid against both the petitioners and date was fixed to furnish the copies to the petitioners. It is not discernable that a father would hatch up a conspiracy with his son to commit an offence under Section 376 IPC. At this juncture, it is not necessary for this Court to get into a roving enquiry.

10. I have scrutinized the FIR and the statements of the victim under Section 164 Cr.P.C. It is revealed through the FIR and the statement of the victim that she got acquainted with the petitioner no. 1 through facebook and their acquaintance led to a love affair and marriage was formally fixed by the victim's parents, after a discussion with the petitioner No. 2 and his wife (deceased). It is also revealed through her FIR that the victim visited the petitioner No. 1 at Dispur lodge in the month of December, 2019 and then the petitioner No. 1 forcefully had

physical relationship with her whereas in her statement under Section 164 Cr.P.C, the victim stated that the petitioner attempted to commit rape on her and although the victim informed the petitioner no. 2 and his wife about the incident, the petitioner No. 2 just ignored her allegations and his wife assured her that the petitioner No. 1 loves her and will soon marry her and she also asked her (victim) not to divulge about the incident. The FIR and the statement of the victim under Section 164 Cr.P.C. also reveals that the victim remained in touch with the petitioner no. 1 and her marriage was fixed to be held with the petitioner no. 1 and the engagement was proposed to be held in the month of April, 2020. However, her engagement was postponed due to the Covid-19 pandemic. When the restrictions were eased, the petitioner No. 1 came to Guwahati with his parents in the month of February, 2020 and stayed in Guwahati for 4(four) days for treatment of the petitioner No. 3 (since deceased). During their stay in Guwahati, the petitioner No. 1 again forcefully had physical relationship with the victim. When, she informed the petitioner no. 1's mother about the incident of forceful sexual assault, the petitioner no. 1's mother tried to cover up the same stating that the petitioner no. 1 loves her. In the month of November, 2020, the victim was invited to the petitioner's house at Hailakandi and she along with her mother visited Hailakandi as her grandmother is also from Hailakandi. She also stayed in the petitioner's house for three days and during those three days, the petitioner No. 1 had committed forceful sexual intercourse with her. Thereafter, the marriage was fixed and her parents had already spent of Rs. 20,00,000/- (twenty lacs) for their marriage. Then suddenly their marriage was called off, and the petitioners demanded Rs. 10,00,000/- (ten lacs) as dowry and if, they were unable to pay the dowry the other condition was that the victim had to procure a Government job for petitioner No. 1. The condition precedent of the victim

procuring a Government job or of paying Rs. 10 lacs as dowry to the petitioners was however not mentioned in the FIR. The FIR is also silent about the incident of rape at Hailakandi.

11. It has to be borne in mind that an FIR is not an encyclopaedia. It encompasses the summary which sets the criminal case into motion. The FIR cannot be discarded as malafide, frivolous or fictitious without valid grounds. Even a comparison of the FIR and the statement of the victim under Section 161 Cr.P.C reveals that the victim was induced into physical relationship with the petitioner as her marriage was fixed with the petitioner no. 1. Whether, this is a case of rape and whether the possibility of conviction is bleak, can only be decided after garnering evidence. At this juncture without evidence, it cannot be decided if the petitioner induced the victim into having physical relationship with him with false promises of marriage. It cannot be ascertained at this stage if the petitioner cheated the victim and induced to her into a physical relationship with him with false promises of marriage and if the victim under "misconception of facts" had succumbed to such a relationship with the petitioner No. 1. Charge sheet has been laid against the petitioners. Trial is yet to commence. A scrutiny of the case record reveals that charges have not been framed.

12. It has been held by the Supreme Court in *Deepak Gulati Vs. State of Haryana* reported in **(2013) 7 SCC 675** that:-

“ Hence, it is evident that there must be adequate evidence to show that at the relevant time, i.e. at initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The “failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term misconception of fact, the fact must have an immediate relevance.” Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten

criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her.”

13. The appellant Deepak Gulati was acquitted by the Hon’ble Apex Court on benefit of doubt.

14. It has been observed by the Hon’ble Supreme Court in *State of Haryana v. Bhajan Lal*, reported in *1992 Supp.(1) SCC 335* that –

“We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

15. Reverting back to the instant case, it is held that the petitioner no. 1 is booked under a serious offence with serious allegation against him. At this juncture, without evidence it cannot be decided, if the victim has come up with false and frivolous allegations to wreak vengeance against the petitioner who finally decided not to get married to the victim. However, the victim’s allegations that the petitioner no. 2 and his wife called off the marriage between the petitioner and the victim, as the victim was unable to fulfill the conditions precedent to their marriage has not been mentioned in the FIR. The petitioner no. 2 is also not booked under the Dowry Prohibition Act, 1961. Moreover, no case under Section 120B/376 IPC is made out against the petitioner No. 2. It is not believable that a father will hatch up a conspiracy with his son and be a party to a criminal conspiracy abetting his son, the petitioner No. 1 to commit an offence under Section 376 IPC. The possibility of conviction of the petitioner no. 2 under Section 120B/376 IPC appears to be remote and bleak, which will indeed be an abuse of the process of the Court. So this case being Dispur P.S. Case No. 874/2021 and PRC Case No. 2337/2001 against the petitioner No. 2 only, is hereby set aside

and quashed.

16. This case being PRC Case No. 2337/2001, corresponding to Dispur P.S. Case No. 874/2021 against the petitioner No. 1 will proceed and he is directed to appear before the trial Court and co-operate with the trial.

17. It has already been held in my foregoing discussions that evidence is yet to be garnered. At this juncture, without evidence it cannot be decided conclusively, if the petitioner induced the victim into having sexual relationship with him with false promises of marriage which holds him liable for the offence of rape, or if no case u/s 376 IPC exists against him. This petition as far as the petitioner No. 1 is concerned is dismissed. A case of this nature ought not be throttled at the threshold. The petitioner is on bail. He is directed to cooperate with the trial.

18. The learned trial Court is directed to expedite the trial and complete the trial within 3 (three) months from the date of this order.

19. In terms of the above, this petition stands disposed of.

JUDGE

Comparing Assistant