

GAHC010056772023



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

Case No. : Crl.Pet./256/2023

NAZIMUL HOQUE @ NAZIMUL ISLAM AND 5 ORS
S/O ABDUR RASHID SK.
R/O VILL- VILL- DAMPUR PART-II, P.S. KAZIGAON, DIST. KOKRAJHAR
(BTR), ASSAM, PIN-783331

2: ABDUL MANNAN
S/O ABDUR RASHID SK.
R/O VILL- VILL- DAMPUR PART-II
P.S. KAZIGAON
DIST. KOKRAJHAR (BTR)
ASSAM
PIN-783331

3: ABDUR RASHID SK
S/O LATE SORHAB ALI
R/O VILL- VILL- DAMPUR PART-II
P.S. KAZIGAON
DIST. KOKRAJHAR (BTR)
ASSAM
PIN-783331

4: NUR NEHAR BEGUM
W/O ABDUR RASHID SK.
R/O VILL- VILL- DAMPUR PART-II
P.S. KAZIGAON
DIST. KOKRAJHAR (BTR)
ASSAM
PIN-783331

5: MASUMA KHATUN
D/O ABDUR RASHID SK.
R/O VILL- VILL- DAMPUR PART-II
P.S. KAZIGAON
DIST. KOKRAJHAR (BTR)

ASSAM
PIN-783331

6: ANJUMA BEGUM
W/O SAFIJUR RAHMAN
R/O VILL- VILL- DAMPUR PART-II
P.S. KAZIGAON
DIST. KOKRAJHAR (BTR)
ASSAM
PIN-78333

VERSUS

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

2:KHAIRUL ISLAM
S/O JOBED ALI
R/O DAMPUR PART-II
P.S. KAZIGAON
PIN- 783331
DIST. KOKRAJHAR (BTR)
ASSA

Advocate for the Petitioner : MR. A IKBAL

Advocate for the Respondent : PP, ASSAM

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

20.06.2023

Heard Mr. A. Ikbal, learned counsel appearing for the petitioner. Also heard Mr. P. Borthakur, the learned Addl. Public Prosecutor, Assam representing the respondent no.1. Heard Ms. S. Siddiqua, learned counsel representing respondent no.2.

2. This is an application under Section 482 of the CrPC praying for quashing the criminal proceeding of PRC Case No.158/2022 (G.R. Case No.670/2021) under Sections 365/352/376 of the Indian Penal Code pending in the court of the learned SDJM(S), Kokrajhar.
3. The respondent no.2 Khairul Islam lodged an FIR before police has stated therein that his sister aged about 20 years was having a love-affair with the petitioner Najimul Hoque. Their relationship continued for a period of about 1½ years. On 28.05.2021, the girl eloped with Najimul Hoque who allegedly made a false promise to her that he will marry her. The other petitioners are the parents and younger brother of Najimul Hoque and they did not allow Najimul Hoque to marry the said girl.
4. Now, the informant Khairul Islam and the victim girl filed two separate affidavits stating that Najimul Hoque ultimately married the girl and both of them are living happily as husband and wife.
5. I have considered the submissions made by the learned counsels of both sides.
6. The power under Section 482 of the CrPC is the inherent power of the High Court for preventing the abuse of the process of the Court. The guidelines for exercising power under Section 482 of the CrPC are laid down by the Supreme Court in *State of Haryana v. Bhajan Lal*, AIR 1992 SC 604. The relevant paragraph is quoted as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have

extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act,

providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

7. I find that under the given circumstances of the case, there is no possibility of future conviction in this case and allowing the criminal proceeding to continue would be an abuse of the process of the court. This is a fit case for exercising the power under Section 482 of the CrPC. Accordingly, the criminal petition is allowed. The criminal proceeding of PRC Case No.158/2022 (G.R. Case No.670/2021) under Sections 365/352/376 of the Indian Penal Code pending in the court of the learned SDJM(S), Kokrajhar, is set aside and quashed.

The criminal petition is disposed of.

JUDGE

Comparing Assistant