

GAHC010079132021



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

Case No. : Crl.Pet./423/2021

1. UMAR FARUQUE @ FARUK ALI
SON OF ABDULMUTALEB
PERMANENT RESIDENTS OF VILL- DATIALBORI
P.S. LAHARIGHAT
DIST. MORIGAON, ASSAM
PRESENTLY RESIDING AT VILL- HAMNUCHAR
P.O. BHELOWGURI, P.S. BHELOWGURI
DIST. MORIGAON, ASSAM

2: ABULHUSSAIN
SON OF LATE YASIN ALI
PERMANENT RESIDENTS OF VILL- DATIALBORI
P.S. LAHARIGHAT
DIST. MORIGAON
ASSAM
PRESENTLY RESIDING AT VILL- HAMNUCHAR
P.O. BHELOWGURI
P.S. BHELOWGURI
DIST. MORIGAON
ASSAM

3: MUSSTT. MORGINA BEGUM
W/O UMAR FARUQUE @ FARUK ALI
PERMANENT RESIDENTS OF VILL- DATIALBORI
P.S. LAHARIGHAT
DIST. MORIGAON
ASSAM
PRESENTLY RESIDING AT VILL- HAMNUCHAR
P.O. BHELOWGURI
P.S. BHELOWGURI
DIST. MORIGAON
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR J C BORAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

JUDGEMENT AND ORDER (ORAL)

Dated: 21.04.2023.

Heard Mr. J.C. Borah, learned counsel for the petitioners. Also heard Mr. B. Sarma, learned Addl. Public Prosecutor, Assam appearing for the State respondent.

2. This petition, under Section 482 of the Code of Criminal Procedure, is preferred jointly by three petitioners, namely, (1) Umar Faruque @ Faruk Ali, (2) Abul Hussain and (3) Musstt. 'X' (name withheld), for quashing of the Criminal Proceeding, being G.R. Case No.34/2016 (corresponding to Bhelowguri P.S. Case No.04/2016), under section 366(A)/34 of the IPC, pending in the Court of learned Chief Judicial Magistrate, Morigaon. It is to be noted here that the aforementioned case has been lodged by one Abul Hussain on 08.01.2016.

3. The factual background leading to filing of the present petition is briefly stated as under:

“On 08.01.2016, the petitioner No.2 Abul Hussain lodged an FIR with the Officer-in-Charge of the Bhelowguri P.S., alleging inter-alia amongst others that on 07.01.2016, at about 5 P.M., while his minor daughter Smti. 'X', aged 10 years, his son Md. Nurjamal and his another daughter Harjina Begum were proceeding to Sahghat, Kaurihagi Chapori, then accused Faruk Ali (petitioner No.1) with one Aktor Ali, Khalilur Rahman, Mutaleb, Saddam, another Saddam Hussain, Kadar Ali and Jiabur Rahman, being armed with sharp objects and lathi, kidnapped his daughter, petitioner No.3, with a view to solemnize her marriages

with the petitioner No.1.”

4. Upon the said FIR, the Officer-in-Charge of Bhelowguri Police Station had registered a case, being Bhelowguri P.S. Case No. 04/2016, under Section 366(A)/34 of the IPC and entrusted ASI Nur Uddin Ali to take preliminary step. Thereafter, the Investigating Officer visited the place of occurrence, examined the witnesses and recovered the victim girl and got her examined by the Doctor and also got her statement recorded in the Court, under Section 164 of the CrPC. He also attempted to cause arrest of the accused persons, but could not succeed and therefore, on completion of investigation, he laid the charge sheet being C.S. No.13/2016, under Section 366(A) of the IPC, against the petitioner No.1 Umar Faruque @ Faruk Ali, to stand trial in the Court, under the said section of law. It is to be mentioned here that the Investigating Officer had not sent up the other accused persons to stand trial due to want of evidence against them.

5. While the case was pending before the Court of learned Chief Judicial Magistrate, Morigaon, the parties have effected a compromise and executed a deed of compromise on 24th of February, 2021 and based upon the said deed of compromise, they have approached this Court for quashing the aforesaid proceeding, pending before the Court of learned Chief Judicial Magistrate, Morigaon.

6. Mr. J.C. Borah, learned counsel for the petitioners submits that though, at the relevant point of time, the petitioner No.3/the victim was minor, yet, subsequently she had attained majority and after attainment of majority, marriage between the petitioner No.3 and the petitioner No.1 was solemnized and they have been leading a happy married life and also they were blessed with a child, and they have affected a compromise and executed a deed of compromise on 24th of February, 2021 and on the basis of the said deed of compromise, the petitioners approached this Court for quashing the entire proceeding, as the offence under Section 366(A) of the IPC is not compoundable, under Section 320 of the CrPC. Referring to a decision of the Hon'ble Supreme Court in the case of **Mafat Lal and another vs. the State of Rajasthan**, in **Criminal Appeal No(s).592/2022**, arising out of SLP (Crl.) No(s).1806/2021, Mr. Borah, learned counsel for the petitioners submits that though the victim was minor at the relevant point of time,

yet, from a perusal of her statement, recorded under Section 164 CrPC, reveals that she eloped with the petitioner No.1 at her own suit will, as there was love affair between her and the petitioner No.1 and as such no offence under Section 366(A) of the IPC is said to be made out against him. And therefore, it is contended to allow the petition and to quash the proceeding, pending before the learned Court below.

7. On the other hand, Mr. B. Sarma, learned Addl. Public Prosecutor, Assam also fairly submits that in view of solemnization of marriage between the petitioner No.3 and the petitioner No.1 and in view of the deed of compromise executed by the parties, dated 24th of February, 2021, the State has no objection in the event of allowing the petition.

8. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the deed of compromise, dated 24th of February, 2021 and the statement of the victim girl, recorded under Section 164 of the CrPC and also gone through the case law, referred by Mr. J.C. Borah, learned counsel for the petitioners.

9. Indisputably, the victim was minor at the relevant point of time and her marriage with the petitioner No.1 was solemnized when she attained majority and they have been living together as husband and wife and blessed with a child. On perusal of the statement of the victim girl, recorded under Section 164 of the CrPC reveals that she eloped with the petitioner No.1 at her own sweet will and that being to position and also in view of the ratio laid down by the Hon'ble Supreme Court in the case of **Mafat Lal and Another (Supra)**, it cannot be said that offence under Section 366(A) of the IPC is made out against the petitioner No.1. It is to be noted here that in **Mafat Lal and Another (Supra)**, it has been held by the Hon'ble Supreme Court that "Section 366 IPC would come into play only where there is forceful compulsion of marriage, by kidnapping or by inducing a woman." Moreover, it appears that the matter has already been settled between the parties and a deed of compromise has been executed between them on 24th of February, 2021, which is enclosed with the petition as Annexure-6.

10. It also appears that the petitioner No.2, who is the informant and the father of the victim/petitioner No.3, has stated that he has no objection in the event of closing the case by

this Court, as they have already settled the matter amicably among themselves and they are not willing to proceed with the matter any further.

11. While dealing with the issue of quashing of FIR in the cases, which are not compoundable, under Section 320 CrPC, the Hon'ble Supreme Court in the case of **State of Mdhya Pradesh vs. Laxmi Narayan and others**, reported in **(2019) 5 SCC 688**, referring two of its earlier decisions, in **Gian Singh Vs. State of Punjab**, reported in **(2012) 10 SCC 303** and **Narinder Singh Vs. State of Punjab**, reported in **(2014) 6 SCC 466**, has held that when the parties have reached at the settlement and on that basis petition for quashing the Criminal Proceeding is filed, the guiding factor in such cases would be:-

(i) to secure the end of justice or

(ii) to prevent the abuse of the process of the court.

12. It is further held that while exercising the power, the High Court is to form an opinion on either of the aforesaid objectives. Further, Hon'ble Supreme Court, in the case of **Laxmi Narayan** (Supra), has held that : "the power conferred under Section 482 of the Code, to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly of the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves".

13. Here in this case, perusal of the record of the learned Court below reveals that the petitioner No.1 has already been charge sheeted under Section 366(A) of the IPC, showing him absconder in the charge sheet. Indisputably, the offence under Section 366(A) I.P.C. is a non-compoundable offence under Section 320 Cr.P.C. It also reveals from the petition that all the three petitioners have approached this Court for quashing of the proceeding of G.R. Case No.34/2016 (corresponding to Bhelowguri P.S. Case No.04/2016), under section 366(A)/34 of the IPC, as after attainment of majority by the petitioner No.3, her marriage has been solemnized with the petitioner No.1 and now they are living together as husband and wife and leading a happy married life and they are also blessed with a child. Indisputably, the

dispute between petitioner Nos.2 and 3 with that of petitioner No.1 arises out of matrimonial relationship or family dispute, and further, it appears that the parties have resolved the entire dispute among themselves.

14. Since the matter has already been settled by the petitioners and since they are not willing to pursue the matter further, and since the matter has arisen out of matrimonial relationship or family dispute, this Court is of the view that end of justice will be meted out if the petition is allowed. It is unlikely that in the event of dismissing the petition, the petitioner No.3, who is now wife of the petitioner No.1, would depose against him before the learned Court below and in such event, further continuation of the proceeding of the G.R. Case No.34/2016 (corresponding to Bhelowguri P.S. Case No.04/2016), under section 366(A)/34 of the IPC, would be an abuse of the process of the Court and it would be an exercise in futility.

15. Under the facts and circumstances and also drawing premises from the ratios, laid down in the cases discussed hereinabove, this Court is inclined to allow this petition, and accordingly, the same stands allowed. Resultantly, the proceeding of proceeding of the G.R. Case No.34/2016 (corresponding to Bhelowguri P.S. Case No.04/2016), under section 366(A)/34 of the IPC, pending in the Court of learned Chief Judicial Magistrate, Morigaon stands quashed.

16. The parties have to bear their own costs.

JUDGE

Comparing Assistant