

GAHC010097042023



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

Case No. : Crl.Pet./427/2023

DURGA DAS
S/O SRI KUSHAL DAS
R/O VILL- KACHUA MAJGAON, P.O. DHALPUR, P.S. BIHPURIA
DIST. LAKHIMPUR, ASSAM

VERSUS

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

2:SRI RABI BISWAS
S/O LATE NALINI BISWAS
VILL- BHOJKHUWA CHAWK

P.S.BIHPURIA
DIST. LAKHIMPUR
ASSA

Advocate for the Petitioner : MR. N N B CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 20-06-2023

Heard Mr. N.N.B Choudhury, learned counsel for the petitioner. Also heard Ms. S.H Bora, learned Additional Public Prosecutor for the State of Assam and Mr. A.

Banerjee, the learned counsel for the respondent No. 2.

2. The petitioner has filed an application under section 482 Cr.P.C. for quashing the Charge-Sheet No. 97/2020 dated 29.04.2020 and subsequent Criminal Case being GR Case No. 224/2020 pending in the Court of Chief Judicial Magistrate, Lakhimpur, at North Lakhimpur arising out of Bihpuria P.S. Case No. 50/2020 registered under section 366 of IPC.

3. The informant is the father of the victim, who has lodged an FIR against the petitioner with an allegation of kidnapping of his minor daughter. At present both the victim and the petitioner are married. The medical report marked as Annexure-II clearly reveals that the victim was 18 years old at the time of the incident and on examination no injury were deducted on her person immediately after the incident. The informant/respondent No. 2 has also submitted an affidavit marked as Annexure-7 that he has no objection and he is not willing to proceed with the present case. Charge-sheet has been laid against the petitioner under section 366 IPC and the charge-sheet is marked as Annexure 3. The victim has also filed an affidavit marked as Annexure-8.

4. I have considered the submissions at the bar with circumspection. It has been held by the Hon'ble Supreme Court in the case of "*Mafat Lal and Anr –Vs- State of Rajasthan (2022) 6 SCC 589*" that:

"11. Considering the overall facts and circumstances of this case the ends of justice would be best secured by quashing the FIR and all consequential proceedings that arise there from. Accordingly, the appeal is allowed. The impugned judgment and order dated 09.12.2020 of the High Court of Rajasthan is set aside and the entire proceeding arising out of FIR No. 45 of 2005 dated 23.05.2005 registered with Police Station Phulera, District

Jaipur under Sections 363 and 366 IPC and all consequential proceedings are hereby quashed”.

5. It has been also held by *Hon’ble Supreme Court in the case of Fazle Gaffar Khan and Anr –Vs- State of W.B. and Anr (2000) 10 SCC 10* that :

“3.The appellant faces criminal proceedings on a charge under Section 366 IPC on the allegation that he kidnapped a minor girl. On the basis of the first information report (FIR) the police took up the investigation and submitted a final form. A protest petition being filed by the complainant, the Magistrate treated it as a complaint and took cognizance. The accused moved the High Court under section 482 Cr.P.C. for quashing of the proceedings. The High Court having refused to quash the proceedings, the present appeal has been filed in this Court. An affidavit of the girl has been filed clearly stating therein that she was married to the appellant-accused. In view of such affidavit, the Court had issued notice pursuant to which the State entered appearance, but the complainant did not make any appearance. In the light of the said affidavit of the girl admitting the marriage between her and the present appellant and the statement made by s. Indira Jaising, learned Senior Counsel appearing for the appellant that a child has been born, we think it in the interest of justice to quash the criminal proceedings. We, therefore, allow this appeal and direct that the criminal proceedings be quashed”.

6. In the instant case both the petitioner and the victim are married and they are blessed with a daughter aged about one and half years only. The dispute is predominantly private in nature. The respondent No. 2 is not at all

aggrieved against the petitioner at present the possibility of conviction appears to be remote and bleak.

7. In view of my foregoing discussions, the charge sheet No. 97/2020 dated 29.04.2020 and the proceeding of G.R. Case No. 244/2020 is set aside and quashed.

In terms of the above observations, the petition stands disposed of.

JUDGE

Comparing Assistant