

GAHC010108262023



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

Case No. : Crl.Pet./489/2023

SHAHEB KHAN AND ANR
S/O PARBAT KHAN
R/O VILL- SHAWRACHARA RESERVE, P.O. CHIKNI
P.S. KALGACHIA
DIST. BARPETA, ASSAM
PIN CODE- 781321

2: AFRUZA KHATUN
D/O ABU BAKKAR SIDDIQUE
W/O SHAHEB KHAN
R/O VILL- SHAWRACHARA RESERVE
P.O. CHIKNI
P.S. KALGACHIA
DIST. BARPETA
ASSAM
PIN CODE- 78132

VERSUS

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

2: MANIRUL ISLAM
S/O ABU BAKKAR SIDDIQUE
VILL- KHELLY
P.O. NIZ RAMPUR
P.S. KALGACHIA
DIST. BARPETA
ASSAM
PIN CODE-78131

Advocate for the Petitioner : G UDDIN

Advocate for the Respondent : PP, ASSAM

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

ORDER

Date : 27-07-2023

ORAL

Heard Mr. A. K. Azad, learned counsel for the petitioner. Also heard Mr.P.S. Lahkar, learned Addl. P.P. for respondent No.1 and Ms. P. Adhikari, learned counsel for the respondent No.2.

2. The petitioners 'X' and 'Y' have filed an application under Section 482 of the Code of Criminal Procedure 1973 (Cr. P. C for short) for quashing the charge sheet No.135/2020 dated 29.5.2020 and subsequent proceeding arising out of Kalgachia P.S Case No. 987/2018, registered as PRC No. 1474/2022 u/s 366 A/34 IPC.

3. The petitioner 'X' is the accused and petitioner 'Y' is the victim of the Criminal Proceeding i. e P.R.C. No. 1474/2022. The respondent No.2 is the brother of the victim 'Y'. Both the accused and victim at present have jointly filed this petition and the informant i. e brother of 'Y' is arrayed as respondent No.2 in this case. It is submitted that this case is pending at the appearance stage. The allegation against the petitioner 'X' was that he kidnapped the minor victim. It is submitted that the victim was 17 years 5 months and she voluntarily went with the petitioner on her own volition. The statement of the victim u/s 164 Cr. P. C. reveals that she was in love with the accused 'X'/ petitioner. She stated in her statement that on 13.10.2018 she eloped with him and stayed in

his relative's house. Thereafter her relatives came and brought her back to her parental home, but again on 2.11.2018 she eloped with the petitioner 'X'/accused and stayed in his uncle's house. The petitioner 'X' has not kidnapped her or induced her to elope with him.

4. The informant i.e. respondent No. 2 has filed an affidavit. It is submitted on behalf of the informant that he has no objection if the FIR lodged by him is quashed and set aside.

5. I have considered the submissions at the bar that the age of the victim was given as 17 years and two years on the higher side can be considered. The admit card of the petitioner 'Y' reveals that the date of birth of the petitioner was 17.2.2002.

6. The learned Addl.P.P. has raised objection against the prayer made in the present petition. The learned counsel for the petitioners relied on the decision of this court in the case of Nasmin Sultana and 4 others Vs State of Assam and another in Crl. Pet. No. 228/2018 vide order dated 06.02.2019 wherein an FIR registered under Section 366 IPC was quashed and set aside as the victim had jointly filed the petition seeking quashing of the proceeding. It is also submitted that this instant case is similarly situated.

7. The learned counsel for the petitioner has also relied on the decision of High Court of Punjab & Haryana at Chandigarh in Kuldeep Singh and others Vs State of Punjab and others wherein vide order dated 26.09.2017, the FIR No 78 dated 19.04.2017 registered under Section 363,366-A, 380,120-B of IPC and Section 5 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 and all consequential proceedings were quashed and set aside against the accused petitioners.

8. The learned counsel for the petitioners has also relied on the decision vide order dated 22.11.2017 passed in Crl. Pet. No. 847/2013 wherein it was observed that:

12.Keeping in view the above principle, let us turn to the facts of the of the present case. Although police submitted charge sheet u/s 366A IPC against the petitioner, materials on record show that the alleged victim was a grown up girl attaining the age of giving her own consent, though technically she was only few days (less than month) short of attaining majority. She eloped with the petitioner out of her own will as her parents were contemplating her marriage with some other person against her will. It is evident from the materials brought on record that the petitioner and the alleged victim have already married and they are living as husband and wife having a child and the family members of the alleged victim have also accepted the relation between the petitioner and the alleged victim and settled the matter . Although technically the victim was a minor at the relevant time, considering the peculiar facts of the case and the materials brought on record, it cannot be said that she was kidnapped or abducted without her consent by the petitioner. The fact that the alleged victim was on the verge of attaining majority and eloped with the petitioner and has been living a peaceful life after marrying the petitioner out of her own will , ruled out the existence of requisite intention on the part of the petitioner for constituting an offence u/s 366 A. To be frank the essential ingredients to constitute an offence u/s 366A is absent in the present case.

13. Be that as it may, when the alleged victim girl has almost attained majority at the time of occurrence and being a grownup girl attaining the age of consent, also entered into marriage with the petitioner and have been living peacefully as husband and wife, having a girl child, and both the parties have amicably settled the matter, in my considered view, the present case though not compoundable u/s 320 IPC, is required to be quashed, as allowing this proceeding to continue would not serve any purpose of justice, rather, it will be an abuse of process of the court. Because the totality of the facts and circumstances of the case as indicated above clearly suggest that allowing the continuation of the present proceeding would become oppressive and sure to take the character of a lame prosecution.

9. In the present case both the accused and victim have jointly filed the petition. The respondent No.2 has no objection. The statement of victim under Section 164 Cr.P.C. reveals that she voluntarily eloped with the petitioner No.1,

not once but twice. The admit card of the victim reveals that she was more than 17 years old at the time of the incident. She was almost on the verge of attaining majority. The petitioners are spouses and their family members have accepted their relationship. Possibility of conviction appears to remote and bleak. Further proceeding will indeed be an abuse of the process of the Court.

10. In view of my foregoing discussions the FIR registered as Kalgachia P.S. Case No. 987/2018 the proceeding of P.R.C Case No. 1474/2022, under Section 366 A/34 IPC is hereby set aside and quashed.

11. In terms of the above observations, this petition is disposed of.

JUDGE

Comparing Assistant