

GAHC010109272018



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

Case No. : Crl.Pet./479/2018

ARUP RAJBANGSHI AND 3 ORS.
S/O SRI SAMBHU RAJBANGSHI, VILL AND PO KERPABHITHA, PS
GORESWAR, DIST. BAKSA (BTC), ASSAM

2: SAMBHU RAJBANGSHI
S/O LATE UPENDRA RAJBANGSHI
VILL AND PO-KERPABHITHA
PS GORESWAR
DIST. BAKSA(BTC)
ASSAM

3: RAJEN RAJBANGSHI
S/O LATE UPENDRA RAJBANGSHI
VILL AND PO-KERPABHITHA
PS GORESWAR
DIST. BAKSA(BTC)
ASSAM

4: SUREN DEKA
S/O GANGARAM DEKA
VILL AND PO-KERPABHITHA
PS GORESWAR
DIST. BAKSA(BTC)
ASSA

VERSUS

STATE OF ASSAM AND ANR.
REPRESENTED BY PUBLIC PROSECUTOR

Advocate for the Petitioner : MR. M SARANIA

Advocate for the Respondent : MR. P.S. LAHKAR(ADDL.PP, ASSAM)

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

JUDGMENT

Date : 13-06-2023

1. Heard Mr. M. Sarania, learned counsel for the petitioners. Also heard Mr. P.S. Lahkar, learned Addl. PP appearing for respondent No. 1 and Mr. A. Roshid, learned counsel appearing for respondent No. 2.

2. The petitioners namely, [1] Arup Rajbangshi [2] Sambhu Rajbangshi [3] Rajen Rajbangshi and [4] Suren Deka have filed this application u/s 482 of the Code of Criminal Procedure, 1973 (Cr.PC for short) with prayer for quashing the criminal proceeding being C.R. No. 366/2016 registered u/s 376/493/420/506 of the Indian Penal Code (IPC for short).

3. It is contended that the victim arrayed as respondent No. 2 filed a complaint before the Chief Judicial Magistrate at Goalpara on 21.04.2016 alleging *inter alia* that while she was working as a Nurse in Life Care Hospital, Goalpara, the petitioner No. 1 came to the hospital looking for the ENT doctor. As the doctor was not available, the petitioner No. 1 noted down the phone number of the victim 'X' and then both the petitioner No. 1 and the victim got closely acquainted. This first meeting of the petitioner No. 1 with the victim 'X' was six months prior to the filing of the complaint. The petitioner No. 1 who posed himself as an Army man proposed marriage but 'X' declined the proposal. Then the petitioner No. 1 came to the victim's rented room at Goalpara and entered into her room and closed the door and tackled her and pinned her to the bed and ripped off her clothes and had physical relationship

with the respondent No. 2 against her will. When the respondent No. 2 raised alarm, the petitioner No. 1 consoled her and promised to marry her. In this manner the petitioner No. 1 promised to marry the respondent No. 2 and on that pretext had physical relationship with her. When the respondent No. 2 demanded that the petitioner No. 1 has to keep his promise and marry her, the petitioner No. 1 came to her house and made the proposal of marriage between him and the respondent No. 2 to the mother and the elder brother of the respondent No. 2. Then the guardians of the respondent No. 2 asked the petitioner No. 1 to call his parents and the petitioner No. 1 assured that his parents would meet the respondent No. 2's guardians within two days. After the proposal, the petitioner No. 1 stayed in the house of Dhananjay Ray, the accused No. 5, mentioned in the FIR who is also the respondent No. 2's uncle, for two days. In connivance with accused No. 5, the petitioner No. 1 then fled the scene. The respondent No. 2's parents went and informed the petitioner No. 1's parents about the incident and they assured the respondent No. 2's parents that that her marriage with the petitioner No. 1 would be arranged. Thereafter on 20.02.2016 all the petitioners visited the respondent No. 2's house and informed that the petitioner No. 1 had refused to marry the respondent No. 2 and it was also revealed that the petitioner No. 1 is not an Army personnel. The petitioners then assured to pay Rs. 2 lacs in cash and Rs. 5,000/- as monthly maintenance to the respondent No. 2 and an agreement was executed on 20.03.2016, but the petitioners have declined to pay the promised amount and instead they have threatened the respondent No. 2 and her family. As a complaint was filed by the respondent No. 2, the learned Chief Judicial Magistrate at Goalpara registered the same as C.R. Case No. 366/2016 u/s 376/420/506/34 IPC and the statement of the respondent No. 2 was recorded u/s 200 Cr.PC. The statements of two other witnesses namely, Samer Ali and Damayanti Roy were

also recorded u/s 202 Cr.PC. Cognizance was taken by the learned Judicial Magistrate u/s 376 IPC against the petitioner No. 1 and u/s 420/506/34 IPC against the other petitioners vide order dated 11.04.2018. Summonses were issued for appearance on 31.05.2018.

4. It is admitted by the petitioners that the petitioner No. 1 and the respondent No. 2 had a friendly relationship. The respondent No. 2 invited the petitioner No. 1 on 25.01.2016 and so the petitioner No.1 visited her and he proceeded to her house by train and was received by respondent No. 2's relatives at the railway station in Bongaigaon and they reached her home at 6 PM. He has denied that he has committed rape on respondent No. 2. He has admitted that when he reached the respondent No. 2's house at 6 PM, he was asked to stay in her uncle's house in the same village. The respondent No. 2's uncle is also arrayed as accused No. 5 in the complaint. It is averred that due to their friendly relationship the respondent No. 2 and her family members may have conceived the idea that their friendly relationship may turn into a nuptial knot. The respondent No. 2's elder brother exercised pressure on the petitioners to sign a written agreement prepared on a stamped paper without allowing the petitioners to go through the contents of the agreement while the petitioner No. 1 was wrongfully restrained in the respondent No. 2's uncle's house on 26.01.2016. The petitioner No. 1 was informed that he had to pay Rs. 2 lacs as compensation for tarnishing the reputation of the respondent No. 2 and also a monthly maintenance of Rs. 5,000/- was demanded from petitioner No. 1 as he gave false assurances to marry the respondent No. 2. The petitioner No. 1 was compelled to affix his signature on the agreement on 26.01.2016 as he was terrified. Despite his protests, he affixed his signature. Although the petitioner No. 1 was confined in the accused No. 5's house, he somehow managed to escape leaving behind his airbag and he reached his home on 28.01.2016.

5. Thereafter on 14.02.2016, the respondent No. 2 accompanied by her uncle and two other persons, visited the residence of the petitioner Nos. 1 and 2, with a view to stay in their house as the wife of petitioner No. 1, but the petitioner No. 1 was not present at home. The petitioner No. 1's parents assured the respondent No. 2 that they would shortly visit her house, after a discussion with the petitioner No. 1 and accordingly the petitioner Nos. 2 and 3 along with another person visited the respondent Nos. 2's house on 20.02.2016 to bring back the airbag left behind by the petitioner No. 1, but they were confronted by the respondent's family with rowdy behavior, because the petitioner No. 1 did not agree to marry the respondent No. 2. They were also threatened that a complaint would be filed against the petitioner No. 1. This impelled the petitioner No. 1 to proceed to the Goreswar police station to lodge a complaint against the respondent No. 2, her elder brother and others, but due to lack of jurisdiction the police at Goreswar police station declined to accept the FIR, but the petitioner lodged an FIR with the police at Agia police station. The FIR was lodged with the police at Agia police station by the petitioner No. 1 on 08.03.2016 which was registered as Agia P.S. Case No.32/2016 u/s 342/420/458/34 IPC.

6. It is contended that no case u/s 376/420/506/34 IPC is made out against the petitioners as the complaint lodged by the respondent No. 2 is false and frivolous. The statements of witnesses u/s 202 Cr.PC clearly reveals that no case is made out against the petitioners and the cognizance was erroneously taken against them by the learned Magistrate. The only relationship between the petitioner No. 1 and respondent No. 2 was that they were friends and they used to exchange phone calls. The complaint was erroneously registered as C.R. Case No. 366/2016, despite the fact that no FIR was lodged against the petitioners, and without valid reasons and after an inexplicable delay a complaint was lodged

against the petitioners by the respondent No. 2 which brings the entire allegation under cloud. The complaint was filed much later than the FIR lodged by the petitioner No. 1 against the respondent No. 2. There is no allegation of cheating or dishonest inducement for delivery of property and so no case u/s 420 IPC was made out against the petitioners. There is no allegation of intimidation and so no offence u/s 506 IPC was made out. If the petitioners have failed to pay monthly maintenance of Rs. 5,000/- and a compensation of Rs. 2 lacs to the respondent No. 2, breaching terms and conditions of any agreement, the respondent No. 2 can pray for relief through a civil suit and a criminal proceeding is not tenable in law. This is a malicious prosecution attended with *malafide* and is liable to be quashed u/s 482 Cr.PC.

7. On the contrary the learned counsel for the respondent has laid stress in his argument that earlier rape was committed and then the petitioner No. 1 promised to marry the respondent No. 2. The initial deposition clearly reveals the allegations which makes out a case against the petitioners. No error has been committed and a well reasoned order was passed on 11.04.2018 in connection with C.R. Case No. 366/2016, when cognizance was taken against the petitioners. The initial depositions of the witnesses marked as Annexure-2 clearly reveals that a prima facie case u/s 376/420/506/34 IPC has been made out against all the petitioners. The *Bhajan Lal's* case referred to by the learned counsel for the petitioners is not similar to this case. The inherent jurisdiction u/s 482 Cr.PC has to be invoked in rarest of rare cases. Why will a petitioner execute an agreement to pay Rs. 2 lacs and a monthly maintenance of Rs. 5,000/- to respondent No. 2, if he is innocent.

8. I have given my anxious considerations to the submissions at the bar.

9. The learned counsel for the petitioners has relied on the decision of the Hon'ble

Supreme Court in *State of Haryana and Others v. Bhajan Lal and Others*, reported in 1992 *Supp (1) SCC 335* and has submitted that this is a fit case to be quashed because this proceeding has been initiated with malafide and with malice, to wreak vengeance. It has been observed by the Hon'ble Supreme Court in *Bhajan Lal's* case (*supra*) that :-

“In the backdrop of the interpretation of the various relevant provisions of the Code under Caper 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 of Criminal Procedure, the following categories of cases are given 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 channelized 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 F.I.R. 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; and**
- (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.”**

10. On the contrary the learned counsel for the respondent relied on the decision of the

Hon'ble Supreme Court in *M/s Neeharika Infrastructure v. State of Maharashtra*, reported in 2021 SCC online SC 315 wherein it has been observed that:-

“In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or “no coercive steps to be adopted”, during the pendency of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or “no coercive steps to be adopted” during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;**
- ii) Courts would not thwart any investigation into the cognizable offences;**
- iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;**
- iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases’ (not to be confused with the formation in the context of death penalty).**
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;**
- vi) Criminal proceedings ought not to be scuttled at the initial stage;**
- vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;**
- viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;**
- ix) The functions of the judiciary and the police are complementary, not overlapping;**

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under [Section 482](#) Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;"

11. I have also considered the submissions of the learned Addl. P.P. that at this initial stage the case cannot be truncated by quashing the complaint petition and by quashing the order of cognizance. I have scrutinized the initial deposition of the respondent No. 2 and the witnesses marked as Annexure-2 and appended along with the petition. It is true that no FIR was lodged at the earlier stage, immediately after the incident of alleged rape. The complaint was filed after the petitioner allegedly failed to keep his promise of marrying the victim i.e. the respondent No. 2. The scanned copies of the LCR reveal that the complaint case is pending at the initial stage. Charges have not yet been framed. It is true that the complainant has also lodged an FIR against the respondent No. 2, before the complaint petition was filed against the petitioner No. 1. The FIR was lodged on 21.03.2016 and was registered as Agia P.S. Case No. 32/2016 u/s 342/420/468/34 IPC whereas the complaint was filed much later on 21.04.2016 by the respondent No. 2. On the basis of the allegations in the FIR dated

21.03.2016 as well as on the basis of the application u/s 482 Cr.PC, the complaint petition filed by the respondent No. 2 cannot be held to be a petition filed with malice to wreak vengeance against the petitioner No. 1 at this stage. Charges are yet to be framed and evidence is yet to be recorded. It cannot be held that the order dated 11.04.2018 passed by the learned Magistrate No. 1 at Goalpara was passed without assigning any reasons. The order dated 11.04.2021 in C.R. Case No. 366/2016 reflects that the learned Magistrate has perused the complaint petition and the statements recorded u/s 200 and 202 of the Cr.PC. The relevant documents were produced and the learned Magistrate has found that a prima facie case was made out against the petitioners and then summonses were issued.

12. In view of my foregoing discussions, it is thereby held that at this stage there appears to be no justified ground to quash the proceeding of C.R. Case No. 366/2016 registered u/s 376/420/506/34 IPC. This Court is hesitant to quash the impugned order dated 11.04.2018 passed in C.R. Case No. 366/2016. It is held that when charges were not yet framed and when evidence is yet to be recorded, it is too early to invoke the inherent jurisdiction of the Court u/s 482 Cr.PC and quash the proceedings by holding that this proceeding is a malicious proceeding.

13. At this pre-matured stage it could not be ascertained whether the complaint case being C.R. Case No. 366/2016 is a malicious prosecution in order to wreak vengeance. Similarly it also could not be ascertained whether the FIR No. 32/2016 which was lodged earlier was a false and frivolous FIR. It is not necessary that the earlier complaint is a genuine complaint and the latter complaint lodged by the respondent No. 2 may not be genuine. It would indeed be pre-matured to pronounce conclusion based on hazy facts that the complaint would tantamount to an abuse of the process of court. The power of quashing ought to be

exercised sparingly with circumspection and in rarest of rare cases. It is not necessary that while examining the complaint this Court is to embark upon an enquiry as to the reliability or genuineness or otherwise of the allegation made in the complaint. Criminal proceedings ought not to be scuttled at the initial stage.

In view of my foregoing discussions, petition is rejected at this stage.

JUDGE

Comparing Assistant