

GAHC010141492022



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

Case No. : Crl.Pet./699/2022

MONDAL ALI @ SOLIM UDDIN SK
S/O MOZID ALI @ ABDUL MOZID
R/O VILL- ALOMGANJ PART-IX,
P.S. GAURIPUR
DIST. DHUBRI, ASSAM
PIN-783349

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE PP, ASSAM

2:BAHARJAN BIBI
W/O KEYAMOT ALI
R/O VILL- ALOMGANJ
PART-IX (LAL PAHAR)

P.S. GAURIPUR
DIST. DHUBRI
ASSAM
PIN-783349

3:NAZMA BEGUM
D/O KEYAMOT ALI
R/O VILL- ALOMGANJ
PART-IX (LAL PAHAR)

P.S. GAURIPUR
DIST. DHUBRI
ASSAM
PIN-78334

Advocate for the Petitioner : MR. M A SHEIKH

Advocate for the Respondent : PP, ASSAM

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
O R D E R

21.11.2023

Heard Mr. M.A. Sheikh, learned counsel for the petitioner.

2. This is an application filed under Section 482 Cr.P.C. for quashing of the FIR of Gauripur PS case No. 1119/2016 under Section 376/323/34 IPC read with Section 4 of the POCSO Act, 2012 corresponding to GR No. 4766/2016.

3. The basic ground urged for quashing of such FIR is that since date of lodging of FIR on 12.11.2016, till date, neither the charge-sheet has been filed by the investigating officer nor any final report. Therefore, the petitioner should not be allowed to continue under such investigation and accordingly, the entire investigation is liable to be quashed.

4. Mr. Sheikh argues that the victim girl had already been married to a different person and she is having a happy married life with a child and therefore, if the investigation is allowed to be proceeded, in all likelihood, the girl will not support the allegation of the FIR inasmuch as, further proceeding in the investigation will turn into an unmerited litigation. In support of such contention, Mr. Sheikh relies on the decision of the Hon'ble Apex court in the case of ***Sanjaysingh Ramrao Chavan v Dattatray Gulabrao Phalke and Ors.*** reported in ***(2015) 3 SCC 123.***

5. Per contra, Mr. Das, learned Additional Public Prosecutor submits that

a prima-facie case has been made out on a mere reading of the FIR under the Sections of law as registered by the Investigating Officer. Therefore, Mr. Das submits that in that view of the matter only on the ground that neither the charge-sheet nor the final report has been filed, an FIR cannot be quashed. Mr. Das further contends that whether the litigation is merited or not merited or whether the victim will come and depose before the court is matter of fact and this court cannot presume such fact and quash an FIR on such anticipation and apprehension.

6. I have given anxious consideration to the submissions advanced by the learned counsel for the parties. Also perused the scanned copy of the case diary. From a bare reading of the FIR, this court is of the considered opinion that a prima-facie case under Section 376/323/34 IPC read with Section 4 of the POCSO Act has been made out. Not only that this court has also perused the statement of the victim recorded under Section 161 Cr.P.C. and Section 164 of the Cr.P.C. where she has specifically alleged commission of rape upon her by the petitioner and specifically stated that she had protested to such act. It is also stated that the victim is a minor child of 17 years. Therefore, the question of her consent to such physical relation, even if assumed, cannot be a ground to quash the FIR inasmuch as, such consent of a minor is not a consent in the eye of law. The question of her majority in absence of any cogent and admissible material can't be determined in an application under section 482 Cr.P.C.

7. Coming to argument of the petitioner i.e. this is an unmerited and undeserved prosecution, this court is of the view that whether the prosecution is having merit is a matter of fact to be decided either at the stage of framing charges or during the trial and such exercise cannot be

carried out under Section 482 Cr.P.C. seeking quashing of the FIR in question inasmuch as law is well settled that this court cannot enter into the correctness of fact alleged in the FIR while deciding an issue of quashment of an FIR.

8. In the view of aforesaid, this court finds no merit in the present petition. Accordingly, same stands dismissed.

9. The Investigating Officer shall be at liberty to continue with the investigation and file F/F. As the investigation is pending since 2016, the Investigation Officer shall complete his investigation at the earliest and preferably within a period of three months from today and file FF.

10. A copy of this order be sent to the O.C of Gauripur PS, Dhubri for doing the needful.

JUDGE

Comparing Assistant