

GAHC010167162023



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

Case No. : Crl.Pet./771/2023

BIBEK DAS
S/O SRI ANIMESH DAS, R/O VILL-THELAMARA GHATGAON, P.S. AND P.S.-
THELAMARA, DIST-SONITPUR, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:ANWESHA BARKATAKI
D/O SUNIL KR. BARKATAKI
STUDENT OF DEPARTMENT OF ANTHROPOLOGY
BORDER OF RCC 8 GIRLS HOSTEL
GUAHATI UNIVERSITY
PIN-78101

Advocate for the Petitioner : MR S C DAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 16-08-2023

1. Heard Mr. S.C. Das, learned counsel for the petitioner and also heard Mr. P Borthakur, learned Addl. PP, Assam.
2. The present criminal revision petition has been filed under

section 482 Cr.P.C., for quashing the FIR dated 13.06.2023 lodged by the respondent No.2. The FIR is quoted herein below:

Date :

“To

The I/C Jalukbari Outpost,

Subject : Formal complaint of sexual assault in University Campus.

Respected Sir,

I am writing this letter to bring a distressing incident to your attention and seek appropriate action against an individual who has engaged in inappropriate behaviour resulting in a violation of my personal boundaries.

On Wednesday, 24th May 2023, at approximately evening 7th PM, I was present at University Market road when a senior student named Bibek Das approached me and without consents touched my private parts in an unwarranted and forceful manner. This act was invasive, traumatic and left me feeling violated and deeply disturbed. As a survivor of sexual assault, I understand the gravity of such incidents and the importance of taking immediate action.

I would like to emphasize that the incident took place in a public setting, and I believe it is essential to address the matter promptly to ensure the safety and well being of others who may encounter this individual. I requested that you conduct a thorough investigation into the incident and take appropriate measures to prevent such incidents from occurring in future.

I urge you to treat this matter with the utmost urgency and seriousness it deserved. Sexual assault is a serious crime that must not be taken lightly. It is essential to foster an environment that protects and respects the rights of all individuals of their age or gender.

Please keep me informed about the processes of your investigation on any subsequent activities that will be taken. I expect that appropriate disciplinary action will be implemented to address this issue effectively and prevent any similar incidents from happening in the future.

Thank you for your attention to this matter. I trust that you will handle this situation with the necessary sensitivity and urgency it requires. Your commitment to ensuring a safe and secure environment for all individuals is greatly appreciated.

Sincerely

*Anwesha Barkataki.
Contact No.6901563055
Department of Anthropology
Border of RCCD 8 Girls Hospital
Gauhati University"*

3. The basic case urged by the learned counsel for the petitioner is that the present FIR is nothing but an abuse of the process of the criminal law inasmuch as the alleged incident occurred on 24.05.2023 at around 7 PM, whereas the FIR was lodged on 13.06.2023 i.e., after 20 days. Accordingly, the learned counsel for the petitioner relying on the judgment of the Hon'ble Apex court in the case of ***Kishan Singh (dead) Through LCR Vs. Gurpal Singh and Others (2010) 8 SCC 775*** argues that as the delay in lodging the FIR after 20 days is not explained, therefore, it is well established that the FIR is lodged only to harass the present petitioner. In support of such contention, the learned counsel for the petitioner further relies on the judgment of the Hon'ble Apex Court in ***P Rajagopal and Others Vs. State of Tamil Nadu*** reported in ***AIR 2019 SC 2866***.

4. On a bare perusal of the allegation and the FIR as discussed hereinabove clearly makes out the cases as registered by the Investigating authority. Law is by now well settled that the inherent power under section 482 Cr.P.C though is wide enough and there is no statutory limit, the court is to exercise such power sparingly more

particularly when the power relates to quashing of an FIR and such FIR can be quashed only when on a plain reading of the FIR, no case is made out.

5. As discussed hereinabove the reading of the FIR itself shows that clear cases as registered has been made out. Now coming to the delay in lodging the FIR, it is also well settled that the in Indian context sexual offences relating to the women and dignity of women, the delay is not always fatal to a case. Further whether such delay is fatal or not can be a subject matter of the trial itself. At the stage of the investigation, this Court in exercise of the power under section 482 Cr.P.C. in the considered opinion of this court cannot and should not quash an FIR, more particularly in the given facts of the present case, whether the delay in lodging the FIR can't be said to be inordinate.

6. The judgment relied on by the learned counsel in the case of Kishan Singh (supra), the subject matter was altogether different and quashment of FIR was basically relates in the aforesaid case on the ground that already a civil suit was filed relating to the same incident and the civil suit was already decreed. Therefore, in the considered opinion of this court, the ratio laid down in the said case is not applicable to the facts of the present case.

7. Coming to the judgment of P Rajagopal (supra), the said case relates to trial and conviction and therefore, the same is also not applicable so far relating to case of quashment under section 482 Cr.P.C., inasmuch as whether such delay is fatal or not can definitely

be taken during the course of trial.

8. In view of the aforesaid, the present criminal revision petition stands dismissed.

JUDGE

Comparing Assistant