

GAHC010168952021



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

Case No. : Crl.Pet./586/2021

DAVID HASNU @ DEBAT HASNU AND ANR
S/O SRI SUBANON HASNU, R/O VILL- HATIKHALI, WAPUDISA, PIN-78832,
P.O.- HATIKHALI, P.S.-LANGTING, DIST- DIMA HASAO, ASSAM

2: SMTI NAIRINGDI DAOLAGUPU
D/O LATE KANAILAL DAOLAGUPU
R/O NEW FOREST COLONY
GODAINRAJI
PIN-788819
P.O.-HAFLONG
P.S.-HAFLONG
DIST- DIMA HASAO
ASSA

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. M P CHOUDHURY

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

Date : 06-06-2023

Heard Mr. M. P. Choudhury, learned counsel for the petitioners. Also heard Mr. B. Sharma, learned Additional Public Prosecutor for the State respondent.

2. This is a joint application filed under Section 482 of the Code of Criminal Procedure, 1973, *read with* Article 227, praying for setting aside and quashing of the G.R. Case No.08/2019 corresponding to PRC Case No.106/2020, which is pending before the Court of the learned Sub-Divisional Judicial Magistrate, Dima Hasao, Halflong arising out of Halflong Police Station Case No.03/2019 dated 09.01.2019, registered under Section 376/493 IPC *read with* Section 8 of POCSO Act, 2012, which was initiated on the basis of the impugned Charge-Sheet No.14/2020, dated 30.06.2020, under Section 376 of the Indian Penal Code.

3. A brief facts leading to the filing of the present petition is that the petitioners No.1 and 2 knew each other since the year 2017, and they gradually developed a love affairs. However, due to some miscommunication and misunderstanding between both the petitioners, ultimately resulted in lodging of an FIR on 09.01.2019 which is registered as Halflong Police Station Case No.03/2019, registered under Section 376/493 of the Indian Penal Code *read with* Section 8 of the POCSO Act, 2012.

4. It is stated that the petitioner No.1 initially communicated with the petitioner No.2 through Facebook in the year 2017, and in the year 2018, the complainant/petitioner No.2 accepted the proposal of the petitioner No.1 to get

married to him, and thereafter, on several occasions the petitioner No.1 on the pretext of getting married to the complainant/petitioner No.2 took her to various hotels on several dates in different places, wherein, he forcibly raped the petitioner No.2 against her wishes without obtaining her consent. Apart from that, since from the month of October' 2018, the petitioner No.1 started ignoring the complainant/petitioner No.2, and on being confronted the petitioner No.1 threatened the complainant/petitioner No.2 with dire consequences if she ever tried to communicate with him. Hence, being left with no other alternative, the petitioner No.2 approached before the learned Trial Court with a complaint which was accordingly to O/C Halflong P.S. for investigation.

5. After receiving the complaint from the learned Trial Court, the Officer-in-Charge, Halflong Police Station registered the case as Halflong P.S. Case No.03/2019, dated 09.01.2019 under Sections 376/493 IPC *read with* Section 8 of the POCSO Act, 2012 against the petitioner No.1. Accordingly, the case was investigated and in pursuant to completion of the investigation, the Charge-Sheet was filed being C.S.No.14/2020, dated 30.06.2020 against the petitioner No.1, under Section 376 IPC, showing him as an absconding. Thereafter, the learned Sub-Divisional Judicial Magistrate, Dima Hasao, issued summons to the accused/petitioner No.1 directing him to appear before the same Court on 04.03.2021, and accordingly, the order of cognizance was passed.

6. Thereafter, both the petitioners sorted out their disputes amicably and to that effect, the petitioner No.2/complainant voluntarily notarized a declaration dated 23.04.2021, before the Notary Public, Dima Hasao, Halflong, wherein, she clearly stated that at present she does not want to pursue the matter against

the petitioner No.1, and also admitted that out of rage and ignorance, she lodged the FIR against him, though there was no force used for physical contact by the petitioner No.1, and physical relationship between them was consensual without any sort of coercion.

7. It is further submitted by the learned counsel for the petitioner that from the averments made in the FIR as well as in the Charge-Sheet and also from the voluntarily declaration made by the petitioner No.2, it is seen that the relationship between petitioners were consensual in nature. They continued their relationship for more than one and a half years and subsequently, an FIR was lodged by the petitioner No.2 only when the petitioner No.1 had expressed disinclination to marry her. Hence, there is no misconception of fact on the part of the petitioner No.1 which induced the petitioner No.2 to give her consent to engage in sexual activities with him.

8. Further, it is also submitted by the learned counsel for the petitioners that the dispute between the parties is purely private in nature, which has already been settled by way of amicable settlement by executing the voluntarily declaration made by the petitioner No.2. Thus, further proceeding of the instant case will not serve any purpose, and it is liable to be set aside and quashed for the ends of justice.

9. It is also submitted that one of the basic ingredients to attract under Section 375 IPC is missing as the sexual act so committed was not against the will or without the consent of the petitioner No.2. More so, at no point of time, the petitioner No.2 or any other person with whom she is interested is put in

fear of hurt or death by the petitioner No.1 to obtain her consent, nor was there any misconception of fact involved as envisaged under Section 90 IPC.

10. In addition to his submission, the learned counsel further relied on guidelines passed by the ***Hon'ble Apex Court guidelines in the case of the State of Haryana vs. Bhajan Lal (1992) Suppl (1) SCC 335***. Further, it is also submitted that, even if, the allegations made in the FIR dated 09.01.2019 and the impugned Charge-Sheet No.14/2020 dated 30.06.2020, registered under Section 376 IPC are taken to be evident that the same cannot legally be termed as proof of the ingredients of the alleged offence. More so, there is no probability of continuing this case as the matter has been settled amicably between the parties and even the petitioner No.2 made her voluntarily declaration before the learned Notary Magistrate that she is no longer interested to proceed with this case.

11. Accordingly, the petitioner Nos. 1 and 2 jointly preferred this petition praying for setting aside and quashing of the entire proceedings arose out of the FIR dated 09.01.2019 by excising the Power under Section 482 of the Code of Criminal Procedure, 1973.

12. In this context, Mr. B. Sharma, learned Additional Public Prosecutor has submitted that the FIR was lodged in the 2019 as well as the Charge-Sheet was filed on 30.06.2020, and the matter was compromised between the parties on 23.04.2021, thus, the question arises, as to why the matter was not settled prior to the filing of the Charge-Sheet or soon after lodging of the FIR, if the case was filed only on misunderstanding. Though, the voluntarily declaration

was executed by the petitioner No.2, which cannot be denied however, the learned Trial Court had passed the cognizance order, registered under Section 376 IPC only after perusing the case records and the statement given by the other witnesses. Thus, it is not a fit case to quash the proceeding by invoking the Section 482 of the Code of Criminal Procedure, 1973.

13. In this regard, the learned counsel for the petitioner relied on the following decisions of the Hon'ble Apex Court:-

- (i). ***Pramod Suryabhan Pawar Vs. State of Maharashtra & Anr., reported in (2019) 9 SCC 608.***
- (ii). ***Sonu Alias Subhas Kumar vs. State of Uttar Pradesh & Anr. reported in 2021 SCC online SC 181.***

14. Relying on the above mentioned judgments, it is submitted by the learned counsel for the petitioners that, there is differences between the false promise and the breach of promise, *"where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it, but to deceive the woman to convince her to engage in sexual relations, there is a "misconception of fact" that vitiates the woman's "consent". On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it"*. However, in the instant case, the FIR as well as from the Charge-Sheet, it is seen that;

- i. Both the parties had developed love affair.
- ii. They had consensual relationship for about more than one and a

half years.

iii. The FIR was subsequently lodged by the petitioner No.2 only on the ground that the petitioner No.1 refused to marry her.

But there is no statement recorded neither in the FIR nor in the Charge-Sheet that he had made false promise only to obtain consent from the petitioner No.2 only to have a sexual relationship. However, relying on the decision of ***Pramod Suryabhan Pawar (Supra)***, the learned counsel for the petitioner submitted that the relationship between the parties was consensual in nature, and no offence is made out within the meaning of Section 376 of IPC. More so, it is seen that after receiving of the summon, the petitioner No.2 immediately made a declaration before the Notary Magistrate declaring that she is not willing to proceed with the case, and had lodged the FIR only out of rage and misunderstanding.

15. The learned counsel for the petitioners further relied on the paragraph Nos. 6, 7 and 18 of the ***Pramod Suryabhan Pawar (Supra)*** wherein, it has held as under:-

“6. Section 482 is an overriding section which saves the inherent powers of the court to advance the cause of justice. Under Section 482 the inherent jurisdiction of the court can be exercised;

- (i) to give effect to an order under the CrPC;
- (ii) to prevent the abuse of the process of the court; and
- (iii) to otherwise secure the ends of justice.

The powers of the court under Section 482 are wide and the court is vested with a significant amount of discretion to decide whether or not to exercise them. The court should be guarded in the use of its extraordinary jurisdiction to quash an FIR or

criminal proceeding as it denies the prosecution the opportunity to establish its case through investigation and evidence. These principles have been consistently followed and re-iterated by this Court. In *Inder Mohan Goswami v State of Uttaranchal*, this Court observed that;

23. This Court in a number of cases has laid down the scope and ambit of courts' powers under Section 482 CrPC. Every High Court has inherent powers to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Section 482 CrPC can be exercised:

- (i) to give effect to an order under the Code;
- (ii) to prevent abuse of the process of the court, and
- (iii) to otherwise secure the ends of justice.

24. Inherent powers under Section 482 Cr.P.C though wide have to be exercised sparingly, carefully and with great caution and only when exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute."

7. Given the varied nature of cases that come before the High Courts, any strict test as to when the court's extraordinary powers can be exercised is likely to tie the court's hands in the face of future injustices. This Court in *State of Haryana v Bhajan Lal* conducted a detailed study of the situations where the court may exercise its extraordinary jurisdiction and laid down a list of illustrative examples of where quashing may be appropriate. It is not necessary to discuss all the examples, but a few bear relevance to the present case. The court in *Bhajan Lal* noted that quashing may be appropriate where; 378-39, para 102)

“102....(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 FIR 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).

(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.”

18. To summarise the legal position that emerges from the above cases, the “consent” of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman’s decision to engage in the sexual act.

16. Considering the rival submissions as well as after perusing the case records and the documents annexed along with the petition therein, it is seen that the petitioner No.2 lodged the FIR with the allegation that the petitioner No. 1 had sexual relationship with her and on several occasions he had a sexual intercourse with the petitioner No.2, but, subsequently, he refused to marry her for which she lodged an FIR. But, after filing of the Charge-Sheet the matter was compromised between the parties, and she voluntarily made a declaration

before the Notary Magistrate declaring that she is not at all willing to proceed with the instant case, and the FIR was lodged only due to rage and misunderstanding. As the case is non-compoundable offence the party cannot sought for any compromise made under Section 320 Cr.P.C. before the Court of learned Trial Court and hence, this petition has been preferred jointly by the petitioners for setting aside and quashing of the FIR as well as the Charge-Sheet and the criminal proceeding which has been initiated on the strength of the FIR lodged by the petitioner No.2.

17. It is a fact that the compromise between the parties took place only after filing of the Charge-Sheet, but, in the same time there is no possibility of making any statement against the petitioner No.1 even if the proceeding is allowed to be continued. It is also seen both the parties were engaged in consensual relationship, however, he had a sexual relationship only with a promise to marry her, but except the said statement there is nothing in the statement of the prosecutrix as well as in the FIR and in the Charge-Sheet that the consent was obtained only with a false promise of marriage, or under "misunderstanding of fact". As the case has already been compromised between the parties and from the voluntarily declaration made by the petitioner No.2, it is seen that she is not interested to proceed with the case and has no grievances against the petitioner No.1. It is also revealed from the LCR that she appeared before the learned Trial Court for withdrawal of the case, but, as the Court has no power to compound the case filed under Section 320 Cr.P.C., thus, both the parties filed this joint petition for setting aside and quashing of the entire criminal proceeding as well as the FIR and the Charge-sheet as filed therein.

18. Thus, it is seen that in the pursuant to the compromise between the parties there is very remote chance of conviction even if the proceeding is allowed to be continued and the same will abuse the process of the court.

19. In view of the discussion made above and also considering the view of the Hon'ble Apex Court, I find it a fit case to exercise the Power under Section 482 of the Code of Criminal Procedure, 1973 Cr.P.C.

20. Accordingly, the G.R. Case No.08/2019 corresponding to PRC Case No.106/2020, pending before the Court of the learned Sub-Divisional Judicial Magistrate, Dima Hasao, Halflong arising out of Halflong Police Station case No.03/2019 dated 09.01.2019, registered under Section 376/493 IPC *read with* Section 8 of POCSO Act, 2012, initiated on the basis of the impugned Charge-Sheet No.14/2020, dated 30.06.2020, filed under Section 376 of IPC, stands set aside and quashed.

21. In terms of above, this criminal petition stands disposed of.

22. Pending applications, if any, stands disposed of.

JUDGE

Comparing Assistant