

GAHC010180812023



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

Case No. : Crl.Pet./852/2023

TARASING RONGPI
S/O HEMAI RONGPI R/O VILL. COUNCIL COLONY GOVT QUARTER P.O.
AND P.S. DIPHU DIST KARBI ANGLONG ASSAM PIN 782460

VERSUS

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

2:JOYSING TERON
S/O LT. KAT TERON R/O VILL. CHIRIMTHEPI P.O AND P.S ZIRIKINDING
DIST. KARBI ANGLONG ASSAM PIN 78244

Advocate for the Petitioner : ALHAJJ I UDDIN

Advocate for the Respondent : PP, ASSAM

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

21.08.2023

1. Heard Mr. A I Uddin, learned counsel for the petitioner. Also heard Mr. P Borthakur, learned Additional Public Prosecutor, Assam.
2. The present application is filed under Section 482/483 of the Cr.P.C. for quashing the whole proceeding in POCSO case No. 45/2020

corresponding to GR case No. 242/2020 arising out of Diphu PS case No. 131/2020.

3. The background fact leading to filing of the present petition can be summerized as follows:

I. On 16.07.2020 an FIR was lodged by the informant inter-alia alleging that his minor daughter who was staying at the residence of the accused present petitioner as household help and were also studying in school was sexually assaulted and exploited.

II. On the basis of such FIR, a case being Diphu PS case No. 131/2020 under Section 370 IPC read with Section 6 of the POCSO Act, 2012 was registered. The investigating officer after conclusion of the investigation submitted charge-sheet under Section 376 (1) IPC read with Section 6 of the POCSO Act, 2012 and the matter was sent for trial.

III. The learned Special Judge, POCSO, Karbi Anglong under its order dated 11.01.2021 on the basis of the material collected during the investigation framed charged under Section 376 (1) IPC read with Section 6 of the POCSO Act, 2012 against the petitioner and as the accused person pleaded not guilty the trial commenced.

IV. In the meantime, the prosecution to bring home the charges has examined the witnesses including the minor victim and according to the learned counsel for the petitioner the matter is at the stage of recording of statement of the accused under the provision of Section 313 Cr.P.C. The annexures annexed to the petition discloses that as many as eleven witnesses have been examined by the prosecution and the defence also cross-examined them.

V. At that stage the present application is filed as indicated hereinabove.

4. The basic ground of the accused petitioner is that from the evidence collected so far no case under Section 376 (1) and Section 6 of POCSO is made out and therefore there is requirement of alteration of the charge to Section 12 of the POCSO Act, 2012.

5. The learned counsel for the petitioner during the argument has submitted that he is not pressing for the quashment of the entire proceeding rather he prays that in exercise of power Section 483 Cr.P.C. this court should discharge the accused from the charges under Section 376 (1) IPC and alter the charge under Section 6 to Section 12 of the POCSO Act.

6. The learned counsel further submits that in view of the settled proposition of law that alteration of charge can be done by the court only and there is no right of any party either the complainant or accused nor the prosecution to seek such addition or alteration as a matter of right therefore, this court in exercise of power under Section 483 Cr.P.C. may like to alter the charges in view of the evidence of the PWs including the victim girl. In support of such contention, the learned counsel for the petitioner relied on judgment in ***Sidhartha Vashisht Alias Manu Sharma vs State (NCT of Delhi)*** reported in ***(2010 6 SCC 1 and P Kartikalakshmi vs Sri Ganesh and Another*** reported in ***(2017) 3 SCC 347***.

7. Considered the submission advanced by the learned counsel for the parties. The power of the High Court under Section 483 Cr.P.C. is a power of superintendence and object of such provision is to ensure that there is an expeditious and proper disposal of the cases. Law is by now well settled that exercise of power under Section 483 needs be exercised only

under extra ordinary situation where there is abuse of process of the court or miscarriage of justice.

8. In the case in hand, the trial is at the verge of completion and the petitioner has not been, in the considered opinion of this court, able to make out a case where this court can exercise its power under Section 483 to quash the entire proceeding or to alter the charge in exercise of power under Section 483 Cr.P.C. inasmuch as there is no delay in the prosecution and the learned counsel for the petitioner has failed to show that the learned Special Judge has acted in a manner which is prejudicial or detrimental to the case of the petitioner or that there is any material to conclude that the trial court has not properly proceeded in the trial before it.

9. In view of the aforesaid, this court is of the unhesitant view that the present petition lacks merit and is liable to be dismissed and the same is done accordingly.

10. While parting with the record, it is clarified that this court has not commented on the merit of the trial and the learned trial court below shall not be influenced by any comment passed while finally deciding the matter pending before it.

JUDGE

Comparing Assistant