

GAHC010182872022



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

Case No. : Crl.Pet./922/2022

ABBASH ALI @ ABBAS ALI
S/O MOHIR UDDIN
R/O VILL- BALAR PATHAR
P.S. KALGACHIA, P.O. SHOWPUR
DIST. BARPETA, ASSAM
PIN-781319.

VERSUS

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

2:SMTI. MANJUWARA KHATUN
W/O ABBASH ALI @ ABBAS ALI
D/O MOTIOR RAHMAN
R/O VILL- BALIKURI
P.S. KALGACHIA
DIST. BARPETA
ASSAM
PIN-781319

PRESENTLY RESIDING AT VILL- BALAR PATHAR

P.O. SHOWPUR
P.S. KALGACHIA
DIST. BARPETA
ASSAM
PIN-78131

Advocate for the Petitioner : MD. S ALOM

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

Date : 14.08.2023

- 1.** Heard Md. S. Alom, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor for the respondent No. 1 and Mr. M. H. Talukdar, learned counsel for the respondent No. 2.
- 2.** This application under Section 482 of the Code of Criminal Procedure, 1973 read with section 401 of the Code of Criminal Procedure has been preferred by the petitioner, namely, *Abbash Ali @ Abbas Ali* for quashing the proceeding of PRC Case No. 3337/2019 (G.R. Case No. 5436/2017) arising out of Kalgchia P.S. Case No. 770/2017 under Section 366/376/34 of IPC pending before the Court of learned Sub-Divisional Judicial Magistrate (S), Barpeta.
- 3.** The accusation in this case is that on 19.11.2017, the victim lodged an FIR before the Officer-in-Charge of Kalgchia Police Station naming five accused persons including the present petitioner, *inter alia*, stating that she was married to one Saidul Islam and on 12.10.2017 at about 4.00 p.m., when she was going to her parents' house along with her two years old baby girl, the accused Nos. 1, 2 and 3, namely, 1. *Abbash Ali*, 2. *Anowar Hussain* and 3. *Amjad Ali*, forcefully kidnapped her and her daughter using a Maruti Car and thereafter, the accused No. 1 i.e. the present petitioner had sexual inter-course with her. On receipt of the said FIR, Kalgchia P.S. Case No. 770/2017 was registered.
- 4.** Later on, after completion of the investigation, charge-sheet was laid vide C.S. No. 22/2018 dated 31.01.2018 against the present petitioner under Section 376/366 of IPC. In the meanwhile, the petitioner was granted interim anticipatory bail by this Court.

5. On the other hand, learned counsel for the petitioner submits that the first informant is petitioner's own wife and the daughter mentioned in the FIR is his own daughter. In support of his contention, he has submitted a marriage certificate which is annexed as Annexure- 5 of the present petition wherein it appears that the petitioner was married to the victim on 27.05.2012 at a Mohar of Rs.1,50,001- (Rupees One Lakh Fifty Thousand and One Rupees). The petitioner has also submitted the birth certificate of his daughter which is annexed as Annexure- 6 of the instant criminal petition from where it appears that a girl child, namely, Atifa Jannat was born to the petitioner and the victim on 31.12.2015. The learned counsel for the petitioner has also submitted that immediately after the filing of the FIR the parties have mutually settled their dispute and the victim has now come back to the petitioner and staying along with him as his wife and they have also executed a mutual compromised deed to that record on 26.01.2018.

6. Learned counsel for the petitioner has also submitted that the victim i.e. the wife of the present petitioner has also submitted the affidavit to show that she is presently residing along with the present petitioner and peacefully enjoying her conjugal life and their disputes have been amicably compromised amongst themselves.

7. Under the present facts and circumstances, learned counsel for the petitioner has submitted that it would be futile to continue prosecution of PRC Case No. 3337/2019 which arose out of the FIR which was lodged by the wife of the present petitioner due to misunderstanding. In support of his submissions, learned counsel for the petitioner has also relied on the ruling of this Court in "**Md. Jahirul Maulana @ Jahirul Islam –Vs- State of Assam and Ors.**" reported in "**2016 (4) GLT 460**" wherein this High Court observed as follows:-

“8. Law was laid down way back in the case of Madhavrao Jiwaji Rao Scindia & Anr. Vs. Sambhajirao Chandojirao Angre & Ors. reported in (AIR 1988 SC 709) that a proceeding, may be quashed, if the chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue. This is because otherwise the parties and the witnesses will be dragged to Court and process of the Court will be abused for no purpose. When the parties have already entered into compromise, even if they are dragged to Court as witnesses, there is every likelihood of their turning back from the allegations and in that event, the learned Court will be left with no other alternative but to acquit the accused person. In that event, there will be unnecessary engagement of valuable judicial time and so taking a practical view of the matter, it appears to be proper to accept the reality and to put an end to the ongoing litigation.”

8. Learned counsel for the petitioner has also cited a ruling of this Court High Court in “**Md. Jongsher Ali –Vs- The State of Assam and Anr.**” (Order dated 20.01.2021) in Criminal Petition No. 863/2019 wherein it was observed that when the victim and the star witness of the case have compromised and not going to support the prosecution case, then in all probability the proceeding is likely to partake the character of a lame prosecution and on that the prosecution was quashed.

9. On the other hand, Mr. M. H. Talukdar, learned counsel who is appearing for respondent No. 2 i.e. victim/wife has also submitted that, in the meanwhile, there has been a compromise between the parties and the victim is now staying along with petitioner and happily enjoying her conjugal life. It also submitted that, in the meanwhile, another male child has been born out of the wedlock between the petitioner and the victim/wife.

10. In view of the facts and circumstances of this case where the parties have compromised the dispute between them and where at the time of lodging of the FIR, the petitioner was the husband of the victim and therefore an accusation under Section 376 of IPC does not lie against the petitioner. It also appears that under the facts and circumstances of this case, no purpose would be served by allowing the instant criminal prosecution to continue in PRC Case No. 3337/2019.

11. This Court, therefore, under the attending facts and circumstances of this case, deems it fit to quash the proceeding of PRC Case No. 3337/2019 corresponding to GR Case No. 5436/2017 pending before the Court of learned Sub-Divisional Judicial Magistrate(S), Barpeta, which is accordingly done and the said case is hereby quashed.

12. This Criminal Petition is accordingly disposed of.

JUDGE

Comparing Assistant