

GAHC010182902022



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

Case No. : Crl.Pet./936/2022

BUDDHIMAN BARMAN @ CHANDRA MOHAN BARMAN
S/O HIRAHOMAN BARMAN,
VILL.- BISHKHOWA PART- II,
P.S.- GOLAKGANJ,
DIST.- DHUBRI, ASSAM.

VERSUS

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

2:JYOTIKA PRADHANI
W/O DWIPEN PRODhani

R/O BISKHOWA PART- II

P.S.- GOLAKGANJ

DIST.- DHUBRI
ASSAM

Advocate for the Petitioner : MR. A DAS

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

JUDGEMENT AND ORDER (CAV)

Date : 23-06-2023

Heard Mr A Das, learned counsel appearing on behalf of the petitioner and B Sarma, learned Additional Public Prosecutor for the State of Assam/respondent No. 1. Also heard Mr R Ali, learned counsel for the respondent No. 2.

2. The petitioner has preferred an application under Section 482 CrPC, 1973, praying for quashing of the criminal proceeding pending before the Court of learned CJM, Dhubri arising out of PRC Case No. 1260 of 2022, under Sections 376/511 IPC against the petitioner.

3. The brief facts of the case is that the informant/respondent No. 2 lodged an FIR before the OC, Golakganj PS stating inter alia that the petitioner for last 5/6 months used to give the informant obscene hints while the informant was on her way to bring cattle from the field. On 08.10.2021, at about 12:00 am, while the informant was going towards her bedroom after attending nature's call, the accused petitioner taking advantage of darkness embraced the informant from backside and tried to commit rape on her. While the informant raised hue and cry, the accused petitioner fled away. Accordingly, the informant lodged the FIR. On receipt of the FIR, a case was registered vide Golakganj PS Case No. 1108/2021, under Sections 509/376/511 IPC. Subsequently, the petitioner was arrested and after completion of investigation, charge sheet was submitted against the petitioner under Sections 376/511 IPC. Thereafter, the learned CJM, Dhubri took cognizance against the petitioner and issued summons against him directing him to appear before the trial Court.

4. The case of the petitioner is that the petitioner's sister-in-law lodged an FIR against the

husband of the informant, i.e., Dipen Pradhani, stating that while her husband, Nabajit Barman went to Bangalore to work as daily wage worker, the husband of the informant often comes to their house. Taking advantage of absence of their other family members of the house, the husband of the informant Dipen Pradhani had shown her obscene indications. On 07.10.2021, at about 10:00 pm, while the petitioner's sister-in-law was going to her bedroom after closing the door, the said Dipen Pradhani was hiding under her bed from earlier. Then, Pradhani came out and tried to commit rape on the sister-in-law of the petitioner. When she raised alarm, her father-in-law and other family members came to the spot and then the husband of the present informant fled away from the scene. Accordingly, one FIR was lodged and a case was registered vide Golakganj PS Case No. 1106/2021, under Sections 509/376/511 IPC.

5. Learned counsel for the petitioner has submitted that in fact, the informant's husband is the main accused who tried to commit rape upon the sister-in-law of the present petitioner and when the informant came to know about lodging of FIR, then as a counterblast and to save her husband, the informant lodged the instant FIR with false allegation of attempting to commit rape towards the informant. It is further submitted that the allegation is totally false, concocted and vexatious.

6. In support of his submissions, learned counsel for the petitioner has placed reliance on the following case-laws:-

1) **AIR 1960 SC 866; (*R P Kapur vs. State of Punjab*)**

2) **1992 Suppl. (1) SCC 335; (*State of Haryana & Ors. Vs. Bhajan Lal & Ors.*)**

7. On the other hand, learned Additional Public Prosecutor submits that the allegation

against the petitioner is that he attempted to commit rape upon the victim. As per the statement of the victim recorded under Section 164 CrPC, the victim has alleged that the accused tried to commit rape upon her. Under such backdrop, there is no question of quashing the present proceeding and it will be considered by the trial Court, after taking evidence of the witnesses.

8. I have considered the submissions made by the learned counsel for the parties. I have also perused the scanned copy of the record.

9. Hon'ble Apex Court in ***State of Madhya Pradesh vs Surendra Kori; 2012(10) SCC 155*** observed as under: -

“13. The High Court in exercise of its powers under Section 482 Criminal Procedure Code does not function as a Court of Appeal or Revision. This Court has, in several judgments, held that the inherent jurisdiction under Section 482 Criminal Procedure Code, though wide, has to be used sparingly, carefully and with caution. The High Court, under Section 482 Criminal Procedure Code, should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of wide magnitude and cannot be seen in their true perspective without sufficient material.”

10. In ***M.M.T.C. and Another v. Medchl Chemicals & Pharma (P) Ltd. and Another; (2002) 1 SCC 234***, the Hon'ble Apex Court held as under:-

"The law is well settled that the power of quashing criminal proceedings should be exercised very stringently and with circumspection. It is settled law that at this

stage, the Court is not justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the complaint. The inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.."

11. In ***State of Orissa and Another v. Saroj Kumar Sahoo***; (2005) 13 SCC 540, this Court held as follows:

"Exercise of power under Section 482 of the Criminal Procedure Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Criminal Procedure Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Criminal Procedure Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law.

That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in

course of administration of justice on the principle "quando lex aliquid alicui concedit, concedere videtur et id sine quo resipsae esse non potest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself.."

12. The Hon'ble Supreme Court in ***Eicher Tractors Ltd. v. Harihar Singh; (2008) 16 SCC 763***, held as follows:

"When exercising jurisdiction under section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge."

13. Hon'ble Apex Court in the case of ***M/S Neeharika Infrastructure Pvt. Ltd. Vs State of Maharashtra and others, 2021 AIR (SUPREME COURT) 1918***, the Hon'ble Supreme Court held that:-

- i) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the `rarest of rare cases.
- ii) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;
- iii) Criminal proceedings ought not to be scuttled at the initial stage;

- iv) Quashing of a complaint/FIR should be an exception rather than an ordinary rule."

14. In view of the foregoing discussions, at this stage, this Court is of the opinion that the disputed questions of facts are involved in the present petition, which can only be determined on the basis of evidence to be led by the parties in order to reach the fair conclusion. In exercise of the powers under Section 482 Cr.P.C., this Court is not expected to conduct a mini trial so as to go into said questions of facts. Such inherent powers are to be exercised by this Court only under exceptional circumstances and when the proceedings, on the face of record, appear to be an abuse of process of law.

15. A bare perusal of the allegations leveled in the FIR, *prima facie* reveals that the allegations have been leveled against the petitioner that the petitioner attempted to commit rape on the victim while she was outside her house to attend nature's call. Hence, this Court does not find any force in the argument of the learned counsel for the petitioner that the sister-in-law of the petitioner has filed same nature of case against the husband of the informant, as the weightage of this fact can only be given at the time of trial. No opinion could be made by this Court at this point of time.

16. In the result, petition is dismissed.

17. The Criminal Petition is accordingly, disposed of.

JUDGE

Comparing Assistant