

GAHC010193252022



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

Case No. : Crl.Pet./967/2022

ANWAR HUSSAIN KAZI
S/O- MOINUL HOQUE KAZI, R/O- VILL.- CHANDIPUR GRANT
(GAURANGAPUR), P.O. AND P.S. ALGAPUR, DIST. HAILAKANDI, ASSAM

VERSUS

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

2:MOSHID ALI LASKAR
S/O- LATE HARUS ALI LASKAR
VILL.- CHANDIPUR GRANT
P.O. CHANDIPUR
P.S. ALGAPUR
DIST. HAILAKANDI
ASSAM

3:JASMINA KHANAM KAZI @ JASMINA BEGUM
D/O LT. MOINUL HOQUE KAZI
R/O UJALA HOME
HAILAKANDI (A WOMEN'S SHELTER HOME) AT HAILAKANDI
NEAR EDUCATION COMPLEX
P.O
P.S AND DISTRICT- HAILAKANDI
ASSAM. PIN- 78815

Advocate for the Petitioner : MR. A M BARBHUIYA

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

JUDGMENT

Date : 15-06-2023

1. Heard Mr. A.M. Barbhuiya, learned counsel for the petitioner. Also heard Mr. B. Sarma, learned Addl. PP appearing for respondent No. 1, Mr. R. Das, learned counsel for respondent No. 2 and Mr. J. Laskar, learned counsel for respondent No. 3.

2. The petitioner has filed this application u/s 482 of the Code of Criminal Procedure, 1973 (Cr.PC for short) read with Article 227 of the Constitution of India challenging the impugned judgment & order dated 12.09.2022 passed by the learned Sessions Judge, Hailakandi in Criminal Revision No. 47/2022 affirming the impugned order dated 01.07.2022 and the order dated 07.07.2022 passed by the Judicial Magistrate, Hailakandi in connection with G.R. Case No. 488/2022, corresponding to Algapur P.S. Case No. 49/2022. The petitioner in this case is Anwar Hussain Kazi.

3. The genesis of the case is that, an FIR was lodged by the petitioner on 10.05.2022 with the police at Algapur P.S. contending *inter alia* that 'X' who was 14 years at the time of the incident, retired to bed after dinner. On the following morning i.e. on 10.05.2022 at about 4 AM the petitioner's mother raised alarm as 'X' was found missing from her bed room. A frantic search was made but 'X' could not be traced out. The FIR was registered as Algapur PS. Case No. 49/2022 u/s 363 of the Indian Penal Code (IPC for short) and investigation commenced. On 25.05.2022 the victim 'X' was recovered from respondent No.-2's house. The State of Assam is arrayed as respondent No. 1, and 'X' as respondent No. 3. The petitioner submitted an application before the Court of the Judicial Magistrate, Hailakandi praying for custody of

his sister 'X'. Vide order dated 25.05.2022 the learned trial Court held that the petitioner has produced her original documents regarding her age. The learned trial Court held that 'X' was a minor but as 'X' was not willing to return home with the petitioner, the trial Court forwarded 'X' to C.W.C. By the same order, the trial Court also directed to submit the authenticity of the age related documents of the victim 'X' submitted by both the parties. It is also averred that due to threats exercised by accused Abdul Munim Laskar, 'X' has claimed that she was 21 years old and a major at that time of the incident.

4. Meanwhile without any *locus standi* one Mosaid Ali Laskar @ Shahid Ali Laskar arrayed as respondent No. 2 on behalf of the accused Abdul Munim Laskar submitted an application No. 805/2022 praying for ossification test of 'X' to prove her age. The learned trial Court without following its earlier order dated 25.05.2022 took into consideration the non-maintainable application.

5. It is further contended that the Head Teacher of Gourangapur L.P. School, Hailakandi, namely, Mohbub Ahmed Ali Mamun Laskar as CW-1 confirmed the date of birth of 'X' to be 01.01.2009 as per primary school record. Thereafter, the Ex. Head Teacher of the said very school, namely Anam Uddin Mazumder denied to have issued the school certificate dated 03.01.2013 which was produced for the victim 'X' claiming that 'X' was a minor. After examining CW-1 and CW-2, the date of birth of the victim girl was conclusively proved to be 01.01.2009 for the second time, but without any justification, vide order dated 01.07.2022, the learned trial Court also called for the Head Master of Chandripur M.V. School, Hailakandi to be examined as CW-3 to prove the date of birth of the victim 'X'. CW-3 has failed to prove the date of birth of the victim 'X' to be 01.01.2001, by producing any valid and original document. He, CW3, stated that one **Kaji Jasmina Begum Laskar** took admission in his school

on 01.01.2013 and as per the Admission Register her date of birth is 01.01.2001. CW-3 allegedly produced Admission Register and he also produced Attendance Register of 2014 of Class-7 and Attendance Register of 2015 of Class-8 which purportedly reflected name of **Kaji Jasmina Begum Laskar** and not the name of 'X' whose name is withheld in this case. It is averred that as the name is not similar, the respondent has failed to prove the date of birth of the victim to be 01.01.2001.

The so called illegal school certificate dated 01.01.2013 is marked as Annexure-8.

The so called illegal school certificate dated 01.01.2016 is marked as Annexure-9.

6. It is contended that the petitioner is the elder brother of the victim and he has proved her date of birth as 01.01.2009. Learned trial Court vide order dated 07.07.2022 has erroneously and without considering the matter in its true perspective allowed the prayer to ascertain her age. Aggrieved by the order dated 07.07.2022 passed by the Judicial Magistrate, First Class, Hailakandi, the petitioner filed a Criminal Revision Petition No. 47/2022 before the learned Sessions Judge, Hailakandi challenging the orders passed by the Magistrate dated 01.07.2022, whereby CW-3 was called as witness, and the order dated 07.07.2022 allowing ossification test.

7. Vide order dated 12.09.2022 the learned Sessions Judge, Hailakandi erroneously upheld the impugned order without considering the materials-on-record in its true perspective. It is contended that vide order dated 25.05.2022, the learned trial Court has already held that victim X is a minor, as per the original records produced by the petitioner. It is submitted that the respondents have produced manipulated documents. It is also averred that the respondent No. 2 has no *locus standi* to file any application praying for ossification

test of the victim 'X'. After examination of CW-1 and CW-2, it was proved that the school certificate produced by the petitioner was genuine while the school certificates produced by the defence are not genuine. The CW-3 produced Admission Register of a student whose name is not similar to the name of the victim 'X' and thus the accused/respondents failed to prove that the victim's date of birth was 01.01.2001. The petitioner has thus prayed to set aside and quash the order dated 01.07.2022, 07.07.2022 passed by the Judicial Magistrate, 1st Class in G.R. Case No. 488/2022 and the impugned judgment and order dated 12.09.2022 passed by the learned Sessions Judge, Hailakandi in Criminal Revision Petition No. 47/2022.

8. Per contra, the respondents have laid stress in their argument that when the victim has no objection for ossification test, why is the petitioner aggrieved. The respondents have prayed to dismiss the petition in *limine*. The orders impugned in the earlier criminal revision petition u/s 397/399 of the Cr.PC and registered as Criminal Revision Petition No. 47/2022 have been upheld by the Court of the Sessions Judge at Hailakandi.

9. It was held by the learned Sessions Judge that the petitioner has claimed that the victim/respondent No. 3 is a minor, whereas the respondent No. 3 herself has claimed that she is a major. Both the parties have submitted Pan Card and Aadhar Card of the victim on the basis of their respective claims. There were no authentic documents like birth certificate or matriculation certificate and the learned trial Court ordered for ossification test of the victim. The trial Court considered the fact that the victim was staying in 'Ujala Home' for a prolonged period as the trial Court could not come to a decision as both the parties have claimed that the date of the birth of the victim as authentic date of birth and the documents submitted by both the parties appeared to be acceptable. With such observation the earlier

petition u/s 397/399 Cr.PC filed by the present petitioner was rejected by the learned Sessions Judge vide the impugned order dated 12.09.2022 in Criminal Revision Petition No. 47/2022.

10. The impugned order dated 01.07.2022 passed by the Judicial Magistrate, 1st Class at Hailakandi reflects that after recording the statement of earlier Headmaster of Gourangapur L.P. School, namely, Anam Uddin Mazumder as CW-2 and from the statement of the present Headmaster, namely, Mohbub Ahmed Ali Mamun Laskar as CW-1, it appears that the date of birth of the respondent No. 3 is 01.01.2009 according to the records of Gaurangapur L.P. School, but the school certificate purporting to be the school certificate issued by the Headmaster of Gourangapur L.P. school appears to be incorrect and not issued by the authority of Gourangapur L.P. School. However, to ascertain the authenticity of the certificate, the Headmaster of the Chandripur M.V. School was summoned on 07.07.2022.

11. The impugned order dated 07.07.2022 passed by the learned Judicial Magistrate reflects that CW-3 Muslim Uddin Laskar is the Headmaster of Chandripur M.V. School and he could recognize the signature of the earlier Headmaster as he is acquainted with the signature of the earlier Headmaster i.e. CW-2. He produced the Admission Register of Class-VI of the year 2013 which shows the date of birth of **Kaji Jasmina Begum Laskar** to be 01.01.2001. He also produced the Attendance Register of Chandripur M.V. School of Class-VII of the year 2014 and Class-VIII of 2015 which also reflects that **Kaji Jasmina Begum Laskar** studied in Chandripur M.V. School. The victim was also produced from the shelter home on 07.07.2022 and she stated that her date of birth is 10.07.2001. As different dates of birth have been projected by both the parties, the trial Court then ordered for ossification test of the victim/respondent No. 3 allowing Petition No. 805/2022 dated 07.06.2022 filed by the

petitioner Sahid Ali Laskar praying for ossification test of the victim/respondent No. 3.

12. CW-2 has denied the signature on the school certificate purported to be issued by him on 03.01.2014. He has claimed that the school certificate is a forged certificate. He could recall that a girl named **Kaji Jasmina Begum Laskar** took admission in Gourangapur L.P. School in the year 2014, and her date of birth was 01.01.2019.

13. I would like to reiterate that the respondent No. 2, Sahid Ali Laskar @ Mosid Ali is alleged to be a third party and he is related to the accused Abdul Munir Laskar. The respondent No. 2 has no *locus standi* to file a petition for ossification test of the victim. The accused is booked u/s 363 IPC in connection with the Algapur P.S. Case No. 49/2022 registered as G.R. Case No. 488/2022. From the document appended along with the petition it appears that the last order passed by the trial Court was on 14.07.2022. Thereafter the learned Sessions Judge passed the order on 12.09.2022. Vide order dated 22.09.2022, the impugned order dated 12.09.2022 in connection with Criminal Revision Petition No. 47/2022 was immediately stayed by this Court. It appears that the victim is still under the custody of 'Ujala Home', as she has refused to go along with the petitioner to her parental home. What is discernable is that this case was at the stage of investigation when the question of the age of the victim surfaced. The certificate in dispute is marked as Annexure-2. The school certificate was issued by the Headmaster of Gourangapur L.P. School. Now the Headmaster who has issued the certificate has denied his signature. After the impugned order dated 07.07.2022 was passed by the trial Court in connection with G.R. Case No. 488/2022, the petitioner preferred a revision petition which was registered as Criminal Revision Petition No. 47/2022. The learned Sessions Judge stayed the operation of the impugned order dated 01.07.2022 and 07.07.2022 in connection with G.R. Case No. 488/2022 and passed the order

dated 12.09.2022. Since then investigation has not progressed. After the FIR was registered on 10.05.2022, the victim's statement was recorded u/s 164 Cr.PC and the victim has claimed to be a major as she stated her age to be 21 years. The order dated 25.05.2022 of the Judicial Magistrate, 1st Class at Hailakandi reflects that the victim was forwarded to the CWC at Hailakandi as she refused to go with the petitioner. It was observed by the learned Magistrate that the document submitted by the victim regarding her age appears to be doubtful and the IO could not ascertain the authenticity of the document. It appears that since the inception of the case, there was notable interference in the investigation. The petitioner has relied on decision of the Hon'ble Supreme Court in *Abhinandan Jha and Others v. Dinesh Mishra*, reported in *AIR 1968 SC 117* wherein it has been observed that:-

“We have already pointed out that the investigation, under the Code, takes in several aspects, and stages, ending ultimately with the formation of an opinion by the police as to whether, on the material covered and collected, a case is made out to place the accused before the Magistrate for trial, and the submission of either a charge-sheet, or a final report is dependent on the nature of the opinion, so formed. The formation of the said opinion, by the police, as pointed out earlier, is the final step in the investigation, and that final step is to be taken only by the police and by no other authority.

The question can also be considered from another point of view. Supposing the police send a report, viz., a charge- sheet, under Section 170 of the Code. As we have already pointed out, the Magistrate is not bound to accept that report, when he considers the matter judicially. But, can he differ from the police and call upon them to submit a final report, under Section 169 ? In our opinion, the Magistrate has no such power. If he has no such power, in law, it also follows that the Magistrate has no power to direct the police to submit a charge-sheet when the police have submitted a final report that no case is made out for sending the accused for trial. The functions of the Magistracy and the police, are entirely different, and though, in the circumstances mentioned earlier the Magistrate may or may not accept the report, and take suitable action, according to law, he cannot certainly infringe upon the jurisdiction of the police, by compelling them to change their opinion, so as to accord with his view.”

14. It is submitted that the third party i.e. the respondent No. 2 has no *locus standi*. He is the uncle of the accused and he has tried to interfere with the investigation by filing various petitions to ascertain the age of the victim. This has indeed resulted in the abuse of the process of the Court and

the investigation has been stretched from the date of the lodgement of the FIR i.e. from 10.05.2022 till the present date. It is also possible that the victim is still under the care of the CWC.

15. It appears that investigation has been breached upon by numerous petitions from both the sides. The age of the victim has been questioned. A hurdle was caused in the investigation by creating a confusion regarding the age of the victim. Disputed documents were put forward which impelled the trial Court to pass an order for ossification test of the victim/respondent No. 3.

16. After considering the submissions at the bar with circumspection and after considering all aspects, I deem it proper to pass an order to set aside that part of the judgment & order dated 12.09.2022 passed by the learned Sessions Judge, Hailakandi in Criminal Revision Petition No. 47/2022, which has upheld that part of the order dated 07.07.2022 passed by the Judicial Magistrate, 1st Class qua forwarding the victim for ossification test to ascertain her age. Any interference at this stage by the uncle of the accused relating to the age of the victim is uncalled for. Even breaching the progress of investigation by the petitioner's side is also unwarranted. Petition is hereby partly allowed. The part of the order of the Judicial Magistrate dated 07.07.2022 in G.R. Case No. 488/2022, forwarding the victim/respondent No. 3 for ossification test is consequentially set aside.

In terms of the above observation, the present petition is disposed of.

JUDGE

Comparing Assistant