

GAHC010193792022



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

Case No. : Crl.Pet./993/2022

JAMIR ALOM
S/O KARIMULLAH BEPARI
R/O CHAGOLIA PART-II, P.S. GOLAKGANJ
DIST. DHUBRI, ASSAM

VERSUS

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

2:NAJMA AHMED
D/O NASARUDDIN AHMED
VILL- BISHKHOWA
PART-V
P.S. GOLAKGANJ
DIST. DHUBRI
ASSA

Advocate for the Petitioner : MR S C PANDIT

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 17-10-2023

Heard the learned counsel, Mr S C Pandit, for the petitioner, Jamir Alom.

2. The petitioner has filed this application under Section 482 of the Code of Criminal Procedure, 1973, with a prayer for quashing the FIR being Golakganj PS Case No. 220 of 2021, under Sections 120(B)/376/328/506 IPC and charge sheet being CS No. 449/2021 dated 13.08.2021.

3. Heard the learned Additional Public Prosecutor for the State of Assam, Ms A. Begum and the learned counsel for the respondent No. 2, Ms P Baruah.

4. The FIR against the petitioner unfolds that the respondent No. 2 was victimized by the petitioner for the last 4 years. Although the respondent No. 2 tried to restrain the petitioner and the co-accused named in the FIR against such misdeeds, the petitioner along with the co-accused, however, harassed the respondent No. 2. The petitioner and the other three co-accused named in the FIR administered sleeping tablets to the family members of the respondent No. 2 and, thereafter, they mentally and physically harassed the respondent No. 2. They also indulged in obscene acts.

5. It is submitted on behalf of the petitioner that the FIR is vague and frivolous as no date of occurrence has been mentioned. The petitioner is alleged to have harassed the respondent No. 2 for 4 years but the respondent No. 2 lodged the ejahar after 4 long years. The allegations of the respondent No. 2 are not worthy of credence.

6. It is also submitted on behalf of the petitioner that the petitioner lodged an FIR against the respondent No. 2 and her brother, on the basis of which Golakganj PS Case No. 1000/2021 was registered under Sections 385/506/34 IPC, as the respondent No. 2 and her brother committed extortion and demanded Rs. 10 lacs from the petitioner, who was also wrongfully confined in her house.

7. The learned Addl. P.P. has submitted that this case is not compoundable as this case is registered u/s 376 IPC, which is a heinous offence.

8. Learned counsel for the respondent No. 2 has submitted that although she has denied all the allegations against her, but the respondent No. 2 is not willing to pursue with the instant case and she has no objection if the afore-mentioned FIR and Charge Sheet are set aside and quashed.

9. The learned counsel for the petitioner has filed an affidavit stating that the litigations initiated by the parties against each other have been amicably settled. The Final Report has been submitted by the Investigating Officer in connection with Golakganj P.S. Case No. 1000/2021 and this Final Report has been accepted by the learned CJM, Dhubri. As the petitioner along with the respondent No. 2 and her brother have amicably settled the dispute which was registered as Dhubri PS Case No. 1009 of 2021, both the parties have met the IO and have stated that the complainant /petitioner has no objection if the Final Report is submitted by the IO. The prosecution side has filed a withdrawal petition in connection with Dhubri PS. Case No. 44/2022 initiated by the respondent No. 2 and vide order dated 22.06.2023 the learned JMFC, Dhubri has allowed the petition for withdrawal of the prosecution.

10. I have also scrutinised the LCR. It is true that Charge Sheet has been laid against the petitioner u/s 376 IPC, but at the same time it cannot be ignored that the petitioner was staying with the respondent No. 2, the complainant for four long years and thereafter a case with allegations of sexual assault was initiated by an FIR lodged by the respondent No. 2. The corresponding PRC Case No. 1805/2022 was pending at the initial stage. Cognizance was taken and summonses were issued to the petitioner. At the initial stage itself both the parties have amicably settled all their disputes. The parties have buried their hatchet and they are not willing to proceed with this case as well as other criminal cases. All the other cases have already been settled between the parties. Probability of conviction appears to be remote and bleak. Further proceeding will indeed be an abuse of the process of the Court.

11. The petitioner has relied on the decision of Hon'ble the Supreme Court in the case of *Kapil Gupta vs. State of NCT of Delhi and Another*, reported in (2022) 0 SCC 1108 wherein it has been held that:-

“13. It can thus be seen that this Court has clearly held that though the Court should be slow in quashing the proceedings wherein heinous and serious offences are involved, the High Court is not foreclosed from examining as to whether there exists material for incorporation of such an offence or as to whether there is sufficient evidence which if proved would lead to proving the charge for the offence charged with. The Court has also to take into consideration as to whether the settlement between the parties is going to result into harmony between them which may improve their mutual relationship.

14. The Court has further held that it is also relevant to consider as to what is stage of the proceedings. It has been observed that if an application is made at a belated stage wherein the evidence has been led and the matter is at the stage of arguments or judgment, the Court should be slow to exercise the power to quash the proceedings. However, if such an application is made at an initial stage before commencement of trial, the said factor will weigh with the court in exercising its power.

15. The facts and circumstances as stated hereinabove are peculiar in the present case. Respondent No.2 is a young lady of 23 years. She feels that going through trial in one case, where she is a complainant and in the other case, wherein she is the accused would rob the prime of her youth. She feels that if she is made to face the trial rather than getting any relief, she would be faced with agony of undergoing the trial.

17. In that view of the matter, we find that though in a heinous or serious crime like rape, the Court should not normally exercise the powers of quashing the proceedings, in the peculiar facts and circumstances of the present case and in order to give succour to Respondent No. 2 so that she is saved from further agony of facing two criminal trials, one as a victim and one as an accused, we find that this is a fit case wherein the extraordinary powers of this Court be exercised to quash the criminal proceedings.

18. In that view of the matter, the appeal is allowed and proceedings in the criminal cases arising out of following FIRs are quashed and set aside:

1. FIR No.569/2020 registered at Police Station, Mehrauli, New Delhi (Rape)

2. FIR No.824/2020, registered at Police Station, Mehrauli, New Delhi (Extortion)."

12. Reverting back to this case it is held that as the parties have settled their dispute amicably, possibility of conviction seems to be remote and bleak. This case appears to be a fit case to invoke inherent jurisdiction u/s 482 of the Cr.PC.

13. In view of my foregoing discussions, the FIR of Golakganj PS Case No. 220/2021 and Charge Sheet being CS No. 449/2021 dated 13.08.2021 are hereby set aside and quashed.

In terms of the above observations, petition is disposed of.

JUDGE

Comparing Assistant