

GAHC010215372023



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

Case No. : Crl.Pet./1037/2023

MAFIYA KHATUN AND ANR
D/O SULTAN ALI
R/O VILL- MOHGULI, P.O. GORCHIGA,
P.S. NORTH LAKHIMPUR, DIST. LAKHIMPUR, ASSAM, PIN-787052

2: FOIJUL ISLAM
S/O ROMJAN ALI
R/O VILL- PANDHOWA
P.O. GORCHIGA
P.S. NORTH LAKHIMPUR

DIST. LAKHIMPUR
ASSAM
PIN-78705

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP, ASSAM

Advocate for the Petitioner : ALHAJJ I UDDIN

Advocate for the Respondent : PP, ASSAM

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

ORDER

Date : 20-12-2023

Heard Mr. A.I. Uddin, learned counsel for the petitioners.

2. The petitioners have jointly filed this application under Section 482 read with Section 320 of the Code of Criminal Procedure (Cr.P.C. for short) seeking quashing of the entire proceeding in Sessions Case No. 93 (NL)/2023 corresponding to G R Case No. 657/2020 arising out of North Lakhimpur Police Station Case No. 297/2020 registered under Sections 448/427/376 of the Indian Penal Code (IPC for short). It is submitted that the charges were framed under Sections 448/376 of IPC.

3. Also heard Mr. B. Sarma, learned Additional Public Prosecutor for the State of Assam.

4. The charge sheet is marked as Annexure-2 of the petition.

5. The FIR unfolds that on the night of 21.03.2020 the accused in the absence of the petitioner's husband entered into the petitioner's room and dragged her to the bank of pond and committed rape on her. He was apprehended by the other family members and police was informed. After the investigation, charge sheet was laid against the accused and this case was pending at the stage of evidence. It is submitted that the petitioner and the victim are co-villagers and they have buried their hatchet and the victim is not willing to proceed with this case. The statement of the victim under Section 164 of Cr.P.C. marked as Annexure-6 exonerates the accused i.e. the petitioner No. 2 herein.

6. The learned counsel for the both the petitioners has relied on the decision of the Hon'ble Supreme Court in *Vineet Kumar and Ors. v. State of U.P. and Anr.* reported in AIR 2017 SC 1884, wherein it has been observed in paragraphs No. 37 and 38, which are extracted as below:

“37. The appeal was filed against the aforesaid judgment of the High Court by the accused contending that there was sufficient material collected in the investigation which proved that allegations were unfounded and the prosecution of the appellant was an abuse of process of the Court. In paragraph 23 this Court noted several circumstances on the basis of which this Court held that judicial conscience of the High Court ought to have persuaded it to quash the criminal proceedings. This Court further noticed that Investigating Officer has acknowledged, that he could not find any proof to substantiate the charges. The charge-sheet had been filed only on the basis of the statement of the complainant/ prosecutrix under Section 164 Cr.P.C. In paragraphs 24 and 25 921 and 22 of AIR) of the judgment following was stated:

“24. Most importantly, as against the aforesaid allegations, no pleadings whatsoever have been filed by the complainant. Even during the course of hearing, the material relied upon by the accused was not refuted. As a matter of fact, the complainant, prosecutrix had herself approached the High Court, with the prayer that the first information lodged by her, be quashed. It would be therefore be legitimate to conclude, in the facts and circumstances of the case, that the material relied upon by the accused has not been refuted by the complainant/ prosecutrix. Even in the charge sheet dated 28.6.2007, (extracted above) the investigating officer has acknowledged, that he could not find any proof to substantiate the charges. The charge-sheet had been filed only on the statement of the complainant/ prosecutrix under Section 164 of the Cr.P.C.

25. Based on the holistic consideration of the facts and circumstances summarized in the foregoing two paragraphs; we are satisfied, that all the steps delineated by this Court in Rajiv Thapar's case (AIR 2013 SC(Cri)659) (supra) stand- satisfied. All the steps can only be answered in the affirmative. We therefore have no hesitation whatsoever in concluding, that judicial conscience of the High Court ought to have persuaded it, on the basis of the material available before it, while passing the impugned order, to quash the criminal proceedings initiated against the accused-appellant, in exercise of the inherent powers vested with it under Section 482 of the Cr.P.C. Accordingly, based on the conclusions drawn hereinabove, we are satisfied, that the first information report registered under Sections 328, 354 and 376 of the Indian Penal Code against the appellant- accused, and the consequential chargesheet dated 28.6.2007, as also framing of charges by the Additional Sessions Judge, New Delhi on 1.12.2008, deserves to be quashed. The same are accordingly quashed.”

38. Thus, above was the case where despite statement under Section 164 Cr.P.C. by prosecutrix the Court referring to material collected during investigation had held that the case was fit where the High Court ought to have quashed the criminal

proceedings."

7. Reverting back to this case, it is held that both the petitioners have amicably settled their dispute. The victim being the complainant is not willing to proceed with the case. The possibility of conviction indeed appears to be remote or bleak as the victim may not incriminate the petitioner No. 2 in her evidence.

8. I have considered the statement of the victim-petitioner No. 1 herein under Section 164 Cr.P.C. Her statement has exonerated the petitioner No. 2. Further proceeding will indeed be an abuse of the process of the Court. In the light of the decision of the Hon'ble Supreme Court in *Vineet Kumar's case (supra)*, the charge sheet No. 292/2020 and the FIR No. 297/2020 and the entire proceeding captioned above, are hereby set aside and quashed.

In terms of the above observations, this criminal petition stands disposed of.

JUDGE

Comparing Assistant