

GAHC010215682022



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

Case No. : Crl.Pet./1135/2022

1. SHILPI KUMARI @ SHILPI KUMARI RAI
W/O SRI SURENDER KUMAR RAI
D/O SHIVA MANGAL RAI (FATHER) AND
SMTI. SNAJU DEVI (MOTHER)
R/O OIL INDIA LIMITED, GATE NO. 2,
NEAR PATHARQUARRY, NARENGI,
P.O. UDAYAN VIHAR, P.S. SACHAL/SATGAON
DIST. KAMRUP (M), ASSAM, PIN-781026

2: SRI SHIVA MAHATO
S/O LATE RAMDEO MAHATO
R/O OIL INDIA LIMITED
GATE NO. 2, NEAR PATHARQUARRY, NARENGI
P.O. UDAYAN VIHAR , P.S. SACHAL/SATGAON
DIST. KAMRUP (M), ASSAM
PIN-78102

VERSUS

1. THE STATE OF ASSAM
REP BY THE PP, ASSAM

2:SRI SUMANGAL RAY @ SHIVA MANGAL RAI
S/O LT. RAMJI RAY @ RAI
R/O OIL INDIA LIMITED
GATE NO. 2 NEAR PATHARQUARRY, NARENGI
P.O. UDAYAN VIHAR, P.S. SACHAL/SATGAON
DIST. KAMRUP (M), ASSAM
PIN-78102

Advocate for the Petitioner : MR. S CHAUHAN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

JUDGMENT

Date : 21-04-2023

Heard Mr. S Chauhan, learned counsel for the petitioners. Also heard Mr. B. Sharma, learned Addl. Public Prosecutor, Assam appearing for the State respondent.

2. This petition, under Section 482 of the Code of Criminal Procedure, is preferred jointly by two petitioners, namely, (1) Smti. Shilpa Kumari @ Shilpa Kumari Rai and (2) Sri Sumangal Ray @ Shiva Mangal Rai, for quashing of the Sessions Case No. 260/2015 arising out of Sachal/Satgaon P.S. Case No.37/2012, under section 366 of the IPC, pending before the Court of learned Addl. Sessions Judge No.1, Kamrup(M).

3. The factual background of filing of the present petition is briefly stated as under:

“On 05.03.2012, Shri Sumangal Ray of Patharkuari, Narengi, lodged an FIR with the O/C Satgaon Police Station to the effect that on the same day, at about 5.30 AM in the morning, he found his daughter Miss Shilpa Kumari, aged 18 years, missing from his house. On enquiry, he also found that one Shiva Mahatoo, who was also living in his locality, missing from his house, and as such he apprehends that Shiva Mahatoo and his family members were involved in the kidnapping of his daughter.”

4. Upon the said FIR, the Officer-in-Charge of Satgaon Police Station had registered a case, being Satgaon P.S. Case No.71/2020, under section 366 of the IPC and entrusted SI D.M. Deka to investigate the same. Accordingly, the

investigating officer had visited the place of occurrence, examined the witnesses and recovered the victim girl and got her examined by the Doctor and also got her statement recorded in the Court, and thereafter, handed her over to the informant. He also arrested the accused and forwarded him to the court. Then on completion of investigation, the investigating officer had laid charge sheet against the accused Shiva Mahatoo, to stand the trial in Court, under Section 366 of the IPC.

5. While the case was pending before the Court of learned Addl. Sessions Judge, Kamrup(M) at the stage of evidence, the petitioner No.1 and 2 got married separately and leading a peaceful married life and also they were blessed with children. Therefore, they have decided amongst themselves not to proceed with the case further and they have approached this Court by filing the present application for quashing the aforesaid proceeding. The respondent No.2, i.e. the informant, also filed an affidavit on 16.02.2023, to the effect that his daughter, i.e. the victim, already got married with another person and she has been blessed with a child and the present proceeding may disturb her married life and therefore, it is contended to drop the proceeding.

6. Mr. S. Chauhan, the learned counsel for the petitioners submits that both petitioners, No.1 and 2, got married separately and they are leading their peaceful married life and the petitioner No.1 is blessed with a child also and therefore, they are not willing to pursue the matter and approached this Court by filing the present application for quashing the aforesaid proceeding pending before the learned Court below. Mr. Chauhan further submits that though the petitioner No.1, in her statement has implicated the petitioner No.2, yet, no incident of kidnapping had taken place and that she had given

the statement under duress and on being threatened by her father and maternal uncle. It is the further submission of Mr. Chauhan that the informant, who is arraigned as respondent No.2 here in this petition, also filed an affidavit to the effect that he has no objection in the event of allowing this petition.

7. On the other hand, Mr. B. Sharma, the learned Addl. Public Prosecutor, Assam submits that the victim was major at the time of occurrence and that the respondent No. 2 also filed an affidavit to the effect that he has no objection in the event of allowing the petition. Mr. Shamra further submits that both the petitioners got married separately and leading their peaceful married life and as such the State has no objection in the event of quashing the proceeding of Sessions Case No.260/2015.

8. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the affidavit filed by the respondent No.2, the informant. It is discernable from the aforesaid affidavit and also from the petition as well as from submissions of learned Advocates of both sides that the petitioner No.1 and the petitioner No.2 got married separately and are leading their happy married life and the petitioner No.1 is blessed with a child. It also appears from the scanned copy of the record that the case is pending at the stage of evidence before the learned court below. Further, it appears that the case was registered in the year 2012, and since then 11 years elapsed.

9. While dealing with the issue of quashing of FIR in the cases, which are not compoundable, under Section 320 Cr.P.C., Hon'ble Supreme Court in the case of **State of Madhya Pradesh vs. Laxmi Narayan and others**, reported in **(2019) 5 SCC 688**, referring two of its earlier decisions, in **Gian**

Singh vs. State of Punjab, reported in **(2012) 10 SCC 303** and **Narinder Singh vs. State of Punjab**, reported in **(2014) 6 SCC 466**, held that when the parties have reached at the settlement and on that basis petition for quashing the Criminal Proceeding is filed, the guiding factor in such cases would be:

- (i) to secure end of justice or
- (ii) to prevent the abuse of the process of the court.

10. It is further held in the said case that while exercising the power, the High Court has to form an opinion on either of the aforesaid two objectives. Further, Hon'ble Supreme Court, in the case of **Laxmi Narayan** (Supra), has held that : "the power conferred under Section 482 of the Code, to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly of the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves".

11. Here in this case, perusal of the record of the learned Court below reveals that the petitioner No.2 has already been charged under section 366 of the IPC. The offence under section 366 I.P.C. is a non-compoundable offence under Section 320 Cr.P.C. It also reveals from the petition that both the petitioners have approached this Court for quashing the proceeding of the Sessions Case No. 260/2015, arising out of Sachal/Satgaon P.S. Case No.37/2012, under section 366 of the IPC, pending before the Court of learned Addl. Sessions Judge No.1, Kamrup(M), as during the pendency of the proceeding both of them got married separately and are leading their

happy married life and the petitioner No.1 is blessed with a child. Indisputably, the dispute between petitioner Nos.1 and 2 arises out of matrimonial relationship or family dispute, and further, it appears that the parties have decided not to proceed with the case further.

12. Since the petitioners are not willing to pursue the matter further, and since the matter has arisen out of matrimonial relationship or family dispute, this Court is of the view that end of justice will be meted out if the petition is allowed. It is also unlikely that in the event of dismissing the petition, the petitioner No.1, who got married with another person leading a happy married life, would depose against him before the learned Court below and in such event, further continuation of the proceeding of Sessions Case No. 260/2015, would be an abuse of the process of the Court and it would be an exercise in futility.

13. Under the facts and circumstances and also drawing premises from the ratios, laid down in the cases discussed hereinabove, this Court is inclined to allow this petition, and accordingly, the same is allowed. Resultantly, the proceeding of the Sessions Case No. 260/2015, arising out of Sachal/Satgaon P.S. Case No.37/2012, under section 366 of the IPC, pending before the Court of learned Addl. Sessions Judge No.1, Kamrup(M) stands quashed.

14. The parties have to bear their own costs.

JUDGE

Comparing Assistant