

GAHC010222672023



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

Case No. : Crl.Pet./1081/2023

EZAZUL HUSSAIN @ EZAZUL HOQUE AND 4 ORS.
S/O LATE ELAHI MIAH @ ALAHI
R/O VILL- NADIAPARA, P.S. KALGACHIA, P.O. BALAGAON
DIST. BARPETA, ASSAM
PIN-781319

2: MD. MOZAMMEL HUSSAIN
S/O LATE ELAHI MIAH @ ALAHI
R/O VILL- NADIAPARA
P.S. KALGACHIA
P.O. BALAGAON
DIST. BARPETA
ASSAM
PIN-781319

3: MUKTAR HOSSAIN @ MUKTAR ALI
S/O ELAHI MIAH @ ALAHI
R/O VILL- NADIAPARA
P.S. KALGACHIA
P.O. BALAGAON
DIST. BARPETA
ASSAM
PIN-781319

4: MUFASSEL HUSSAIN @ MUFAZZEL HUSSAIN

S/O LATE ELAHI MIAH @ ALAHI
R/O VILL- NADIAPARA
P.S. KALGACHIA
P.O. BALAGAON
DIST. BARPETA
ASSAM
PIN-781319

5: MOSTAFIZOR RAHMAN
S/O LATE ELAHI MIAH @ ALAHI
R/O VILL- NADIAPARA
P.S. KALGACHIA
P.O. BALAGAON
DIST. BARPETA
ASSAM
PIN-78131

VERSUS

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

2:SMTI. MOFIDA KHATUN
W/O EZAZUL HUSSAIN @ EZAZUL HOQUE
D/O AJGAR ALI
R/O VILL- NADIAPARA
P.S. KALGACHIA
P.O. BALAGAON
DIST. BARPETA
ASSAM

PIN-78131

Advocate for the Petitioner : MD. S ALOM

Advocate for the Respondent : PP, ASSAM

BEFORE

HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

O R D E R

13.12.2023

1. Heard Mr. S. Alom, learned counsel for the petitioner as well as Mr. M.H. Talukdar, learned counsel for the respondent no. 2. Also heard Mr. D.P. Goswami, learned Addl. P.P. appearing for the State respondent no. 1.

2. I have considered the submissions at the Bar with circumspection.
3. It is submitted at the Bar that both the parties have amicably settled their dispute and the victim of this case has filed an affidavit stating that the victim/respondent no. 2 herein and the petitioner had a love relationship. Out of misunderstanding, the FIR was lodged.
4. The allegation in the FIR was that the petitioner induced the victim and obtained her consent to have physical relationship with the victim by promising to marry her. The petitioner also took the victim to the house of the accused persons named in the FIR and he forcefully committed sexual assault on the victim and abandoned her in the house. Thereafter, the other accused named in the FIR assaulted the victim.
5. It is submitted by the learned counsel for the petitioner that immediately after the FIR was lodged relating to this incident, the petitioner solemnised his marriage with the victim. At present, the petitioner and the victim are staying together as husband and wife and they are blessed with a son. Annexure-4 is the Kabin Nama and the Annexure-5 is the birth certificate of the son.
6. The petitioner has relied on the decision of this Court in *Jahirul Maulana @ Jahirul Islam (MD.) Vs. State of Assam & Ors.* reported in 2016 (4) GLT 460, wherein, it has been observed that:-

8. Law was laid down way back in the case of Madhavrao Jiwaji Rao Scindia & Anr. Vs. Sambhajirao Chandojirao Angre & Ors., reported in (AIR 1988 SC 709) that a proceeding may be quashed, if the chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue. This is because otherwise the parties and the witnesses will be dragged to Court and process of the Court will be abused for

no purpose. When the parties have already entered into compromise, even if they are dragged to Court as witnesses, there is every likelihood of their turning back from the allegations and in that event, the learned Court will be left with no other alternative but to acquit the accused person. In that event, there will be unnecessary engagement of valuable judicial time and so taking a practical view of the matter, it appears to be proper to accept the reality and to put an end to the ongoing litigation.

7. In the instant case, both the parties have amicably settled their dispute. Possibility of conviction indeed appears to be remote and bleak, as the victim is the star witness of this case and she is not willing to support the prosecution case. Further proceeding will indeed be an abuse of the process of the Court.

8. The case was pending at the initial stage. The trial has not yet commenced.

9. In the light of the decision of this Court in ***Jahirul Maulana @ Jahirul Islam (MD) (supra)***, the entire proceeding PRC Case No. 148/2023 arising out of Kalgachia P.S. Case No. 608/2019 is hereby set aside and quashed.

JUDGE

Comparing Assistant