

GAHC010224232022



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

Case No. : Crl.Pet./1112/2022

LOHIT DAS AND 2 ORS.
S/O SRI RAJONI DAS
R/O VILL- ROHDHOLA DANIGAON
P.S. GOHPUR
DIST. BISWANATH, ASSAM

2: SRI NITUL DAS
S/O SRI KESHAB DAS
R/O VILL- DIPORA
P.S. GOHPUR
DIST. BISWANATH
ASSAM

3: SMT. BINITA DAS
D/O SRI LOHIT DAS
W/O SRI NITUL DAS
R/O VILL- DIPORA
P.S. GOHPUR
DIST. BISWANATH
ASSA

VERSUS

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

Advocate for the Petitioner : MR. L GOGOI

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

JUDGMENT

Date : 19-04-2023

Heard Mr. L. Gogoi, learned counsel for the petitioners. Also heard Ms. N. Das, 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 three petitioners, namely, (1) Sri Lohit Das, (2) Sri Nitul Das and (3) Smti. 'X' (name withheld), for quashing of the Gohpur P.S. Case No.71/2020, corresponding to G.R. Case No.83/2020 and PRC No.102/2022, under section 366(A) of the IPC, pending before the Court of learned SDJM (M), Gohpur in Biswanath District.

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

“On 17.02.2020, one Lohit Das, son of Rajoni Das of Rahdhola Danigaon lodged an FIR with the Officer-in-Charge of Gohpur Police Station to the effect that on that day, at about 10:00 A.M., Sri Nitul Das has kidnapped his daughter Smti. 'X' (name withheld), 17 years from his house.”

4. Upon the said FIR, the Officer-in-Charge of Gohpur Police Station had registered a case, being Gohpur P.S. Case No.71/2020, under Section 366(A) of the IPC and entrusted ASI Bijoy Sarma to take preliminary step and also endorsed SI D. Nath to complete the investigation. 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. Though he tried cause arrest of the accused, yet he could not succeed. Then after completion of investigation, the investigating officer had laid charge sheet against the accused Nitul Das, to stand the trial in Court, under Section 366(A) of the IPC, showing him absconder in the charge sheet.

5. While the case was pending before the Court of learned SDJM (M), Gohpur, the parties have effected a compromise between themselves and after attainment of majority

by the victim, accused Nitul Das got married with her and now leading a happy married life and the petitioner No.2 and 3 are not willing to pursue the case and therefore, they have approached this Court by filing the present application for quashing the aforesaid proceeding.

6. Mr. L. Gogoi, learned counsel for the petitioners submits that there was love affair between the petitioner No.3 and the petitioner No.2, but, at the relevant point of time, the victim was minor and therefore, her father lodged one case against the petitioner No.2 and thereafter, the petitioner No.3 attained majority and her marriage was solemnized with the petitioner No.2 as per the Hindu rites and rituals and now they have been leading a happy married life and therefore, Mr. Gogoi submits that the petitioner No.1 and petitioner No.3 are not willing to pursue the matter and contended to quash the proceeding, pending before the learned Court below.

7. On the other hand, Ms. N. Das, learned Addl. Public Prosecutor, Assam submits that in pursuant to the order of this Court dated 09.11.2022, she has obtained a report from the I.O. as to whether any marriage between the petitioner No.2 and petitioner No.3 has been solemnized and whether they are continuing their marital life as husband and wife, and based upon the said report, she submits that accused Nitul Das and the victim girl got married and they are living as husband and wife at their native place. Producing the report in the form of W.T. Message of the Officer-in-Charge of Gohpur Police Station, before this Court Ms. Das submits that the State has no objection in the event of quashing the proceeding of Gohpur P.S. Case No.71/2020, under Section 366(A) of the IPC, since the accused and the victim got married and living together as husband and wife.

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 report/W.T. Message, dated 15.11.2022 of the Officer-in-Charge of Gohpur Police Station. It is discernable from the aforesaid report that the petitioner No.2 and the petitioner No.3 got married and are leading a happy married life. It also appears from the documents placed on record that the petitioner No.2 has already been charge sheeted under Section 366(A) of the IPC, showing him absconder, in the charge sheet dated 30.06.2020.

9. While dealing with the issue of quashing of FIR in the cases which are not compoundable, under Section 320 CrPC, the Hon'ble Supreme Court in the case of **State of Mdhya Pradesh vs. Laxmi Narayan and others**, reported in **(2019) 5 SCC 688**, referring to 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. It is further held that while exercising the power, the High Court is to form an opinion on either of the aforesaid 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 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".

10. Here in this case, perusal of the record of the learned Court below reveals that the petitioner No.2 has already been charge sheeted under Section 366(A) of the IPC, showing him absconder in the charge sheet. Indisputably, the offence under Section 366(A) I.P.C. is a non-compoundable offence under Section 320 Cr.P.C. It also reveals from the petition that all the three petitioners have approached this Court for quashing of the proceeding of Gohpur P.S. Case No.71/2020, under Section 366(A) of the IPC, as after attainment of majority by the petitioner No.3, her marriage has been solemnized with the petitioner No.2, as per the Hindu rites and rituals and now they are living together as husband and wife and leading a happy married life. Indisputably the dispute between petitioner Nos.1 and 3 with that of petitioner No.2 arises out of matrimonial relationship or family dispute, and further, it appears that the parties have resolved the entire dispute among themselves.

11. Since the matter has already been settled by the petitioners and since they 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 unlikely that in the event of dismissing the petition, the petitioner

No.3, who is now wife of the petitioner No.2 would depose against him before the learned Court below and in such event, further continuation of the proceeding of Gohpur P.S. Case No.71/2020, corresponding to G.R. Case No.83/2020 and PRC No.102/2022, under section 366(A) of the IPC, would be an abuse of the process of the Court and it would be an exercise in futility.

12. 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 Gohpur P.S. Case No.71/2020, corresponding to G.R. Case No.83/2020 and PRC No.102/2022, under section 366(A) of the IPC stands quashed.

13. The parties have to bear their own costs.

JUDGE

Comparing Assistant