

GAHC010252162022



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

Case No. : Crl.Pet./1249/2022

ABDUS SELIM @ SELIM UDDIN
S/O ABDUS SAMAD @ ABDUL SAMAD
R/O NO. 3 BALURCHAR
WARD NO. 3 BALURCHAR
WARD NO. 3 PANCHUGHAT
P.O. AND P.S. DHUBRI,
DIST. DHUBRI, ASSAM, PIN CODE- 783301

VERSUS

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

2:ZAKIR HOSEN @ JAKIR HUSSAIN
S/O LATE ABDUL KARIM @ ABDUL KALAM
R/O SANTOSH PUR PART-I
P.O. TILAPARA, P.S. CHAPAR
DIST. DHUBRI, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

For the Petitioner: Mr. S. Rahman, Advocate.

For the respondent(s): Mr. B. Sarma, Additional Public Prosecutor,
Assam for the State/respondent No.1.
Mr. M. Hussain, Advocate for respondent No.2
(Informant).

Date of Hearing and Judgment : 21.04.2023

JUDGMENT AND ORDER (ORAL)

Heard Mr. S. Rahman, learned counsel for the petitioner. Also heard Mr. B. Sarma, learned Additional Public Prosecutor for the State/respondent No.1 and Mr. M. Hussain, learned counsel for the respondent No.2 (informat).

2. This petition under Section 482 of the Code of Criminal Procedure Code, 1973 is preferred by the petitioner, namely, Abdus Selim @ Selim Uddin for quashing the F.I.R. of Chapar P.S. Case No.102/2022 corresponding to G.R. Case No.324/2022 under Section 366 of IPC.

3. It is to be mentioned here that the aforementioned F.I.R. has been lodged by informant, Zakir Hussain, on 10.06.2022, with the In-Charge of Salkocha Police Out Post, alleging *inter-alia* amongst others that on 09.06.2022, at around 9 A.M., while his daughter Pinjira Khatun, aged 15 years, was proceeding towards Dakhin Salkocha Higher Secondary School, then, one Salim Uddin, son of Samad Ali of Bhangarpar (Jhagrapar), under Gauripur Police Station, has kidnapped her from the National Highway.

4. Upon the said F.I.R., the In-Charge of Salkocha Police Out Post recorded one G.D. Entry No.139, dated 10.06.2022 and forwarded the same to the Officer-In-Charge, Chapar Police Station for registering a case. On receipt of same, the O.C. In-Charge of Chapar Police Station registered a case being Chapar P.S. Case No.102/2022, under Section 366 of IPC and endorsed ASI Lanko Roy to investigate the same. Thereafter, the I.O. has visited the place of

occurrence, examined the witnesses and recovered the victim girl and got her statement recorded in the Court under Section 164 of Cr.P.C.

5. In the meantime, the petitioner and the respondent No.2 entered into a compromise agreement on 02.08.2022, and decided to settle the dispute mutually and on the basis of the said compromise agreement, they approached this Court for quashing the F.I.R. of Chapar P.S. Case No.102/2022, stating that in fact the F.I.R. was lodged out of anger.

6. Mr. S. Rahman, learned counsel for the petitioner submits that, in fact, no such occurrence, as alleged in the F.I.R., had ever taken place and besides, the respondent No.2 and the petitioner No.1 have effected a compromise and they are no longer willing to proceed with the case and therefore, it is contended to allow the petition.

7. Mr. M. Hussain, learned counsel for the informant submits that the informant, who is the respondent No.2 of the present petition, has filed an affidavit, dated 08.02.2023, to the effect that they have mutually compromised the matter and also executed one agreement on 02.08.2022 and that the statement of the victim girl was recorded as per his instruction and later on, he realized that he has done a mistake and he therefore begged apology for the same and that the respondent No.2 has no objection in the event of quashing the F.I.R. of Chapar P.S. Case No.102/2022.

8. Having heard the learned counsel of both the sides, I have carefully gone through the petition and the documents placed on record and also perused the statement of the victim girl and also perused the birth certificate of the victim girl, which is annexed with the petition as Annexure No.2, which reveals that her date of birth is 10.09.2007 and also perused the compromise agreement

dated 02.08.2022.

9. It appears that due to misunderstanding the respondent No.2 had lodged the F.I.R. with the Chapar Police Station, upon which Chapar P.S. Case No.102/2022 has been registered and now both the parties have settled the matter amicably and they are not willing to proceed with the matter any further.

10. It is to be mentioned here that 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 Madhya 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 309*** 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."

11. Since the matter has already been settled by the petitioner and the respondent No.2 and since they are not willing to pursue the matter further, and since the matter has arisen out of matrimonial relationship or family dispute,

and also the parties have settled the entire disputes amongst themselves, this Court is of the view that end of justice will be meted out if the petition is allowed. Further, since the matter has been settled amicably, the respondent No.2 and the victim are unlikely to depose against the petitioner and in such event continuation of further proceeding would be an abuse of the process of law.

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 Chapar Police Station Case No.102/2022 corresponding to G.R. Case No.324/2022 under Section 366 of the IPC stands quashed.

13. The parties have to bear their own costs.

JUDGE

Comparing Assistant