

GAHC020007162022



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

CRL. REVN. No. 9 of 2022

Shri Temjensuba Longkumer,

Aged about 36 years,
S/o- Late Shri Tiayanger,
Village: Chakpa Village,
Mokokchung, Nagaland.

.....Petitioner

-Versus-

1. The State of Nagaland

2. XXX (Name of the victim not disclosed),
Aged about 36 years,
D/o- XXX,
Address- XXX
Dimapur- 797112, Nagaland.

.....Respondents

:: BEFORE ::

HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

For the Petitioner : Mr. Sentiyanger, Advocate

For the Respondents : Mr. K. Angami, Public Prosecutor
: Mr. Supongwati Walling, Advocate
(For respondent No. 2)

Date of Hearing
& : **18.05.2023**
Date of Judgment

JUDGMENT & ORDER

(Mridul Kumar Kalita, J)

Heard Mr. Sentianger, learned counsel for the petitioner. Also heard Mr. K. Angami, learned Public Prosecutor for the State of Nagaland and Mr. Supongwati Walling, learned counsel for the respondent No. 2 (*prosecutrix*).

2. This Criminal Revision Petition has been filed by the accused/petitioner, namely, Shri Temjensuba Longkumer under section 401 read with sections 397 & 482 of the Code of Criminal Procedure, 1973 impugning the order dated 30.09.2022 passed by the learned Sessions Judge, Mokokchung, Nagaland in Sessions Case No. 4/2022 framing charges against the accused/petitioner under section 354/376/506 of Indian Penal Code read with section 66 of Information Technology Act, 2000.

3. The facts relevant for adjudication for this Criminal Revision Petition, in brief, are as follows:-

(i) That on 23.03.2022 at 4:30 p.m. an FIR was lodged by one XXX (*name of the victim not disclosed and hereinafter she is referred to as "XXX"*) before the Officer-in-Charge, Women Police Station, Mokokchung, Nagaland, *inter alia*, alleging that the present accused/petitioner (*Mr. Temjensuba Longkumer*) was known to her through facebook and on 20th January, 2022

at around 8-9 p.m. he violated her sexually after threatening her with a hand gun and took her nude photographs. Later on, he again contacted her and threatened to expose and make the contents in his possession viral in media platform if does not comply with his demand and he exploited the helplessness of the victim on several occasions. He also threatened her that approaching Police or other help would be futile on her part as he was renowned person of Mokokchung and nobody would believe her story.

(ii) On receipt of the said FIR, Mokokchung Women P.S. Case No. 001/2022 was registered under section 354/376/506 of Indian Penal Code read with section 66E of Information Technology Act, 2000 and the present accused/petitioner was arrested on 23.03.2022.

(iii) After completion of the investigation, the Investigating Officer laid the Charge-sheet No. 2/2022 against the present accused/petitioner under section 354/376/506 of Indian Penal Code read with section 66E of Information Technology Act, 2000.

(iv) The accused/petitioner was produced before the Court of Chief Judicial Magistrate, Mokokchung and on 21.06.2022 he was released on bail. On 28.09.2022, learned Chief Judicial Magistrate, Mokokchung committed the case to the Court of learned Session Judge, Mokokchung as the offence under section 376 IPC is exclusively triable by the Court of Sessions.

(v) On 30.09.2022, learned Sessions Judge, Mokokchung framed charges under section 354/376/506 of Indian Penal Code read with section 66 of Information Technology Act, 2000 against the present accused/petitioner and when the charges were explained to him, the present accused/petitioner pleaded not guilty to the said charges and claimed to be tried.

4. Mr. Sentianger, learned counsel for the accused/petitioner has submitted that the accused/petitioner was not served with the copies of charge-sheet and other documents submitted along with the charge-sheet and he was only informed by his counsel to come to the Court on 30.09.2022 and to plead not guilty. Mr. Sentianger, learned counsel for the accused/petitioner has further submitted that the petitioner was prejudiced due to non-furnishing of documents which were forwarded to the Magistrate along with the charge-sheet. It is also submitted that due to non-furnishing of the said documents the accused/petitioner was deprived of an opportunity to argue for his discharge before the learned Sessions Judge. It is also submitted that on 02.11.2022, the accused/petitioner filed an application before learned Sessions Judge, Mokokchung under section 207 read with section 208 of the Code of Criminal Procedure, 1973 praying for furnishing the copies of printouts of the screen-shots of "facebook messenger" and/or "Whatsapp" chats between him and the prosecutrix which were submitted along with Police report under Section 173 of Code of Criminal Procedure, 1973, however, same was not furnished to him, thereby depriving him of his statutory rights.

5. Mr. Sentianger, learned counsel for the accused/petitioner has cited a

ruling of Hon'ble Supreme Court of India in "***Manu Sharma v. State (NCT of Delhi)***" reported in "**(2010) 6 SCC 1**" wherein it was observed as follows:-

"218. The liberty of an accused cannot be interfered with except under due process of law. The expression "due process of law" shall deem to include fairness in trial. The court (sic Code) gives a right to the accused to receive all documents and statements as well as to move an application for production of any record or witness in support of his case. This constitutional mandate and statutory rights given to the accused place an implied obligation upon the prosecution (prosecution and the Prosecutor) to make fair disclosure. The concept of fair disclosure would take in its ambit furnishing of a document which the prosecution relies upon whether filed in court or not. That document should essentially be furnished to the accused and even in the cases where during investigation a document is bona fide obtained by the investigating agency and in the opinion of the Prosecutor is relevant and would help in arriving at the truth, that document should also be disclosed to the accused.

219. The role and obligation of the Prosecutor particularly in relation to disclosure cannot be equated under our law to that prevalent under the English system as aforereferred to. But at the same time, the demand for a fair trial cannot be ignored. It may be of different consequences where a document which has been obtained suspiciously, fraudulently or by causing undue advantage to the accused during investigation such document could be denied in the discretion of the Prosecutor to the accused whether the prosecution relies or not upon such documents, however in other cases the obligation to

disclose would be more certain. As already noticed the provisions of Section 207 have a material bearing on this subject and make an interesting reading. This provision not only require or mandate that the court without delay and free of cost should furnish to the accused copies of the police report, first information report, statements, confessional statements of the persons recorded under Section 161 whom the prosecution wishes to examine as witnesses, of course, excluding any part of a statement or document as contemplated under Section 173(6) of the Code, any other document or relevant extract thereof which has been submitted to the Magistrate by the police under sub-section (5) of Section 173. In contradistinction to the provisions of Section 173, where the legislature has used the expression "documents on which the prosecution relies" are not used under Section 207 of the Code. Therefore, the provisions of Section 207 of the Code will have to be given liberal and relevant meaning so as to achieve its object. Not only this, the documents submitted to the Magistrate along with the report under Section 173(5) would deem to include the documents which have to be sent to the Magistrate during the course of investigation as per the requirement of Section 170(2) of the Code.

- 6.** Mr. Sentiyaenger, learned counsel has also submitted that the charges were framed against the present accused/petitioner in Sessions Case No. 4/2022 without furnishing him the copies of documents which the learned Committing Magistrate was under statutory obligation to furnish to him and therefore, learned counsel for the accused/petitioner has prayed for setting aside the impugned order dated 30.09.2022 passed by learned

Sessions Judge, Mokokchung and has also prayed for setting aside the charges framed against the present accused/petitioner. It is further prayed that he may be furnished with all the documents forwarded along with Police report under Section 173(5) of the Code of Criminal Procedure, 1973 and thereafter he should be heard afresh on the question of framing of charges against him.

7. Mr. K. Angami, learned Public Prosecutor, Nagaland has fairly submitted that the accused is entitled to get copies of documents forwarded to the Magistrate along with the Police report under Section 173(5) of the Code of Criminal Procedure, 1973 and accordingly same may be furnished to the present accused/petitioner.

8. Mr. Supongwati Walling, learned counsel for the respondent No. 2 (*the victim*) has also fairly submitted that the copies of the documents forwarded to the Magistrate along with the Police report under Section 173(5) of the Code of Criminal Procedure, 1973 may be furnished to the present accused/petitioner. However, he has submitted that as the documents also include nude photographs of the victim, same may be blackened before furnishing the same to the accused/petitioner.

9. I have considered the submissions made by learned counsel for both sides as well as gone through the material on record, including the case record of G.R. Case No. 28/2022 and Sessions Case No. 4/2022.

10. On perusal of the case record, it appears that the Charge-sheet No. 2/2022 was laid on 07.09.2022 under section 354/376/506 of Indian Penal Code read with Section 66E of the Information Technology Act, 2000 against the present accused/petitioner and it was accompanied with

several documents including screen-shots of facebook messenger and whatsapp chats between the prosecutrix and the accused/petitioner. It also appears that on 02.11.2022, an application was filed under Sections 207/208 Cr.P.C. praying for furnishing copies of said facebook messenger and whatsapp chats to the accused/petitioner, however, same was declined.

On perusal of the order-sheets maintained in the case records of G.R. 28/2022 as well as Sessions Case No. 4/2022, it appears that there is no endorsement anywhere, in the case record, to show that the copies of documents referred to in Section 207 of the Code of Criminal Procedure, 1973 were ever furnished to the present accused/petitioner. It also appears that even when the present accused/petitioner applied for the copies of the print out of screen-shots of facebook messenger and whatsapp chats between the prosecutrix and the accused/petitioner, the same was denied to him. This Court is of considered opinion that the Chief Judicial Magistrate, Mokokchung was duty bound to furnish the copies of documents referred to in section 207 Code of Criminal Procedure, 1973 before committing the said case to the Court of Sessions. Learned Sessions Judge was also under obligation to ensure that the accused/petitioner was furnished with the copies of documents referred to in section 207 Code of Criminal Procedure, 1973 before framing charges against him. Moreover, application dated 02.11.2022, filed by the present accused/petitioner before learned Sessions Judge, Mokokchung praying for furnishing copies of said facebook messenger and whatsapp chats to the accused/petitioner, however should not have been declined without citing any reasons. This Court is of the considered opinion that to afford

fair opportunity to the accused/petitioner of defending himself against the allegations leveled against him in the Police report, both the Courts i.e. the Court of learned Chief Judicial Magistrate, Mokokchung as well as Court of learned Sessions Judge, Mokokchung were under obligation to ensure that the copies of documents referred to in section 207 Code of Criminal Procedure, 1973 were furnished to the present accused/petitioner before considering the question of framing charges against him. By not doing so, the accused/petitioner has been prejudiced.

11. In view of what has been discussed above, the impugned order dated 30.09.2022 passed by learned Sessions Judge, Mokokchung in Sessions Case No. 4/2022 framing charges under Section 354/376/506 of Indian Penal Code read with section 66 of Information Technology Act, 2000 against the present accused/petitioner is hereby set aside. Learned Sessions Judge, Mokokchung is hereby directed to ensure that the copies of documents referred to in Section 207 of the Code of Criminal Procedure, 1973, including the copies of the print out of screen-shots of facebook messenger and whatsapp chats between the prosecutrix and the accused/petitioner are furnished to the present accused/petitioner. It is, however, made clear that as the copies of documents forwarded along with the charge-sheet also include nude photographs of the prosecutrix, same need not to be furnished to the accused/petitioner, however, he may be allowed to inspect the same either personally or through pleader in the Court. Thereafter, learned Sessions Judge, Mokokchung may proceed with consideration of charges against the present accused/petitioner afresh.

12. Let the case records of Sessions Case No. 4/2022 along with the connected files be send back to the Court of learned Sessions Judge,

Mokokchung along with a copy of this judgment. The accused/petitioner shall appear personally before learned Sessions Judge, Mokokchung on or before 20.06.2023 to participate in further proceedings of Sessions Case No. 4/2022.

13. With the above observations, this Criminal Revision Petition is hereby disposed of.

JUDGE

Comparing Assistant