

Serial No. 18
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Petn. No. 86 of 2023

Date of Decision: 03.04.2024

Shri Teiborlang Nongneng
S/o. Smti Ridalin Nongneng
R/o Mairung Heh, Umiam,
Ri-Bhoi District.

.....Petitioner.

Vs. 1) State of Meghalaya,
Rep. by- The Secretary
Home Department,
Govt. of Meghalaya, Shillong

2) The Superintendent of Police
Ri-Bhoi District,
Govt. of Meghalaya,
Nongpoh.

3) Smti Aidaris Marbaniang,
D/o (L) T. Marbaniang,
R/o Umbir Village,
Ri-Bhoi District.

..... Respondents.

Coram:

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S.R. Lyngdoh, Adv.

For the Respondent(s) : Ms. S. Ain, GA.

JUDGMENT AND ORDER (ORAL)

1. Heard Mr. S.R. Lyngdoh, learned counsel for the petitioner and also heard Ms. S. Ain, learned GA appearing for the State Respondent.

2. This is an application seeking quashing of the FIR and the entire proceedings of G.R. No. 467 of 2020 arising out of Women PS Case No. 85(12)2020 under Section 3(a)/4 of POCSO Act pending before the Special Judge POCSO at Ri-Bhoi District, Nongpoh.

3. The brief facts of the case is that pursuant to the lodging of the FIR in Women PS Case No. 85(12)2020 under Section 3(a)/4 of POCSO Act, the matter was investigated upon and a Final Report (FR) No. 04/21 dated 25.05.2021 was submitted by the Investigating Officer (IO). The concluding part of the report reads as follows:-

“ On further investigation it was learnt that the victim was not a victim of sexual assault as proved by her statement U/S 164 Cr.PC and as opined b the medical officer of CHC Umsning Dr. S.R.L Nongbri that there are no genital injuries. It is to be noted that if a minor girl was raped, injuries will be seen but as there are no injuries, it is proved that the girl was not a victim of sexual assault. Hence the case will be return in FR as mistake of facts.

Therefore, I beg your Hon'ble court to release Shri Teiborlang Nongneng, 19 years, S/o Smti Ridalin Nongneng, R/o Mairung Heh, Umiam, PS- Umiam, Ri- Bhoi, District and discharge him from all liabilities charged against him as he did not penetrate the girl and I beg to return the case in FR as mistake of facts and the purport of the case was given to the complainant verbally.”

4. After the submission of the above FR, a notice was issued to the complainant by the trial court. On 22.12.2022, the complainant appeared before the trial court and conveyed her no objection to the submission of the FR by the IO. However, it appears that inspite of all this, the learned trial court by the impugned order dated 22.12.2022 decided to take cognizance of the matter on perusal of the statement of the survivor recorded under Section 164

Cr.PC, as according to the trial court, the statement discloses commission of such act which falls under Section 7 of the POCSO Act, 2012.

5. Assailing the order dated 22.12.2022, the learned counsel for the petitioner submits that it was improper for the trial court to proceed with the trial against the petitioner inspite of submission of the FR and no objection of the complainant in the matter. The learned counsel by referring to the statement of the survivor recorded under Section 164 Cr.PC submits that even the contents of the statement would not invite any conviction against the petitioner and hence the same could not have been the basis before the trial court to proceed with the trial. The learned counsel further contends that there exists no list of prosecution witnesses and in absence of any prosecution witness, the case against the petitioner cannot be proved. He contends that it would be impossible for the prosecution to move ahead with the case before the trial court and in such a situation, it is a fit case where the impugned order dated 22.12.2022 and the entire proceeding of G.R. No. 467 of 2020 arising out of Women PS Case No. 85(12)2020 under Section 3(a)/4 of POCSO Act be set aside and quashed.

6. Ms. S. Ain, learned GA, per contra, submits that the learned trial court was well within its power to take cognizance of the matter in view of the provision of Section 190 (1)(b) Cr.PC. The learned GA submits that it is appropriate for the trial court to examine the available materials on record before accepting the FR submitted by the investigating authority by adopting a mechanical approach. She further submits that the allegation against the complainant invited charge under the POCSO Act which is serious in nature and the approach of the trial court in scrutinizing the materials on record and in deciding to proceed with the matter is appropriate and is within the ambit of law prescribed by the Cr.PC. To buttress her argument, the learned counsel places reliance on the decision of the Apex Court reported in *(2010) 9 SCC*

479, *Uma Shankar Singh Vs. State of Bihar & Anr.* (para. 19 & 20) and submits that in view of the law laid down in the said decision, there is no merit in the present criminal petition and the same may be dismissed forthwith.

7. A careful perusal of the materials on record reveals that after the conclusion of the investigation of the Women PS Case No. 85(12)2020 under Section 3(a)/4 of POCSO Act, a report dated 25.05.2021 was submitted to the trial court by which the claimant was discharged from all liabilities of the case, primarily on the ground that the medical report did not show any genital injuries received by the survivor. It was opined that since there was no injury, it cannot be said that the survivor was a victim of sexual assault. However, the learned trial court on perusal of the statement of the survivor recorded under Section 164 Cr.PC was of the opinion that the statement discloses commission of act which falls under Section 7 of the POCSO Act. The statement of the survivor under Section 164 Cr.PC has been annexed with the present criminal petition and the same has been perused by this Court. The contents of the statement do not inspire this Court to take a different view other than what has been taken by the learned trial court.

8. The decision of *Uma Shankar Singh (supra)* relied on by the State respondent at paragraph 19 and 20 lays down as hereunder: -

“19. The law is well settled that even if the investigating authority is of the view that no case has been made out against an accused, the Magistrate can apply his mind independently to the materials contained in the police report and take cognizance thereupon in exercise of his powers under Section 190(1)(b) Cr.PC. That is precisely what has happened in the present case.

20. In the instant case the investigation had been handed over to the CID and both CID and the local police had submitted their reports in final form exonerating the petitioner of the allegations made against him in the FIR. However, the Chief Judicial Magistrate, Siwan, took cognizance of the offence

under Section 302/379 IPC and Section 27 of the Arms Act against the petitioner. This is not a case where the Magistrate took recourse to any further inquiry but took cognizance on the police report itself, which he was entitled to do under Section 190(1)(b) Cr.PC.”

9. What can be gathered from the above, is that even if investigating authority is of view that no case is made out against the accused, the trial court can apply its mind independently to materials contained in police report and take cognizance based thereupon Section 190 (1)(b) Cr.PC. It is also clear that the trial court is not bound to accept the police report and the ‘no objection’ to its acceptance by the complainant. Moreover, the decision of the trial court to take cognizance of the matter to proceed with the trial is based on the materials on record which was a part of the police report and not by taking recourse of any further enquiry in the matter. In such a situation, no illegality can be attributed to the order of the trial court.

10. The contention of the learned counsel for the petitioner with regard to the absence of list of prosecution witness also does not hold water in view of the fact that the provisions of the Cr.PC empowers a trial court to summon material witness at any stage of inquiry, trial or other proceedings.

11. In view of the discussions made above, this criminal petition is devoid of merits and is hereby dismissed.

Judge

Meghalaya

03.04.2024

“N.Swer, Stenographer, Gr-II”