



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

Case No. : Crl.Petn./98/2024

Docha Tagom and 2 Ors Son of Docha Kokom, permanent resident of Village
Latkamt, PO and PS Raga, Kamle District, Arunachal Pradesh

2: Kupi Godak

Age:

Occupation :

Son of Shri Terik Godak permanent resident of Village Godak PO and PS Raga
Kamle District Arunachal Pradesh

3: Miss XXX (Victim)

Age:

Occupation :

Daughter of Shri Kupi Godak permanent resident of Godak Village PO and PS Raga
Kamle District Arunachal Pradesh

VERSUS

The State of AP

represented by the PP of AP

Advocate for the Petitioner : Kago Taja

Advocate for the Respondent : Mr. G. Tado, P P of AP

**BEFORE
HONBLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

Date : 23-08-2024

Heard Mr. K. Taja, learned counsel for the petitioners. Also heard Mr. G. Tado, learned Additional Public Prosecutor for the State of Arunachal Pradesh/sole respondent.

2. This application under Section 482 of the Code of Criminal Procedure, 1973 has been jointly filed by the petitioners, namely, (i). *Shri Docha Tagom*, (ii). *Shri Kupi Godak* and (iii) Ms. "X", the victim (name is not disclosed to protect the identity of the victim girl), praying for quashing of the proceedings of the POCSO Case No. 03/2024(Z), arising out of Raga P.S. Case No. 06/2024 under Section 8 of *the Protection of Children from Sexual Offences Act (POCSO Act), 2012* and Section 354A of *the Indian Penal Code (IPC)*, presently, pending before the Court of the learned Special Court POCSO-cum-Sessions Court, Ziro.

3. The facts relevant for consideration of the instant criminal petition, in brief, are as follows:

(i). That on 11.03.2024, the father of the victim (the petitioner no. 2 in the instant criminal petition) had lodged an F.I.R. before the Officer-in-Charge of Raga Police Station, *inter alia*, alleging that the petitioner No. 1, namely, *Shri Docha Tagom* had molested his daughter on 10.03.2024 at his residence. It was also stated in the F.I.R. that the daughter of the informant (petitioner No. 3 in the instant criminal petition) was under the

age of 15 (fifteen) years at the time of the incident.

(ii). On receipt of the said F.I.R., Raga P.S. Case No. 06/2024 was registered under Section 354 of the IPC read with Section 8/12 of the POCSO Act, 2012 and investigation was initiated.

(iii). After completion of the investigation, Charge-sheet was laid against the petitioner No. 1, namely, *Shri Docha Tagom* on 12.05.2024 under Section 354 of the IPC read with Section 8/12 of the POCSO Act, 2012. The petitioner No. 2 was arrested after lodging of the aforesaid F.I.R. and he is facing the trial remaining in custody.

(iv). On 10.06.2024, the Court of learned Special Judge (POCSO), Lower Subansiri District, Ziro, framed charges under Section 8 of the POCSO Act, 2012 read with Section 354 A of the IPC, against the petitioner No. 1, *Shri Docha Tagom*. When the said charges were read over and explained to the petitioner No. 1, he pleaded not guilty and claimed to be tried.

4. Mr. K. Taja, learned counsel for the petitioners has submitted that after framing of charges against the petitioner No. 1, the prosecution side have already examined the main witnesses, namely, the victim as well as the complainant as PW-1 and PW-2, respectively. He also submits that in her testimony before the Trial Court as PW-1, the victim has deposed that the petitioner No. 1 is the husband of her elder cousin sister. The learned counsel for the petitioners, thus, submits that the petitioner No. 1 is, therefore, related the petitioner No. 2 and the victim girl. The learned counsel for the petitioners

also submits that though in her deposition before the Trial Court as PW-1, the victim girl has stated that in the month of March, 2024, on the request of her father's sibling *Smti Godak Mami*, she went to her residence, which was situated in Medical Colony, Yada, to take care of her children, the petitioner No. 1 at that time, came to residence of *Smti Godak Mami* and requested the victim girl to prepare meal for him, as he was alone in his house. On his request, the victim girl came to the house of the petitioner No. 1, which is located near Medical Colony, Yada. The learned counsel for the petitioners has submitted that the victim girl has also deposed that while she was leaving the kitchen after preparing meal, the petitioner no. 1 suddenly hugged her from back side by crossing his arms over her chest and touched her breast. She also deposed that the petitioner no. 1 seemed to be in inebriated condition and therefore, she did not like his behaviour and immediately left his house.

5. The learned counsel for the petitioners has submitted that the victim girl as PW-1 has also deposed in her testimony before the Trial Court that the petitioner No. 1 followed her to the house of her aunt, *Smti Godak Mami* and begged pardon by saying that he did not have any bad intention and was hugging her only to say thanks to her. The learned counsel for the petitioners has also pointed out that the victim girl has categorically stated in her testimony that the petitioner No. 1 did not hug or touch her inappropriately on any other day except on the date of the incident. The learned counsel for the petitioners has also submitted that during cross examination, the victim girl has categorically stated that the petitioner No. 1 did not hug her with bad intention and touched her breast by mistake only.

6. The learned counsel for the petitioners has, thus, submitted that from the testimony of victim girl before the Trial Court, it is apparent that no offence under Section 8 of the POCSO Act, 2012 or Section 354 A of the IPC has been made out against the petitioner No. 1 in this case. He further submits that in addition to that, the complainant who is that father of the victim girl and the petitioner No. 1 have arrived at an amicable settlement between them and to that effect, a Deed of Agreement has also been executed between them on 18.06.2024, wherein, it was agreed between the parties that the matter has been settled amicably between them and the criminal case pending against the petitioner No. 1 would not be pursued by the complainant or the victim girl. It is also mentioned in the settlement reached between the parties that the FIR was lodged against the petitioner No. 1 by the petitioner No. 2 due to mistake and confusion as later on, the petitioner No. 2, who is the complainant, was informed by victim girl that she was not touched inappropriately by the petitioner No. 1 as alleged by petitioner No. 2 in the FIR.

7. The learned counsel for the petitioners has also submitted that though the complainant and victim have deposed before the Trial Court by stating the true facts, wherein, the petitioner No. 1 have not been implicated and there is every likelihood of the trial ending in acquittal of the petitioner No. 1, however, there are 6 (six) more witnesses, who are yet to be examined, which would certainly take some time and in view of the settlement arrived at between the parties as well as the depositions of the PW-1 and PW-2 before the Trial Court, there is unlikelihood of the case ending up in conviction and therefore, it would be futile to proceed with the Trial of petitioner No. 1 in this case.

8. The learned counsel for the petitioners also submits that though charges were framed against the petitioner No. 1 under Section 8 of the POCSO Act as well as Section 354 A of the IPC, however, this Court in exercise of its power under Section 482 of the Code of Criminal Procedure is not precluded to look into the evidence, which is on record, to see as to whether the evidence available on record would lead to proving of charges framed against the petitioner No. 1 and would ultimately lead to conviction. He further submits that if High Court finds that the evidence may not lead into conviction, it would be futile to proceed with the criminal proceeding pending against the petitioner No. 1. He also submits that as the petitioner No. 1 and the complainant as well as victim are related to each other and they have reached an amicable settlement between them, the High Court may exercise its power of quashing the proceeding in the aforementioned case for the ends of justice and to prevent the abuse of the process of the Court.

9. The learned counsel for the petitioners also submits that the case of the petitioners squarely falls within the condition number "C" enumerated by the Apex Court in the case of ***State of Haryana Vs. Bajan Lal and Others*** reported in ***1992 Supple. 1 SCC 335***, wherein, it has observed that where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of same do not disclose the commission of offence and make out a case against the accused, the High Court should exercise its power under Section 482 of the Code of Criminal Procedure to quash such case.

10. In support of the submissions made by the learned counsel for the petitioners, he has relied up on the following judgments i.e.:

(i). ***State of Madhya Pradesh and Laxmi Narayan and Others***, reported in ***(2019) 5 SSC 688***.

(ii). ***State of Haryana Vs. Bajan Lal and Others***, reported in ***1992 Supple. 1 SCC 335***.

11. On the other hand, Mr. G. Tado, learned Additional Public Prosecutor has vehemently opposed the prayer for quashing of the criminal proceedings of Special POCSO Case No. 03/2024(Z) pending against the petitioner No. 1 before the Court of learned Special Judge (POCSO)-cum-Sessions Judge, Ziro, Lower Subansiri District. The learned Additional Public Prosecutor submits that as the offence charged against the petitioner No. 1 is under special law i.e. the POCSO Act, 2012 and as the Apex Court has observed in the case of ***Laxmi Narayan*** (Supra), that the powers of quashing should not be exercised in case of offences which are under special statutes.

12. The learned Additional Public Prosecutor also submitted that the offences under POCSO Act are serious offences involving mental depravity and having serious impact on the society and as in the instant case, the petitioner No. 1 has been charged for the offence of committing sexual assault on minor girl punishable under Section 8 of the POCSO Act, the High Court should not show any benevolence in favour of the petitioner No. 1 and should not quash the proceeding against the petitioner No. 1.

13. The learned Additional Public Prosecutor has also submitted that the victim girl in her statement made before Trial Court as PW- 1 has categorially

implicated the petitioner no. 1 by stating that the petitioner no. 1 had hugged her from back side by crossing his arms over her chest and touched her breast in an inebriated condition and the said behaviour was not liked by her when the petitioner no. 1 did so. He also submits that as the victim girl is a minor, the question of her consent in such case is of no relevance and immaterial. The learned Additional Public Prosecutor has also submitted that only 2 (two) witnesses have been examined in the Trial pending against the petitioner no. 1 and 6 (six) more witnesses are yet to be examined and out of those witnesses there are some witnesses to whom the victim reported the incident immediately after occurrence of the incident and therefore, their testimony would be relevant in deciding the charges framed against the petitioner No. 1. The learned Additional Public Prosecutor also submits that under above circumstances, the settlement arrived at between the parties is of no relevance and same should not be taken into consideration by this Court, while considering the instant criminal petition and he prays for dismissing the criminal petition jointly filed by the petitioners.

14. I have considered the submissions made by the learned counsels for both the sides and have perused the materials available on record, including the scanned copy of the case record of POCSO Case No. 03/2024 (Z).

15. In the instant case, the petitioners, who are the accused, the complainant and the victim, respectively, have jointly filed the present petition under Section 482 of the Code of Criminal Proceeding for quashing of the criminal proceeding pending against the petitioner No. 1.

16. It has been settled by the Apex Court in the case of ***Laxmi Narayan*** (Supra) that when the parties have reached the settlement and, on that basis, petition for quashing the criminal proceeding is filed, the guiding factor in such cases would be to secure (i). ends of justice and (ii). prevent the abuse of the process of Court.

17. In the instant case, the parties have approached this Court for quashing of the criminal proceeding pending against the petitioner no. 1 at an early stage of the trial, when only 2 (two) of the 8 (eight) prosecution witnesses listed in the Charge-sheet have been examined.

18. Power conferred under Section 482 of the Cr.P.C., 1973, may be exercised to quash a criminal proceeding in respect of non-compoundable offences under Section 320 of the Code, if such a dispute is a family dispute and the parties have resolved the entire dispute amongst themselves. In the instant case, the dispute though may not be regarded as a family dispute, however, the facts remains that the petitioners are related to each other and they have settled the dispute between them. Moreover, the charges framed against the petitioner no. 1 is under Section 8 of the POCSO Act for allegedly committing the offence of sexual assault.

19. If we look at the definition of sexual assault as provided under Section 7 of the POCSO Act, 2012, it provides as follows:

“Whosoever with sexual intent touches Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other

person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault."

20. On cursory perusal of the aforesaid provision, it would appear that mere touching of the breast of a child in itself would not constitute an offence unless it has been done with sexual intent by the accused. However, in the instant case, if we peruse the testimony of the victim recorded during the trial as PW-1, she has categorically stated in her cross-examination as follows:

"...It is true that he did not hug me with bad intention and touched my breast mistakenly."

21. If we consider the testimony of the PW-2, i.e. the complainant of the case as well as the petitioner No. 2 in the instant case, he also deposed before the Trial Court as follows:

"...The victim told me that the accused came to the residence of Smti Godak mami and expressed that he did not have any bad intention but hugged her casually and sought pardon. She had pardoned him after informing me over the telephone."

22. If the above evidence is considered along with the fact that the matter between the parties have been settled by virtue of a Deed of Agreement dated 18.06.2024, wherein, it was affirmed that the F.I.R. was lodged against the petitioner no. 1 due to mistake of fact, misunderstanding and communication gap and it was learned that the petitioner no. 1 did not inappropriately touch the victim girl on the date of the alleged incident, it appears that the offence under Section 8 of the POCSO Act, 2012 as well as Section 354 A of the IPC could not be made out in the instant case.

23. Though it is true that the power of the High Court for quashing a criminal proceeding in an offence involving special Act wherein, offence is of mental depravity or offence alleged is of serious nature, like murder, rape and dacoity, should not be exercised to quash the criminal proceeding, however, mere fact of stating an offence to be under special Act like POCSO Act, 2012 would also not debar the High Court from examining the records of a particular case to find out as to whether there are sufficient materials on record, which if proved, would lead to proving of charges for such offences and on such examination, if the High Court comes to a finding that chances of conviction are remote and bleak in a particular case, it would not be wrong to quash a criminal proceeding in such cases on the basis of settlement arrived at between the parties.

24. In the instant case also, the petitioner No. 1 has been detained behind the bars since the date of his arrest and he is facing the trial remaining in custody though the evidence of the victim as well as complainant does not suggest that the proceeding against the petitioner No. 1 would culminate in conviction.

25. In the instant case, the offence alleged against the petitioner No. 1 involves hugging of the victim and touching her breast inappropriately, however, when the victim herself has deposed before the Trial Court that the petitioner No. 1 did not hug her with bad intention and that he touched her breast mistakenly, this Court is of the considered opinion that the present case is a fit case where on the basis of settlement arrived at between the parties, the criminal proceeding pending against the petitioner No. 1 should be quashed.

26. This Court is of the considered opinion that it would be a futile exercise to

proceed with the trial as the possibility of conviction in the instant case is very bleak.

27. For the reasons stated above and for the ends of justice and to prevent the abuse of the process of Court, this Court is inclined to quash the pending criminal proceeding against the petitioner No. 1 in the instant case.

28. Accordingly, the proceeding of the POCSO Case No. 03/2024 (Z) under Section 354 A of the IPC and Section 8 of the POCSO Act, 2012, which arose out of Raga P.S. Case No. 06/2024 and presently pending before the Court of the learned Special Judge, Special Court POCSO-cum- Sessions Court, Ziro, is hereby quashed.

29. The Criminal Petition is accordingly disposed of.

30. Let the petitioner No. 1, namely, *Shri Docha Tagom*, be set at liberty forthwith, if he is not required to be detained with any other cases.

JUDGE

Comparing Assistant