

GAHC040011962023

2024:GAU-AP:1039



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

Case No. : Crl.Petn./154/2023

Tania Moryom and Anr.
Daughter of Shri Tanya Tari,
Present R/o Yupia, PO/PS Doimukh, District Papum Pare, (AP)

2: Kenge Rigam
Age:
Occupation :
S/o Late Sarje Rigam
R/o Type I Colony. Seppa
District East Kameng
Arunachal Pradesh

VERSUS

THE STATE OF AP
Represented through the Public Prosecutor.

Advocate for the Petitioner : Teto Taba, C Ering, B Taba

Advocate for the Respondent : P P of AP,

BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE

JUDGMENT & ORDER (Oral)

Date : 27-11-2024

Heard Mr. T. Taba, learned counsel for the petitioners. Also heard Ms. L. Hage, learned Additional Public Prosecutor for the State.

2. This is an application under Section 482 of the Code of Criminal Procedure, 1973 (now repealed), jointly filed by the petitioners praying for quashing of the criminal proceedings in connection with POCSO Case No.16/2021, under Sections 376/506 IPC, read with Section 6 of POCSO Act, pending before the learned Special Judge (POCSO) Yupia on the basis of settlement.

3. The case set up by the prosecution is that on 03.06.2021, a written FIR was received from Ms. X (name withheld), the petitioner No. 1 herein, to the effect that in the year 2020, she got friendly with one *Shri Kange Rigam*, the petitioner No. 2 herein, through Facebook and on his request, she came to Naharlagun from Yazali on 16.02.2020 for attending NBCC Silver Jubilee Programme. On her arrival from Yazali, the accused/the petitioner No. 2 took her to Nirjuli in a hotel under the pretext of lunch and raped her repeatedly. It is alleged that the accused/the petitioner No. 2 has captured her nude photographs and started blackmailing that same shall be made viral in the social media. The accused/the petitioner No. 2 has also snatched her original Class-X Certificate and Aadhar card.

4. On receipt of the above written FIR, a case was registered being Itanagar Women Police Station Case No. 67/2021, under Sections 376/506 IPC, read with Section 4 of POCSO Act.

5. In the course of investigation, the statement of the victim/petitioner No. 1, was recorded under Section 161 Cr.P.C. The age of the victim during the commission of crime is stated to be 16 years 11 months 13 days. The victim was forwarded for medical examination; however, she refused to undergo medical examination. The accused/the petitioner No. 2 was also interrogated and his statement was recorded by the Police, which shows that the accused has accepted before the Police that he was in relationship with the victim and

had sexual intercourse with her many times at different hotels including her rented house located at Yazali.

6. On the completion of the investigation, the Police has filed Charge-sheet against the petitioner No. 2, under Section 376/506 IPC, read with Section 6 of the POCSO Act, which is pending trial before the learned Special Judge (POCSO) at Yupia.

7. Mr. T. Taba, learned counsel for the petitioners submits that although the allegation is serious in nature, the petitioners being relatives and having a continued social and familial relationship with each other, have amicably settled their differences and misunderstandings as the FIR has been lodged clearly on misunderstanding. That apart, no ingredients of offences under Section 376 IPC or Section 6 of POCSO Act have been established. The statement recorded before the Court, clearly reveals that no offence is disclosed against the petitioner No. 2. Therefore, continuance of the present criminal proceeding would be an abuse of the process of law as no conviction could be obtained in such a case. Moreso, the FIR was lodged out of sheer misunderstanding between the petitioners. He further submits that the petitioners have settled the case between them and are having a cordial relationship and during this period of time, both the parties have moved ahead with their respective lives and presently, they are happily settled and, in such circumstances, he prays that the present proceedings being POCSO Case No.16/2021, under Sections 376/506 IPC read with Section 6 of POCSO Act, may be quashed.

8. On the other hand, Ms. L. Hage, learned Additional Public Prosecutor, submits that the offences alleged is of heinous and serious in nature, therefore, the proceedings cannot be quashed as it would be against the laid down principles of law. Therefore, she submits that the present petition may be

dismissed.

9. Considered the submissions of the learned counsels for the parties and also perused the materials available on record, including the scanned copy of the Trial Court Record.

10. On consideration of the materials, *prima facie*, it appears that the petitioner No. 2 has taken the petitioner No. 1 to different places including hotels, where he had sexual intercourse with the petitioner No. 1. Records also reveal that the petitioner No. 1 has categorically stated that she was invited by the petitioner No. 2 in the NBCC Silver Jubilee Celebration Programme at a village near Nirjuli. The petitioner No. 1 was taken by the petitioner No. 2 to a hotel at Nirjuli under the pretext of lunch and he had indulged in forceful sexual activities with her. It is a categorical statement under Section 164 of the Cr.P.C. before the Chief Judicial Magistrate by the petitioner No. 1 that the petitioner No. 2 had committed sexual intercourse with her despite her resistance.

11. Having considered the materials on record, this Court unhesitatingly is of the view that a case of serious offences is disclosed.

12. The Hon'ble Supreme court in the case of ***The State of Madhya Pradesh vs. Laxmi Narayan and Ors.***, reported in ***(2019) 5 SCC 688***, has held that no doubt under Section 482 of the Cr.P.C, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution. It also held that such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact

on society. It further held that the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves.

13. In the present case, undoubtedly the offences alleged is heinous and serious in nature, which is an allegation of rape under Section 376 IPC read with Section 6 of the POCSO Act.

14. Having considered the seriousness of offences alleged in the present case, I am of the view that present case is not a fit case to invoke the inherent power of this Court under Section 482 of the Cr.P.C. as the Hon'ble Supreme Court has clearly laid down that such a power is not to be exercised in a criminal proceeding which involves heinous and serious offence of mental depravity or offences like rape etc.

15. Accordingly, the criminal proceeding of POCSO Case No.16/2021, under Sections 376/506 IPC, read with Section 6 of POCSO Act, pending before the learned Special Judge (POCSO) Yupia is not liable to be quashed under Section 482 of the Cr.P.C.

16. The criminal petition stands dismissed.

17. However, it is made clear that the trial should proceed in accordance with law, uninfluenced by any observation made by this Court in the present proceeding.

JUDGE

Comparing Assistant