

GAHC010009162013



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

Case No. : Crl.Pet./559/2013

MD. AKABBAR DEWAN
S/O LT. ARAN DEWAN VILL- PAKAI BETHARI, P.S. BARPETA, DIST.
BARPETA, ASSAM.

VERSUS

THE STATE OF ASSAM and 2 ORS
ASSAM

2:PARASH ALI

3:EBADUL HOQUE
BOTH ARE SONS OF MD AKABBAR
VILL- PAKA BETBARI
P.O. BARPETA
P.S. BARPETA
DIST. BARPETA
ASSAM

Advocate for the Petitioner : MR. ABU SHARIF, MR. M ALAM,MR. SAMSUJ ZAMAN,MR.
FAKHRUL ISLAM

Advocate for the Respondent : MR N AHMED (R2, R3), MR G P CHETIA (R2, R3),

BEFORE**HON'BLE MR. JUSTICE MANASH RANJAN PATHAK****05/08/2024**

On the basis of a complaint lodged by the petitioner on 22.07.2009 before the learned Chief Judicial Magistrate, Barpeta against the accused respondent Nos. 2 & 3 that the accused persons, more particularly the respondent No. 2 on the pretext of marrying his daughter, who is a minor had made her pregnant and forced her for termination giving her medicines and the accused respondent No. 2 did not marry her and left her in that condition, C.R. Case No. 2334/2009 was registered before the Court of learned Chief Judicial Magistrate, Barpeta. In this regard, the petitioner prayed before the learned Chief Judicial Magistrate, Barpeta to send the matter to the Barpeta Police Station to register it as a police case, make necessary investigation, arrest the accused persons and to provide justice to his daughter.

2. The learned Chief Judicial Magistrate, Barpeta by its order dated 22.07.2009 referred the said complaint petition of the petitioner dated 22.07.2009 to the Officer-in-Charge of Barpeta Police Station to register it as a police case and to investigate the matter and to submit the report in final form. Accordingly, the said complaint petition was considered as a written FIR and Barpeta P.S. Case No. 914/2009 corresponding to G.R. No. 1662/2009 under Sections 376/413/420/506/326/34 IPC was registered against the respondent Nos. 2 and 3.

3. The victim girl was medically examined and on completion of the investigation of the case, police filed charge-sheet in said Barpeta P.S. Case No. 914/2009 on 19.04.2010 vide Charge-Sheet No. 172/2010 against the respondent Nos. 2 & 3 as accused persons of the case, where the respondent No. 2 was considered to be a juvenile.

4. The respondent Nos. 2 & 3 after filing of charge-sheet in said Barpeta P.S. Case No. 914/2009 surrendered before the learned Chief Judicial Magistrate, Barpeta on 11.12.2009 and prayed before the said Magistrate to consider them as juveniles in conflict with law and in that regard the accused/respondent Nos. 2 & 3 placed before the Magistrate that their dates of birth are 09.03.1992 and 30.12.1991 respectively.

5. Considering the same and on going through the materials of the case diary, the learned Chief Judicial Magistrate, Barpeta on 11.12.2009 directed both the accused persons/respondent Nos. 2 & 3 to appear before the learned Principal Magistrate, Juvenile Justice Board, Barpeta.

6. Aggrieved with the said order of the learned Chief Judicial Magistrate, Barpeta dated 11.12.2009, the petitioner preferred a Criminal Revision Petition being Criminal Revision Petition No. 02/2010 before the learned Additional Sessions Judge (FTC), Barpeta.

7. The learned Additional Sessions Judge (FTC), Barpeta by judgment dated 29.06.2011 after considering all the materials allowed the said revision petition of the petitioner setting aside the said order of the learned Chief Judicial Magistrate, Barpeta dated 11.12.2009 as the accused persons did not place their birth certificates before the said Magistrate while considering them as juveniles on 11.12.2009 and directed the Principal Magistrate, Juvenile Justice Board, Barpeta to hold Ossification test of both the respondent Nos. 2 & 3, i.e, the accused persons to ascertain their actual age. Thereafter, Age Estimation Report of both the accused persons/respondent Nos. 2 & 3 was prepared after their medical examination by the authorities of the Fakharuddin Ali Ahmed Medical College & Hospital, Barpeta on 10.01.2013 holding that as on 10.01.2013, date of the radiological investigation of the accused persons are found to be above 20 years. With the said medical report, the accused persons/respondent Nos. 2 & 3 approached the learned Principal Magistrate, Juvenile Justice Board, Barpeta by submitting the medical report dated 10.01.2013. The learned Principal Magistrate, JJB, Barpeta by its order dated 29.01.2013, considering the said medical report and after hearing the parties including the present petitioner/complainant of said Barpeta P.S. Case No. 914/2009 came to the finding that the accused/respondent No. 2 was a Juvenile in conflict with law on the date of the incident.

8. Aggrieved with the said observation of the learned Principal Magistrate, JJB, Barpeta dated 29.01.2013 passed in said G.R. No. 1662/2009 arising out of Barpeta P.S. Case No. 914/2009, the complainant as petitioner preferred this criminal petition on 26.07.2013.

9. The Court while issuing notice to the respondents on 08.08.2013, in the interim stayed the further proceeding of G.R. No. 1662/2009 arising out of Barpeta P.S. Case No. 914/2009 pending before the Principal Magistrate, JJB, Barpeta, which is still in force.

10. After expiry of the leading counsel for the petitioner, Mr. Abu Sharif; Mr. Mehbub Alam and Samsuj Zaman had entered appearance on behalf of the complainant/petitioner by filing Vakalatnama on 17.06.2020 and though the full names of those counsels have been reflected in the cause list today, but the petitioner remained unrepresented when the matter was taken up for consideration. Even on 24.07.2024, the petitioner remained unrepresented.

- 11.** Heard Ms. S Jahan, learned Additional Public Prosecutor, Assam for the State respondent No. 1 and Mr. N Ahmed, learned counsel for the respondent Nos. 2 & 3.
- 12.** Therefore, this criminal petition stands dismissed for non-prosecution.
- 13.** The interim order passed earlier on 08.08.2013 accordingly stands vacated.
- 14.** Registry shall forthwith inform the learned Principal Magistrate, Juvenile Justice Board, Barpeta with regard to this order.
- 15.** The respondent Nos. 2 & 3 shall appear before the learned Principal Magistrate, Juvenile Justice Board, Barpeta in said G.R. No. 1662/2009 arising out of Barpeta P.S. Case No. 914/2009 on or before 22.08.2024.
- 16.** As this order has been passed in presence of Mr. N Ahmed, learned counsel for the respondent Nos. 2 & 3, therefore, the learned Principal Magistrate, Juvenile Justice Board, Barpeta need not issue any fresh notice to the accused person/respondent Nos. 2 & 3 in that regard for their appearance before the said Board.

JUDGE

Comparing Assistant