

GAHC010073092024



2024:GAU-AS:13148

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

Case No. : Crl.Pet./401/2024

KAMRAN AHMED AND ANR
S/O LATE ABDUL HANNAN, PERMANENT RESIDENT OF VILLAGE
BURUNGA PART I (LAMBATILLA) PS KALAIN, DIST CACHAR, ASSAM

2: AZIZUN NESSA @ AJIJUN NESSA
W/O LATE ABDUL HANNAN
PERMANENT RESIDENT OF VILLAGE BURUNGA PART I (LAMBATILLA) PS
KALAIN
DIST CACHAR
ASSA

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY PP ASSAM

2: ABDUL HUSSAIN
S/O ATE NASIR UDDIN
RESIDENT OF VILLAGE BURUNGA PART I (LAMBATILLA) PS KALAIN
DIST CACHAR
ASSAM 78881

Advocate for the Petitioner : MR. A M S MAZUMDER,

Advocate for the Respondent : PP, ASSAM, MS. S DEVI (r-2), MRS. R RONGMEI (r-2), MS. K L R
YANTHAN (r-2)

BEFORE**HON'BLE MR. JUSTICE MANASH RANJAN PATHAK****03/09/2024**

Heard Mr. Allama Mohammed Samin Mazumder, learned counsel for the petitioners and Mr. R J Baruah, learned Additional Public Prosecutor, Assam for the State, opposite party No.1. Also heard Mrs. Rina Rongmei, learned counsel for the opposite party No.2/informant.

2) Petitioners herein, son and mother, are FIR named accused persons in Kalain Police Station Case No.310/2022 under Sections 448/376/294/34 IPC corresponding to G. R. No. 3401/2022 as well as charge sheeted accused persons in Charge Sheet No. 134/2023 submitted on 03.06.2023 in said Kalain P.S. Case No.310/2022 under Sections 448/376 IPC, where the learned Judicial Magistrate First Class (JMFC), Cachar, Silchar on 02.02.2024 in Police Report Case (PRC) No. 106/2024 took cognizance of offence under Sections 448/376 IPC against both the petitioners and issued summons to them for their appearance in the matter.

3) Aggrieved with that the petitioners have filed this criminal petition praying, amongst others, to set aside and quash (i) the criminal proceeding of said PRC No.106/2024 arising out of Kalain P.S. Case No.310/2022 (corresponding to G.R. No. 3401/2022) and (ii) the Charge Sheet No. 134/2023 dated 03.06.2023 submitted in said Kalain P.S. Case No.310/2022 under Sections 448/376 IPC, pending before the Court of learned JMFC, Cachar at Silchar.

4) The Court on 08.04.2024 issued notice in the case and called for the records of PRC No. 106/2024 from the Court of learned JMFC, Cachar, Silchar along with the records of said Kalain P.S. Case No.310/2022.

5) Perused the records of the case that were called for. Brief facts of the case is that on 22.08.2022 the opposite party No.2 lodged a written Ejahar before the Officer-in-Charge of the Kalain Police Station stating that about three years back his sister got married to a person from Kurkuri Part III. It was alleged that after few days of her marriage the petitioner No.1 initiated an illegal relationship with her, induced her and managed to obtain divorce (Talaq) from her matrimonial home. Being induced, without knowing the act of the petitioner, after obtaining divorce (Talaq) on the ill advice of the petitioner, she stayed about one and half years in her paternal home along with the informant. During this period the petitioner No.1 had physical

relation with the said sister of the informant and because of that she became pregnant. When he came to know about the pregnancy of her sister, on being enquired, from her he came to know about all these and then he contacted the accused persons, i.e. the petitioners. Then the petitioner No.2 misbehaved with the informant using foul language and the petitioner No.1 rejected the claim of the informant and his sister. In the meanwhile, on last 17.08.2022 around 06:30 pm at Bikrampur (Sonapur) Public Health Center his sister gave birth to a baby boy. As the health of his sister deteriorated, she was referred to Silchar Medical College Hospital for her better treatment and she has been admitted in the ICU at SMCH, Silchar. By the said Ejahar, the informant requested the authority concerned of Kalain Police Station to enquire into the matter, to do the needful and punish the guilt.

6) Said Ejahar of the opposite party No. 2 was accordingly registered on 22.08.2022 as Kalain Police Station Case No.310/2022 under Sections 448/376/294/34 IPC (corresponding to G. R. No. 3401/2022).

7) On competition of the investigation of the case, the Investigating Officer vide No.134/2023 dated 03.06.2023 submitted the Charge Sheet in said Kalain Police Station Case No.310/2022 against the petitioner No.1 under Sections 448/376 IPC. However, as during the investigation sufficient evidences were not found against the petitioner No.2 pertaining to her involvement in the case and due lack of evidence and witnesses to corroborate the allegation made in the FIR against her, therefore, the concerned Investigating Officer in the said charge sheet dated 03.06.2023 submitted to relieve the petitioner No.2 from the said Kalain Police Station Case No.310/2022 and alleged accusation made in it.

8) The learned Chief Judicial Magistrate (CJM), Cachar, Silchar on 18.02.2024 received the said Charge Sheet filed in Kalain Police Station Case No.310/2022 along with the relevant case diary. By its order dated 18.02.2024, the learned CJM, Cachar, Silchar transferred the said case to the Court of learned Judicial Magistrate First Class (JMFC), Cachar Silchar. On filing of the Charge Sheet in said Kalain Police Station Case No.310/2022, it was registered as Police Report Case (PRC) No. 106/2024.

9) On 02.02.2024, the records of said PRC No. 106/2024 along with the Charge Sheet and Case Diary of Kalain Police Station Case No.310/2022 were placed before the Court of learned JMFC, Cachar, Silchar.

10) Learned JMFC, Cachar, Silchar, however, by its order dated 02.02.2024 took cognizance of offence under Sections 448/376 IPC not only against the accused person petitioner No. 1, but also the petitioner No.2 and issued summons to them for their appearance in the case Kalain P.S. Case No.310/2022.

11) From the perusal of the records of the case, it is seen that the petitioner No. 2 was granted Police Bail in said Kalain P.S. Case No.310/2022 during the investigation of the case after recording her statement by the investigating officer under Section 161 CrPC. The petitioner No. 1 though evaded arrest, later he obtained pre-arrest Bail in said Kalain P.S. Case No.310/2022 from a co-ordinate Bench of this Court in AB No.162/2023 and thereafter, he appeared before the Investigating Officer of the case.

12) Considered the decisions of the Hon'ble Supreme Court in the cases of (i) *Naim Ahmed -Vs- State (NCT of Delhi)*, Criminal Appeal No. 257/2023, decided on 30.01.2023; (ii) *A.M. Mohan -Vs- The State, represented by the SHO and Another*, decided on 20.03.2024 (decided by a Full Bench) and (iii) *ShaileshbhaiRanchhodbhai Patel and Another -Vs- State of Gujrat*, Criminal Appeal No. 1884/2013 decided on 28.08.2024, all placed by Mr. Mazumder, learned counsel on behalf of the petitioners.

13) During her statement under Section 164 CrPC recorded by the learned JMFC, Cachar, Silchar on 01.03.2023, the victim girl implicated the petitioner No. 1 of committing the alleged crime and also about committing sexual intercourse with her on the pretext of marrying her, while she was staying in her paternal home after divorce with her husband, due to which she became pregnant and gave birth to the baby boy.

14) Case records indicate that petitioner No. 1 and the victim girl was known to each other from long, from her school days. In the meanwhile, the petitioner No. 1 married another girl, who left him after about one and half years of their marriage. After the marriage of the victim girl with a person from KurKuri Part-III, the petitioner No. 1 used to visit her matrimonial home frequently for which some family dispute arose between the victim girl and her husband and the members of her in-laws. As such, the victim girl and her husband mutually agreed to divorce and accordingly, divorce took place between them. Thereafter the victim girl returned to her paternal house, stayed there and during the period of her stay in her paternal house, the petitioner No. 1 regularly visited her. It is also seen that even on two occasions petitioner No.1 accompanied the

victim girl to doctor during her pregnancy.

15) Considering the materials in the case record, the charge sheet filed in said Kalain P.S. Case No.310/2022 and the statement of the victim girl under Section 164 CrPC, this Court is of the opinion that it is not a fit case to exercise the inherent power of the Court under Section 482 CrPC to consider the prayer of the petitioner No. 1 to set aside and quash the proceeding of the PRC No.106/2024 arising out of Kalain P.S. Case No.310/2022 as well as the Charge Sheet No. 134/2023 dated 03.06.2023 submitted in said Kalain P.S. Case No.310/2022 under Sections 448/376 IPC against him, where the proceeding is presently pending before the Court of learned Judicial Magistrate First Class, Cachar at Silchar.

16) Accordingly, prayer of the petitioner No. 1, namely, Kamran Ahmed, Son of Late Abdul Hannan, resident of Village-Burunga Part-I (Lambatilla), Police Station-Kalain, District-Cachar, Assam made in this petition stands rejected.

17) However, considering the entire aspects of the matter, the relevant materials in the case record, the Charge Sheet No. 134/2023 dated 03.06.2023 submitted in said Kalain Police Station Case No.310/2022, this Court is of the opinion that if the proceeding of said PRC No. 106/2024 arising out of Kalain P.S. Case No.310/2022 pending before the Court of learned JMFC, Cachar at Silchar is allowed to continue against the petitioner No. 2, it would be an abuse of the process of the Court.

18) For the reasons above, so as to prevent the abuse of the process of the Court, the proceeding of said Police Report Case (PRC) No. 106/2024 pending before the Court of learned Judicial Magistrate First Class, Cachar at Silchar arising out of Kalain Police Station Case No. 310/2022, corresponding to G. R. No. 3401/2022 under Sections 448/376 IPC along with the Charge Sheet No. 134/2023 dated 03.06.2023 submitted in said Kalain Police Station Case No.310/2022 as well as the FIR dated 22.08.2022 relating to said Kalain Police Station Case No. 310/2022 with regard to the petitioner No.2, namely, Azizun Nessa @ Ajijun Nessa, Wife of Late Abdul Hannan, resident of Village-Burunga Part-I (Lambatilla), Police Station-Kalain, District-Cachar, Assam are set aside and quashed in exercise of the inherent power of this Court to secure the ends of justice.

19) Registry shall forward a copy of this order to the Court of learned Judicial Magistrate First Class, Cachar, Silchar for its information and necessary action.

20) Petitioner No.2 shall also submit certified copies of this order before the learned Judicial Magistrate First Class, Cachar, Silchar in said PRC No. 106/2024 and the Officer-in-Charge of Kalain Police Station, Cachar, obtaining necessary acknowledgement from those authorities in that regard.

21) Accordingly, this criminal petition is partly allowed to the extent above.

JUDGE

Comparing Assistant