

GAHC010076662024



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

Case No. : WP(C)/2112/2024

RAHIM UDDIN
S/O- LATE NURUL HOQUE,
R/O- VILLAGE- SABAJPUR,
P.S.- MURAJHAR,
DISTRICT- HOJAI, ASSAM,
PIN- 782439.

VERSUS

THE STTAE OF ASSAM AND 5 ORS
REPRESENTED BY THE ITS COMMISSIONER AND SECRETARY,
HOME DEPARTMENT,
GOVERNMENT OF ASSAM,
DISPUR, GUWAHATI-6.

2:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI-07.

3:THE SUPERINTENDENT OF POLICE
HOJAI
DIST.- HOJAI (ASSAM).

4:THE OFFICER-IN-CHARGE OF HOJAI POLICE STATION
DIST.- HOJAI (ASSAM).

5:THE MANAGING TRUSTEE OF HAJI ABDUL MAJID MEMORIAL
HOSPITAL AND RESEARCH CENTRE
DIST.- HOJAI (ASSAM).

6:DOCTOR SACHIN YADAV
DOCTOR HAMM HOSPITAL
HOJAI

Advocate for the Petitioner : M U BARBHUYAN

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 24.04.2024

Heard Mr. M.U. Barbhuiyan, learned counsel for the petitioner. Also heard Mr. S. Baruah, learned Govt. Advocate appearing for respondent nos.1 to 4.

2. The case of the petitioner is that he had admitted his 17 years old minor son in the emergency cabin at HAMM Hospital, Hojai, who was suffering from stomach pain and appendicitis. It is projected that the attending doctor, who is arrayed as respondent no.6 had asked him to speak in Hindi, which he could not and therefore, he was assaulted by the doctor.

3. In respect of the said incident, an FIR was lodged by the petitioner, which was registered as Hojai P.S. Case No. 76/2024. It is alleged that the case was registered under bailable section and resultantly, the doctor (respondent no.6) got bail.

4. The issue was taken up by the Child Welfare Committee of Hojai district, who had recorded the statement of the victim and declared the child as "Child in Need of Care and Protection" (CNCP for short) and the Officer-in-

Charge of Hojai P.S. was directed to investigate the matter.

5. Alleging that appropriate investigation was not carried out, the petitioner has submitted a representation to the Superintendent of Police, Hojai on 11.03.2024, which has not been acted upon. Hence, this writ petition has been filed under Article 226 of the Constitution of India for a direction upon the Superintendent of Police, Hojai and/or the State CID to initiate proper and fair investigation.

6. In such matters, the Supreme Court of India, in the case of *Sakiri Vasu Vs. State of U.P. & Ors., (2008) 2 SCC 409* has *inter alia* held that an aggrieved person can only claim that the offence he alleges be investigated properly, but he has no right to claim that the same be investigated by any particular agency of his choice. Even if an FIR has been registered and police had made the investigation, which the aggrieved person feels is not proper, such a person can approach the Superintendent of Police under Section 154(3) Cr.P.C., which the petitioner has done and even if that does not yield any satisfactory action, the aggrieved person can approach the Magistrate under Section 156(3) Cr.P.C. It has also been provided therein that if the Magistrate is satisfied, he can order a proper investigation and take other suitable steps and pass such orders as the learned Magistrate thinks necessary for ensuring a proper investigation.

7. In light of the said decision, without expressing any opinion, the Court is inclined to close this writ petition by granting liberty to the petitioner to approach the jurisdictional Magistrate under Section 156(3) Cr.P.C. as the Magistrate is empowered to direct the Officer-in-Charge of the police station to

held a proper investigation and take such necessary steps as may be necessary for ensuring proper investigation including monitoring the same.

8. With liberty as granted above, this writ petition stands closed.

JUDGE

Comparing Assistant