

GAHC010082622023



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)
PRINCIPAL SEAT AT GUWAHATI

Crl. Pet.366/2023

DIPAN BARMAN
S/O SRI BIKASH BARMAN
R/O MAIN ROAD,
ULUBARI, WARD NO. 3,
P.O. AND P.S. BASUGAON
DIST. CHIRANG, ASSAM

..... **Petitioner**

VERSUS

1. THE STATE OF ASSAM
REP. BY THE PP, ASSAM

2: MRS. RUMEE KALITA
W/O PANKAJ KHEMKA
FLAT NO. C 105
BABYLON APARTMENTS
LOKHRA ROAD
JYOTIKUCHI
GUWAHATI-34
D/O LATE KAMALA KANTA KALITA (RETD. D.S.P.)
OPP. GLC COLLEGE
P.O. AND P.S. BARPETA ROAD
DIST.- BARPETA
ASSAM
PIN-78131

..... **Respondents**

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Advocate for the Petitioner	:	Mr. B. Gogoi, Advocate
Advocate for the Respondents	:	Mr. MD Khan, Advocate
		Mr. BB Gogoi, Addl.PP
Date of Hearing	:	13.12.2023
Date of Judgment	:	23.02.2024

JUDGMENT & ORDER (CAV)

1. Heard Mr. B. Gogoi, learned counsel for the petitioner. Also heard Mr. M.D. Khan, learned counsel for the informant respondent No. 2 and Mr. B.B. Gogoi, learned Addl. PP, Assam for the State.

2. The petitioner Sri Dipen Barman has filed this application u/s 482 of the Code of Criminal Procedure, 1973 (Cr.PC for short) seeking quashing of the order dated 06.02.2023 passed in PRC Case No. 82/2023, taking cognizance of offence u/s 448/509/406 of the Indian Penal Code (IPC for short), against the petitioner.

3. The FIR unfolds that the informant was posted as Superintendent of State Taxes, Office of the Assistant Commissioner of Taxes, Unit-B, Kar Bhawan, Ganeshguri, Guwahati-6 and she was residing alone in Flat No. C-105 Babylon Apartments at Jyotikuchi, Lokhra Road, Guwahati-34. The informant (also referred to as respondent No. 2), was closely acquainted with the petitioner since the time she was posted at Bongaigaon during 2013-16 and the petitioner used to visit her office frequently. Thereafter the petitioner used to call her and used to visit her ancestral home at Barpeta and a good

friendship developed between the petitioner and the respondent No. 2's husband. When the respondent No. 2 was transferred to Guwahati, the petitioner used to visit her flat at Guwahati. On 04.12.2020 at around 4 PM, the petitioner found the respondent No. 2 alone at home and he forcefully committed rape on the respondent No. 2/victim/informant. Although the informant tried to resist, the petitioner overpowered her and committed rape on her and also caused physical injuries on her person. Due to the trauma, the informant stopped going out for several days. The petitioner also stopped visiting the informant for some time but on the pretext of returning her money which he had borrowed, the petitioner again visited the informant's flat at Guwahati and again committed rape on her. In this way the petitioner committed rape on her on several occasions. The petitioner used to visit the informant's house and take the informant as hostage and commit rape on her repeatedly. He also threatened her that if she would divulge about the instances of sexual assault, he would get her dismissed from service through his connections with the higher authority and he would send her husband to jail by foisting a money laundering case. As the informant was under such threats, she did not disclose about the incidents to her husband or to any other person. The petitioner committed rape on the victim on several occasions on 15.07.2021, 25.08.2021, 20.09.2021, 21.09.2021, 19.11.2021, 13.02.2022 and 24.03.2022

and on other dates. As the informant was harassed in such a manner, she consumed 250 Zapiz 5 tablets and she was hospitalised at Down Town Hospital in Guwahati for 3 days. After the incident and after medical counselling, the informant disclosed about the incident to her husband and other family members.

4. It is alleged that the petitioner has been continuously demanding and extorting money from the informant to construct his house at Basugaon and he coerced the informant to pay him Rs. 34 lacs. The informant paid the money part by part by selling her ancestral land at Guwahati and also from her own income and by borrowing money from her family and her friends. Her husband, family members and friends encouraged her to lodge the FIR. A friend Smt. Rupanjali Sarma, the informant's driver Mohidul Mandal, the Security Guard of Babylon Apartments and her husband are witnesses to the dilemma undergone by the informant.

5. Per contra, it is submitted that the petitioner who is an ACS Officer joined Assam Civil Services as Assistant Commissioner in the year 2015 and in the year 2017 he joined as a Circle Officer at Kokrajhar Revenue Circle and on September 2020, he joined as a Circle Officer at Bongaigaon. On 01.07.2021, the petitioner was transferred and he joined as Sub Divisional Officer and on 20.01.2022 he joined as SDO (Civil) Gohpur and he is at present serving at Gohpur. The petitioner got married to Smt. Jharna Barman on 30.11.2011 and they are blessed with two sons. His elder son is about 11 years old and the younger one 6 years old. He met the informant at Bongaigaon, during his official visit to the Bongaigaon Tax Office and they became good friends and were actively in contact through social media. In the year 2018 the petitioner's wife started a manufacturing unit named as "Bodoland Pariwar" a partnership firm of producing packaged drinking water at Basugaon and the informant's husband Sri Pankaj Khemka was given dealership of packaged drinking water in the name of 'Jharna Jal'. Dealership of Pankaj Khemka is registered in the name of 'Geeta Marketing' located at Barpeta Road. During business transactions between the petitioner's wife and the informant's husband, an amount of Rs. 5 lacs (approximately) was due to the petitioner's wife. As the informant's husband failed to repay the amount, a dispute arose between the petitioner's wife and the informant's husband and to avoid repaying the debt, a false FIR (Annexure-1) was lodged.

6. It is averred that it is discernable from the FIR that a false and fabricated case has been slammed against the petitioner. The informant has no documentary evidence relating to lending Rs. 34 lacs to the petitioner by selling her ancestral property and by borrowing from her family and friends. The petitioner has strongly denied such allegation of borrowing Rs. 34 lacs. Prior to the lodgement of the FIR on 20.07.2022, the informant had submitted an application on 01.06.2022 before the Deputy

Commissioner, Biswanath Chariali via email, alleging that the petitioner had procured Rs. 22 lacs from the informant and had failed to return the same. The amount mentioned in the FIR and the amount mentioned before the Deputy Commissioner does not tally and thus, clearly reveals the blatant lies of the informant. In response to the application submitted by the informant, the petitioner's wife Smt. Jharna Barman submitted an application on 10.06.2022 before the Deputy Commissioner, Biswanath Chariali countering all the allegations against her husband-petitioner herein. It was clarified by the petitioner's wife Smt. Jharna Barman that the grievance of the informant was relating to financial transaction between her and the informant's husband. Her husband has been unnecessarily dragged into the financial dispute between them. After registration of the FIR, the petitioner was granted anticipatory bail vide AB No. 2095/2022 on 12.08.2022. It is submitted that charge-sheet has been laid against the present petitioner being C.S. No. 1/2023 dated 03.01.2023 u/s 448/509 IPC. It is averred that no offence u/s 509 of the IPC has been made out against the present petitioner. As both the petitioner and the informant were closely acquainted, Section 448 is not applicable. The order dated 06.02.2023 was erroneously passed by the Judicial Magistrate, 1st Class, Kamrup (M) that there are sufficient incriminating materials against the petitioner to proceed u/s 448/509/406 IPC. The order dated 06.02.2023 is thus liable to be set aside. There is no allegation in the FIR that any word, gesture or any offence intending to insult the modesty of a woman is alleged to have been committed.

7. It is further contended that in the status report of the Investigating Officer dated 29.11.2022, it was clearly stated that the CCTV footage of the place of occurrence was sought from the President/Secretary on some given dates, but the said Society could not provide the CCTV footage as they were not equipped to keep the record for such a long duration. The CDR records cannot be said to be evidence relating to the offence alleged against the present petitioner. The witnesses namely, Rupanjali Sarma, the informant's driver Mohidul Mandal, the Security Guard of Babylon Apartments cannot be considered to be witnesses as the FIR clearly reveals that the informant was alone at home at the time of incident. It is submitted that there is every possibility that the petitioner would be acquitted and probability of conviction appears to be remote and bleak. Further proceeding will indeed be an abuse of the process of the Court. No prima facie offence u/s 448/509/406 of the IPC has been made out against the present petitioner. There are no documents relating to mis-appropriation of funds. The petitioner is an ACS Officer and this proceeding will act as a hurdle to his career prospects. This case has been lodged with *mala fide* and the decision of Hon'ble the Supreme Court in ***State of Haryana and Others v. Bhajan Lal and Others***, reported in ***1992 Supp(1) SCC 335*** is relevant to this case. The petitioner has prayed to set aside and quash the FIR being All Women P.S. Case No. 53/2022 and the

entire PRC Case No. 82/2023.

8. Per contra, the informant has filed an affidavit-in-reply contending *inter alia* that the instant petition is liable to be dismissed summarily as the petitioner has not approached this Court with clean hands as he has suppressed facts. It is averred that this case has been reopened for further investigation vide order dated 21.02.2023 passed by the learned SDJM(S)1, Kamrup (M). The prayer of the informant seeking directions regarding confiscation and freezing of digital evidences was allowed and this case was at the stage of investigation even after charge-sheet was laid against the petitioner. It is admitted by the informant that she was acquainted to the petitioner. It is submitted that the informant's husband never owed any money to the petitioner's wife. Only a single copy of notice was submitted by the petitioner without payment details in the invoice. The statement of accounts will clarify the payment details. The informant's husband never owed Rs. 5 lacs or even a dime to the petitioner's wife. It is contended that Annexure-5 of the petition relates to some purported WhatsApp message to portray that the informant was involved in a relationship, outside marriage with the petitioner.

9. I have perused the annexed documents along with the petition.

10. I have also considered the submissions at the Bar with circumspection.

11. The submission of the learned counsel for the petitioner that the informant/respondent No. 2 was in a relationship outside her marriage, cannot be considered at this stage.

12. The submission of the learned counsel for the petitioner that a false case of rape has been initiated against the petitioner is not required to be considered at all as cognizance was not taken under Section 376 IPC against the petitioner, despite the allegation of continuous sexual assault by the petitioner on the victim/respondent No. 2, herein. Charge sheet was laid under Sections 448/509 IPC. The respondent's prayer, seeking directions regarding confiscation and freezing of digital evidence was allowed even though charge sheet has been laid against the petitioner. Consequentially, investigation is deemed to be under progress.

13. The submission of the petitioner that any prudent person will never believe that the petitioner committed rape on the informant continuously by exercising threats and without her consent, is not at all required to be considered at this stage. Annexure-5 of the petition is, thus, not relevant at this juncture. It cannot be held that as no cognizance was taken under Section 376 of the IPC, the entire proceeding is liable to be quashed by holding decisively that a false case was initiated against the petitioner. The maxim *falsus in uno, falsus in omnibus*, is not relevant to this case. All the allegations

cannot be dismissed and brushed aside at this stage. The entire proceeding cannot be truncated and quashed, at this juncture.

14. I have scrutinized the scanned copies of the LCR.

15. Initially, the complaint petition was filed under Section 376(2)(n)/406/420 IPC and vide order dated 21.09.2022, as prayed for by the informant, a direction was issued to the IO to investigate into the matter and submit status report and the All Women PS Case No. 53/2022 was registered and investigation commenced and finally culminated into charge sheet under Sections 448/509 of the IPC. Vide order dated 06.02.2023, cognizance was taken against the petitioner under Sections 448/509/406 IPC. The learned trial Court found a *prima facie* case under Sections 448/509/406 IPC. The order dated 21.02.2023, in connection with the All Women PS Case No. 53/2022 and PRC Case No. 83/2022, indeed reveals that the respondent No. 2 filed a petition being Petition No. 6123, stating that an application under Section 156 (3), read with Section 173 (8) of Cr.PC was filed before the Court seeking directions to the Investigating Officer to comply with the orders dated 28.12.2022 and 10.01.2023, regarding confiscation and freezing of digital evidences. The Court then directed the Circle Head/COO/CGM/Chief Compliance Officer, Assam Telecom Circle of Bharti Airtel Limited, Reliance Jio Infocomm Limited and BSNL, to freeze and store the commercial records/call data records, mobile tower location history of four phone numbers of the petitioner for the relevant dates, 15.07.2021, 21.08.2021, 20.09.2021, 21.09.2021, 19.11.2021, 20.12.2021, 13.02.2022 and 24.03.2022 and a report was called for and this case was pending at the stage of report, till 25.06.2023.

16. Vide order dated 26.04.2023, the proceeding of PRC Case No. 82/2023 has been stayed by this Court.

17. It is true that it was observed by this Court, vide order dated 26.04.2023 that it does not appear from the FIR that any property or any article was entrusted to the petitioner, in order to invoke the provisions of Section 406 IPC and no cognizance was taken under Section 376 IPC and further proceedings were stayed, but now, at this juncture, a report is being awaited, relating to freezing of digital evidence, as mentioned above. At this juncture, invoking the inherent jurisdiction under Section 482 of the Cr.PC does not appear to be justified. A report was already called for by the learned trial Court on an application under Section 156 (3), read with Section 173 (8) of the Cr.PC, for digital evidence vide order dated 21.02.2023, whereas the petitioner is before this Court to quash the order

passed by the learned trial Court, dated 06.02.2023, taking cognizance and issuing summons against the petitioner and the FIR registered as All Women PS Case No. 53/2022, under Section 376(2)(n)/406/420 IPC. The petitioner has not prayed for quashing the subsequent order dated 21.02.2023, in connection with PRC Case No. 82/2023.

18. In the wake of the foregoing discussions, it is apparent that the details of the call records have been called for by the trial Court vide the subsequent order dated 21.02.2023. Call records are of the time when the petitioner is said to have committed the offence as alleged by the informant. Section 406 has been added by the learned trial Court while taking cognizance against the petitioner. At this juncture without sufficient evidence it would not be justified to dismiss the case of the informant at the threshold. The petition u/s 482 Cr.PC is hereby dismissed at this stage. Interim order is recalled.

JUDGE

Comparing Assistant