

GAHC010091112022



2024:GAU-AS:12895

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

Case No. : Crl.Pet./428/2022

MAZID ALI @ ABDUL MAZID
S/O LATE HAZRAT ALI, VILL- NO. 4 NANGLICHAR, P.O.-MANGALDAI, P.S.-
SHYAMPUR, DIST-DARRANG (ASSAM), PIN-784125

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:ASMAT ALI
S/O BAHAJ ALI
VILL-M NO. 5 NANGLICHAR
P.O.-MANGALDAI
P.S.-SHYAMPUR
DIST-DARRANG (ASSAM)
P.S.-784125

3:ASIA KHATUN
W/O SAFIKUL ISLAM
C/O. MAZID ALI @ ABDUL MAZID
VILL- NO. 4 NANGLICHAR
P.O. MANGALDAI
P.S. SHYAMPUR
DIST- DARRANG
ASSAM
PIN- 78412

Advocate for the Petitioner : MR. S K ROY, MD K RAHMAN

Advocate for the Respondent : PP, ASSAM, MR. M HUSSAIN, MR. M HUSSAIN (r-3)

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

18.12.2024

Heard Md. K. Rahman, learned counsel for the petitioner. Also heard Ms. S. H. Borah, learned Additional Public Prosecutor for the respondent No.1 and Mr. M. Hussain, learned counsel for the respondent Nos. 2 and 3.

2. This is an application filed under Section 482 of the Code of Criminal Procedure, 1973, praying for quashing the impugned proceeding in connection with G. R. Case 1994/2018 (corresponding to PRC case No.227/2020) which is pending before the Court of learned Chief Judicial Magistrate, Darrang, Mangaldai.

3. I have given my anxious consideration to the submissions at the Bar, with circumspection.

4. Md. Rahman, learned counsel for the petitioner, has submitted that respondent No. 2 lodged the FIR against the present petitioner with an allegation of attempting rape on respondent No. 3/victim, solely due to a personal grudge and a monetary transaction, and, as per the instigation of neighbors, based on false and concocted allegations. He further submits that being the layman, the respondent Nos. 2 and 3 were not aware of the contents of the FIR. Subsequently, the matter has been compromised between the parties, and at present, the informant/respondent No.2 and the victim/respondent No.3 have no interest in proceeding with the case. Moreover, the victim, being the daughter-in-law of the present petitioner, is residing happily and peacefully, maintaining a cordial relationship. He further submits that the probability of conviction is very remote and bleak, and even if the proceedings are allowed to continue. As the matter has been settled between the parties, there is no probability that the witnesses will adduce evidence against the present petitioner. Accordingly, he

submits that it is a fit case where the inherent power under Section 482 of the Cr.P.C. can be invoked by setting aside and quashing the criminal proceedings as stated above.

5. In this context, Mr. Hussain, learned counsel for respondent Nos. 2 and 3, has submitted that the matter has already been settled between the parties. In this regard, respondent Nos. 2 and 3 had already filed affidavits stating that due to some misunderstanding and only at the instigation of other people, the FIR was lodged against the accused/petitioner, and that both the respondents were not aware of the contents of the FIR. Thus, he raised no objection if the criminal proceedings, along with the FIR and charge-sheet initiated against the present petitioner, are set aside and quashed by invoking the power under Section 482 of the Cr.P.C. He also submits that there is a remote chance of conviction even if the proceedings are continued.

6. Mr. S. H. Bora, learned Additional Public Prosecutor, has submitted that though the matter has been settled amicably between the parties, she raised an objection considering the nature of the allegation of attempt of rape brought against the petitioner.

7. After hearing the submissions made by the learned advocates of both sides, as well as considering the fact that the petitioner and respondent No. 3 are maintaining a cordial relationship, I find that there is a remote chance of conviction even if the proceedings are allowed to be continued. It is also stated that respondent No. 2 lodged the FIR only due to some misunderstanding and is not willing to further proceed with the case.

8. In this regard, a decision of ***Hon'ble Apex Court in the Case of Kapil Gupta vs. State of NCT of Delhi, reported in (2022) 0 Supreme (SC) 1108***, can be cited, wherein it has been held that "(B) Indian Penal Code, 1860 – Section 376 – Criminal Procedure Code, 1973, - Sections 320 and 482 – Rape – Quashing petition – Amicable settlement between the parties – Case and counter- case – Respondent No.2

is a young lady of 23 years – She feels that going through the trial in one case, where she is a complainant and in other case, wherein she is accused would rob prime of her youth – In both cases, though the charge-sheets have been filed, charged are yet to be framed and as such, trial has not yet commenced – Since respondent No. 2 herself is not supporting prosecution case, even if criminal trial is permitted to go ahead, it will end in nothing else than an acquittal – If request of the parties is denied, it will be amounting to only adding one more criminal case to already overburdened criminal Courts – Both criminal proceedings quashed”. And, paragraph 13 of the said judgment is read as under:-

“3. It can thus be seen that this Court has clearly held that though the Court should be slow in quashing the proceedings wherein heinous and serious offences are involved, the High Court is not foreclosed from examining as to whether there exists material for incorporation of such an offence or as to whether there is sufficient evidence which if proved would lead to proving the charge for the offence charged with. The Court has also to take into consideration as to whether the settlement between the parties is going to result into harmony between them which may improve their mutual relationship.”

9. The Hon’ble Supreme Court in the case of **State of Haryana & Ors. Vs. Bhajan Lal & Ors.**, reported in **1992 Supp (1) SCC 335**, has held as under:

“102. *In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be*

exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a magistrate within the purview of Section 155(2) of the Code.*
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

10. In the instant case, it is seen that the matter has been compromised between the parties, and at present, the accused/petitioner and respondent No. 3 are living

happily and maintaining their cordial relationship. Therefore, the possibility of conviction appears to be remote and bleak, and the FIR was lodged by respondent No. 2 only due to some misunderstandings and on the instigation of the villagers.

11. So considering submission made by the learned counsels of both sides as well as considering the view of the decision made by the Hon'ble Apex Court in the case of ***Kapil Gupta (Supra) and Laxmi Narayan (Supra)*** as well as considering the fact that both the parties are living peacefully, I am of the view that is a fit case where the provision under Section 482 Cr.P.C. can be invoked.

12. In view of the foregoing discussions, the FIR, dated 14.07.2018 along with the Charge-Sheet No.63/2018 dated 31.12.2018 submitted in connection with Shyampur P.S. Case No. 77/2018 under Section 498(A)/457/376/511/406/34 of IPC and the impugned proceeding in connection with G. R. Case 1994/2018 (corresponding to PRC case No.227/2020), which is pending before the Court of learned Chief Judicial Magistrate, Darrang, Mangaldai, is hereby set aside and quashed.

13. In terms of the above, this Criminal Petition stands allowed and disposed of.

JUDGE

Comparing Assistant