



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

PRINCIPAL SEAT AT GUWAHATI

Criminal Petition No. 512/2022

1. Md. Abdul Jalil,
S/o Late Nurul Islam,
R/o No.2 Debengaon, PS-Lumding,
District-Hojai, Assam.
2. Kutub Uddin,
S/o Late Abdul Mazid,
R/o No.2 Sarthegaon, P.S.-Limding
District-Hojai, Assam.

.....Petitioners.

-Versus-

1. The State of Assam,
Represented by the P.P. Assam.
2. Nurun Nehar,
W/o Abdul Hoque,
R/o No.2 Bhatiakhali,
P.O. Kathpara, P.S.- Rupahihut,
District-Nagaon, Assam.

.....Respondents.

**BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN**

APPEARANCE:-

For the Petitioner : Mr. S. Islam.

For the Respondent No.1 : Mr. B. Sharma, Addl. P.P.

Respondent No.2 : Mr. F. Khan,

Date of Hearing & Judgment : **05.01.2024**

JUDGMENT AND ORDER

Heard Mr. S. Islam, learned counsel for the petitioners. Also heard Mr. B. Sharma, learned Addl. P.P. for the sole respondent No. 1 and Mr. F. Khan for the respondent No.2.

2. In this Criminal Petition under Section 482 of the Code of Criminal Procedure, two petitioners, namely, Abdul Jalil and Kutubuddin have prayed for quashing the entire proceeding of Special POCSO Case No. 86/2021, under section 120B/366(A)/342/109 IPC read with section 4 of the POCSO Act arising out of Rupahihut P.S. Case No. 467/2017, under section 366 (A)/34 IPC, read with section 4 of the POCSO Act, pending before the court of learned Addl. Sessions Judge cum Special Judge (POCSO), Nagaon.

3. The background facts, leading to filing of the present Criminal Petition, are adumbrated as under:-

“On 31.08.2017, Mrs. Nurun Nehar, W/o Abdul Hoque, of No.2 Bhatiakhali, lodged one FIR with the Officer-in-Charge, Rupahihat P.S. to the effect that on 05.07.2017 accused Abul Hussain kidnapped her 13 years old daughter, namely, Smti. X, (name withheld) from the road, while she was proceeding to Kathpara Khirunnessa M.E. Madrassa, in one Indica car and kept her concealed in the house of accused Abdul Jalil and during the said period of one month, accused Abul Hussain, Abdul Jalil and accused Kutub Ali committed rape upon her. Thereafter, on 24.08.2017, she somehow managed to escape.

Upon the said FIR, the Officer-in-Charge Rupahihut P.S. registered a case, being Rupahihut P.S. case No. 467/2017, under section 366 (A)/34 IPC, read with section 4 of the POCSO Act, and carried out the investigation, which culminated in submission of charge sheet against all the accused to stand trial in the court, under sections 120B/366(A)/342/109 IPC, read with section 4 of the POCSO Act. Upon the said charge sheet, the learned court below has taken cognizance of the offences and issued process to the accused persons.”

4. While the case was pending before the court of learned Addl. Sessions Judge, Hojai, the two petitioners have approached this Court, by filing the present petition on the following grounds amongst others:-

- (i) That, on 23.08.2017, in presence of the village Head Man the matter has been settled amicably and a deed of compromise was also executed and submitted to the I/C Nakhuti Police Out Post.

- (ii) That, as per Voters' list, the victim girl was 18 years old at the time of occurrence and her mother has falsely stated in the FIR that her age was 13 years at the time of relevant occurrence.
- (iii) That, there was love affair between the accused No.1 and the victim girl and she had voluntarily eloped with accused No.1 and a Marriage Agreement was also executed on 10.08.2017, between the accused No.1 and the victim girl;
- (iv) That, the petitioner No.1 - Abdul Jalil is the maternal uncle of the accused Abul Hussain and petitioner No. 2 is the friend of petitioner No.1 and they have been falsely implicated herein this case;
- (v) That, after few days of recovery, the victim girl was married to Mojibor Rahman of No.1 Bhatiakhali;

5. Mr. Islam, the learned counsel for the petitioners, submits that the petitioners are innocent and no way are they involved with the offence alleged in the FIR. Mr. Islam also submits that the matter was initially compromised between the parties and a deed of compromise was also executed and that there was love affair between the accused Abul Hussain and the victim girl and she was 18 years old at the time of occurrence and she eloped with Abul Hussain voluntarily and one marriage agreement also executed to that effect. Mr. Islam also submits that the petitioners are innocent and they have been implicated falsely. Therefore, Mr. Islam contended to allow this petition.

6. Whereas Mr. B. Sharma, learned Addl.P.P. for the state respondent No.1 submits that the offences are serious in nature and that the victim girl has implicated both the petitioners in her statement under section 161 as

well as under sections 164 Cr.P.C. and that there is no merit in this petition and therefore Mr. Sharma contended to dismiss the petition.

7. On the other hand, Mr. F. Khan, the learned counsel for the respondent No.2 submits that though the petitioner have claimed that at the time of occurrence the victim was 18 years, yet the informant and the victim also categorically stated that the age of the victim, at the material time of occurrence was 13 years old and that while dealing with a petition under section 482 Cr.P.C. this court cannot decide the disputed question of facts. Mr. Khan further submits that there are sufficient materials against the accused persons and therefore, Mr. Khan contended to dismiss the petition.

8. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the scanned copy of the record received from the learned court below.

9. It is not in dispute that the case was registered under section 366 (A)/34 IPC, read with section 4 of the POCSO Act against three persons, including the two petitioners. And after investigation, charge sheet was submitted under sections 120B/366(A)/342/109 IPC read with section 4 of the POCSO Act, against all the three accused, including the two petitioners. And upon the said charge sheet the learned court below has taken cognizance of the offences, issued process to the petitioners and to the other accused.

10. A careful perusal of the FIR reveals that the informant has implicated altogether three accused persons, including the two petitioners. Further, it appears from the statement of the victim girl recorded under sections 161

and 164 Cr.P.C. that she has implicated both the petitioner with the offences alleged in the FIR. The offences are undoubtedly serious and heinous offences of mental depravity. This kind of offences even cannot be quashed even if the parties have settled the dispute amicably and approached the court under section 482 Cr.P.C. Reference in this context can be made to a decision of Hon'ble Supreme Court in the case of **State of Madhya Pradesh vs. Laxminarayan & Ors.** reported in **(2019) 5 SCC 688**, wherein referring to two of its earlier judgment in the case of **Gian Singh vs. State of Punjab** reported in **(2012) 10 SCC 303** and **Narinder Singh vs. State of Punjab** reported in **(2014) 6 SCC 466** in paragraph No. 15 held as under:-

15.1. That the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

15.2. Such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

15.3. Similarly, such power is not to be exercised for the offences under the special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

15.4. Offences under Section 307 IPC and the Arms Act, etc. would fall in the category of heinous and serious offences and therefore

are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act, etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delicate parts of the body, nature of weapons used, etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge-sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paras 29.6 and 29.7 of the decision of this Court in *Narinder Singh [Narinder Singh v. State of Punjab, (2014) 6 SCC 466 : (2014) 3 SCC (Cri) 54]* should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

15.5. While exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise, etc.

11. The proposition of law that can be crystallized from the discussion made herein above is that the power under Section 482 of the Code of Criminal procedure cannot be exercised in those prosecution cases which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact upon society.

12. In the case in hand, admittedly, charge sheet against the petitioners have been filed under sections 120B/366(A)/342/109 IPC, read with section 4 of the POCSO Act. Upon the said charge sheet, the learned court below had already taken cognizance of the offences and issued process to the accused persons. Indisputably, the offences are serious offence of mental depravity and the same are not private in nature and have serious impact upon the society.

13. Thus, having carefully considered the submissions of learned Advocates of both sides and also carefully considering the facts and circumstances on the record, I find no merit in this petition and accordingly, the same stands dismissed.

14. In terms of above, this Criminal Petition stands disposed of. The parties have to bear their own cost.

JUDGE

Comparing Assistant