

GAHC010126042020



2024:GAU-AS:9868

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

Case No. : Crl.Pet./451/2020

BIPLAB PHUKAN AND 2 ORS.
S/O SRI NILKANTA PHUKAN, R/O SANTAPUR, P.O. LAHALIAL,P.S
BIHPURIA, DIST. LAKHIMPUR, ASSAM

2: HIRAKJYOTI PHUKAN @ TAPAN PHUKAN
S/O SRI PADMESWAR PHUKAN
R/O SANTAPUR
P.O. LAHALIAL
P.S BIHPURIA
DIST. LAKHIMPUR
ASSAM

3: ANUPAM PHUKAN
S/O SRI SUBHAN PHUKAN
R/O SANTAPUR
P.O. LAHALIAL
P.S BIHPURIA
DIST. LAKHIMPUR
ASSA

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE PP, ASSAM

2:JUMI GOGOI PHUKAN
W/O SRI HEMANTA PHUKAN
R/O SANTAPUR
P.O. LAHALIAL
P.S BIHPURIA
DIST. LAKHIMPUR
ASSA

Advocate for the Petitioner : MR. L MOHAN, MR. P GOGOI

Advocate for the Respondent : PP, ASSAM, MR. S BORTHAKUR (r-2)

:: PRESENT ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Petitioners : Mr. L. Mohan, Advocate.

For the Respondent No.1: Mr. P. Borthakur,
Addl. P.P., Assam.

For the Respondent No.2: Mr. S. Borthakur,
Advocate.

Date of Hearing : 16.08.2024.

Date of Judgment : 30.09.2024.

JUDGMENT AND ORDER (CAV)

Heard Mr. L. Mohan, the learned counsel appearing for the petitioners. Also heard Mr. P. Borthakur, learned Addl. Public Prosecutor, Assam representing Respondent No.1 as well as Mr. S. Borthakur, the learned counsel representing the Respondent No.2.

2. This is an application under Section 482 of the CrPC praying for setting aside and quashing the FIR dated 02.09.2020 of Bihpuria P.S. Case No.348/2020 corresponding to G.R. Case No.1846/2020 under Sections 376 and 506 of the Indian Penal Code read with Section 34 of the said Code and the criminal proceedings of Sessions Case No.65(NL)/2023.

3. On 02.09.2020, the 26 year old informant lady had lodged an FIR against the present three petitioners alleging that while her husband was not present in the house, they often raped her. The petitioners allegedly threatened the woman that if she disclose the matter to anybody else, she would have to face the dire

consequences. Scared of the petitioners, she had to leave her husband's house and had to take shelter in somebody else's house.

4. On conclusion of investigation, police filed the *charge sheet* against the present petitioners.

5. The petitioners have submitted that the victim lady and her husband used to sell local liquor in their house and many customers visited their house for consuming alcohol. They claimed that the Respondent No.2 and her husband had created an unhygienic environment in that area. The customers allegedly used to stay in the house of the Respondent No.2 till midnight, and also created *hulla*. According to the petitioners, they were against the acts of the Respondent No.2 and her husband and that is the reason why the Respondent No.2 had filed the false FIR dated 02.09.2020.

6. The case records show that the Respondent No.2 had sworn an affidavit at North Lakhimpur stating that because of misunderstanding of facts, she had to lodge the said FIR. The concerned investigating officer was also told that she wanted to withdraw the said FIR.

7. The record also shows that the Secretary of a Mahila Samity also wrote a letter to the Officer In charge of Bihpuria Police Station stating that the present petitioners are innocent persons and the allegation brought against them by the Respondent No.2 is false.

8. In order to buttress his arguments, Mr. Mohan has relied upon a judgment of the Hon'ble Supreme Court in *Narinder Singh v. State of Punjab*, (2014) 6 SCC 466. Relevant paragraphs of the said judgment are quoted as under:

“29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.3. Such a power is not to be exercised in those prosecutions which involve 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. Similarly, for the offences alleged to have been committed under special statute 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.

29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual alone. 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 proving 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. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the latter case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.”

9. I have considered the submissions made by the learned counsel of both sides.

10. In *State of Haryana v. Bhajan Lal*, AIR 1992 SC 604 the Supreme Court has laid down the guidelines as to when the power under Section 482 of the CrPC can be exercised by the High Court. Paragraph 102 of the judgment reads 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 channelised 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."

11. The power to quash proceeding under Section 482 of the CrPC is exercised when there are no materials to proceed against the petitioners even if the allegations in the complaint are *prima facie* accepted as true. In the present case, the allegations in the FIR constitutes a *prima facie* case against the petitioners.

12. In *Narinder Singh* (supra), the Supreme Court has held that the power under Section 482 of the CrPC is not to be exercised in the prosecutions which involve heinous and serious offences of mental depravity or offence like murder, rape, dacoity etc. The Court has held that such offences are not private in nature and have serious impact on the society.

13. Therefore, the ratio laid down in *Narinder Singh* (supra) is not applicable in the present case.

14. This Court is of the opinion that this is not a fit case for exercising the power under Section 482 of the CrPC. Therefore, the present petition is found to be devoid of merit and stands dismissed and disposed of accordingly.

Interim order, if there be any, stands vacated.

JUDGE

Comparing Assistant