

GAHC010129662013



2024:GAU-AS:10765

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

Case No. : Crl.Pet./258/2013

MD. KAMRUL ISLAM KHAN @ KAMRUL ISLAM
S/O AFAZAL KHAN R/O VILL- KUMARGATI, P.O. KALAPANI, P.S.
MANKACHAR, DIST. DHUBRI, ASSAM.

VERSUS

THE STATE OF ASSAM

Advocate for the Petitioner : MS.K L R YANTHAN, MS.L H BARUAH,MR.S C BISWAS

Advocate for the Respondent : PP, ASSAM, MR.AMIL HUSSAIN,MR.MALBAR HUSSAIN

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 05.11.2024

1. Heard Ms. U Nanda, learned counsel for the petitioner and Mr. B Sarma, learned Additional Public Prosecutor.
2. The present application under section 482 Cr.P.C is filed for quashing of FIR in Mankachar PS Case No.512/2012 under section

498(A)/34 IPC. The respondent No.2 has lodged the FIR on 15.12.2012 before the Officer in charge of Mankachar PS against the present petitioner, who is her husband.

3. As per the FIR, the present petitioner married her as per Islamic Shariat law on 13.04.2012, and thereafter during the conjugal life, the accused on the ill advice of the rest of the accused persons, who are the in-laws of the present petitioner, pressurized the victim to bring cash amount of Rs.2,00,000 as dowry from her parents. According to the FIR, the accused No.1 and his family members started to beat her and inflicted inexplicable torture upon her on being failed to pay the money demanded by her parents and on 10.11.2012, she was beaten up and was drove out of her matrimonial home at around 2.00 AM in the morning and also poured kerosene oil and tried to set fire on her. Consequently she took shelter in her parental home with the help of her neighbours and thereafter lodged the FIR. There was some delay in lodging the FIR which was explained to the effect that as there was a social adjudication, there has been a delay.

4. On the basis of the aforesaid FIR, Mankachar PS Case No.512/2012 under section 498A/34 IPC was registered.

5. The learned counsel for the petitioner while assailing such FIR argues that the petitioner was not present at the place of occurrence at the time of commission of the alleged offence, inasmuch as he was a student studying Engineering elsewhere. It is also the contention of the learned counsel for the petitioner that on that day, the informant was also not in the place of occurrence, rather she was at her parental home and therefore, it is apparent that this is an abuse

of the process of the court and the FIR has been lodged with a malafide intention to harass the petitioner.

6. Though none appears for the respondent wife, however, a written objection has been filed in the criminal petition objecting quashment of the FIR and certain details were elaborated as to how she was meted with cruelty on being failed to satisfy the demand of dowry.

7. Mr. Sarma learned Addl. PP, submits that this court may not like to exercise its power under Section 482 Cr.P.C in the given facts of the present case, inasmuch as, if the FIR is read in its entirety and is treated to be correct, the same discloses commission of offence under section 498A IPC, inasmuch as after completion of the investigation, the investigating officer has already filed charge sheet, wherein the present petitioner was sent for trial.

8. I have given anxious considerations to the arguments advanced by the learned counsel for the parties.

9. The object of revisional power of this Court under Section 397 Cr.P.C. is to set right a patent defect or an error of jurisdiction or law. Such power can be exercised where the decision under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. It is equally well settled that a revisional jurisdiction of High Court should not be exercised in a routine manner. The Hon'ble Apex Court in ***Chandra Babu vs State*** reported in **2015 (8) SCC 774** held that

normally revisional jurisdiction should be exercised in a question of law however, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. The Supreme Court went to say that the power is required to be exercised so that justice is done and there is no abuse of power by the Court.

10. The Hon'ble Apex Court in ***Mohammad Wajid vs State of U.P.*** reported in **2023 INSC** after dealing elaborately with the power of revision so far same relates to the quashing of FIR and charge sheet has laid down the following principles.

i. It will not be just enough for the court to look into the averments made in the FIR/ complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not.

ii. In frivolous or vexatious proceedings, the court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments made.

iii. The overall circumstances leading to the initiation/ registration of the case as well as the materials collected in the course of investigation is to be looked into.

11. From the reading of the FIR in its entirety and if it is taken on face value, it cannot be said that the allegations are omnibus allegations, rather a specific statement is made how the alleged offences were committed. The argument of Ms. Nanda learned counsel for the petitioner revolves around factual assertion such as plea of alibi as well as the fact that the victim was not present at the

place of occurrence.

12. It is by now well settled that while exercising its power under section 482 Cr.P.C., this court cannot enter into such disputed factual aspect, though this court will not be powerless in a given case to examine the detailed materials available on record to look into whether the application was filed with malafide intention or to harass the petitioner.

13. This court do not find anything to suggest that the FIR was filed with a malafide intention, rather the case of the petitioner that it was filed with malafide intention rest on some factual assertions which cannot be entertained by this petition under section 482 Cr.P.C.

14. Accordingly, the present petition stands dismissed.

15. The interim order, if any, passed earlier stands vacated. The LCR be sent back forthwith.

JUDGE

Comparing Assistant