

GAHC010130982023



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

Case No. : Crl.Pet./592/2023

BOLORAM SAHU
S/O- LATE BAIJNATH SAHU, R/O- VILL.- SANTIPUR, P.S. BORPATHAR, DIST.
KARBI ANGLONG, ASSAM, PIN- 785602.

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE P.P., ASSAM

2:LILABATI SAHU
W/O SHRI ABHIRAM SAHU
R/O NAMBOR NADI TEA ESTATE
BORPATHAR
KARBI ANGLONG
ASSAM
PIN- 78560

Advocate for the Petitioner : MS. T SOM

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 14.06.2024

1. Heard Ms. T. Som, learned counsel for the petitioner. Also heard Mr. R.

J. Baruah, learned Additional Public

Prosecutor appearing for respondent No.1 and Mr. J. Deka, learned counsel appearing for the respondent No.2/ informant

2. By filing this application under Section 482 Cr.P.C., the petitioner has prayed for quashing and setting aside the impugned charge-sheet dated 30.12.2022 and pending proceeding of the POCSO Case No. 02/2023 pending before the court of Special Judge, Karbi Anglong, Diphu.

3. The factual matrix leading to this case is that on 30.11.2022 an FIR has been lodged before the officer in-charge of Barpathar Police station stating *inter alia* that on 28.11.2022 at about 7 pm when her daughter was sleeping at home, the petitioner entered into the said room, assaulted her daughter and squeezed the breast of her daughter and also touched her private parts. On the next day at night again the said accused petitioner entered into her house. It was also alleged that on previous occasions also the petitioner misbehaved with her daughter. On receipt of the complaint, a case was registered vide Barpathar PS Case No. 39/2022 under Section 448/354A IPC read with Section 8/12 of POCSO Act. After completion of investigation, charge-sheet was submitted against the accused/petitioner under the aforesaid Sections of law.

4. The learned counsel for the petitioner has submitted that after filing of the charge-sheet, the trial court has started the proceeding against the petitioner and charge was framed under Section 457/323/294/354A IPC read with Section 8/12 of POCSO Act. Subsequently, the matter has been amicably settled between the parties. The informant has stated that due to some misunderstanding and instigation of others, the informant has lodged the FIR

against the petitioner. Subsequently, an affidavit has been sworn by the informant stating that she has no objection if the proceeding of the case vide POCSO Case No. 02/2023 pending in the court of Special Judge, Karbi Anglong, Diphu against the petitioner is quashed.

In support of his submission, learned counsel has placed reliance on the following case laws:

(i) (2003) 4 SCC 675 (*B. S. Joshi and others vs. State of Hariyana and another*).

(ii) (2014) 3 GLR 559 (*Biswajit Doley and others vs State of Assam*).

5. Mr. J. Deka, learned counsel for the respondent No.2/informant has submitted that the informant has no objection if the present proceeding pending against the petitioner, is quashed.

6. Per contra, learned Additional Public Prosecutor has submitted that the case is at the trial stage and the evidence of the victim was recorded wherein she implicated the accused petitioner to be involved in the case. Though the informant has stated that she has no objection for quashing the proceeding, however, as the victim has implicated the petitioner, the learned Additional Public Prosecutor has vehemently opposed in quashing of the present proceeding.

7. I have considered the submission made by the learned counsel for the

parties. I have also gone through the trial court record including the evidence of the victim girl wherein she stated that the accused petitioner used to tell her that he loved her. On the date of incident, the accused petitioner came to their house, he kissed her and touched her breast. Then her mother lodged the case. On earlier occasions also the accused committed such nuisance.

8. It is a settled position of law that the extraordinary power under section 482 Cr. P.C. should be exercised sparingly and with great care and caution and can be used to prevent abuse of the process of the court or to secure ends of justice and the exercise of inherent powers entirely depends on facts and circumstances of each case.

9. The Supreme Court in *Sushil Suri v. Central Bureau of Investigation*, (2011) 5 SCC 708, considered the scope and ambit of the inherent jurisdiction of the High Court and observed as under:—

“16. Section 482 Code of Criminal Procedure itself envisages three circumstances under which the inherent jurisdiction may be exercised by the High Court, namely, (i) to give effect to an order under Code of Criminal Procedure; (ii) to prevent an abuse of the process of court; and (iii) to otherwise secure the ends of justice. It is trite that although the power possessed by the High Court under the said provision is very wide but it is not unbridled. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the Court exists.”

10. The Supreme Court in *B.S. Joshi v. State of Haryana*, (2003) 4 SCC 675 held that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and section 320 Cr. P.C. does not limit or affect the powers under section 482 Cr. P.C. The Supreme Court in *Shiji alias Pappu v. Radhika*, (2011) 10 SCC 705 considered the exercise of inherent powers by the High Court under section 482 Cr. P.C. in a matter where the offence was not

compoundable and observed that simply because an offence is not compoundable under section 320 Cr. P.C. is by itself no reason for the High Court to refuse exercise of its power under section 482 Cr. P.C. It was further observed that there is a subtle distinction between compounding of offences by the parties before the trial court or in appeal and the exercise of power by the High Court to quash the prosecution under section 482 Cr. P.C.

11. The Supreme Court in various decisions has discussed the issue pertaining to quashing of FIR registered for the offence punishable under section 376 IPC. The Supreme Court in *Gian Singh v. State of Punjab*, (2012) 10 SCC 303 laid down following principles:—

“57. The position that emerges from the above discussion can be summarised thus : the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences Under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be quashed even though the victim or victim’s family and the offender have settled the dispute.”

12. The Supreme Court in *State of Madhya Pradesh v. Laxmi Narayan*, (2019) 5 SCC 688 recapitulated the principles laid down in *Gian Singh* (supra) and observed as under:—

“(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;

(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;

(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;

(4) xxx xxx xxx

(5) While exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of noncompoundable 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.”

13. In recent relevant judgment of the Apex Court in the case of Shafiya Khan @ Shakuntala Prajapati vs State of U.P. (2022) 4 SCC 549, it was observed as under:

“16. It is no doubt true that the power of quashing of criminal proceedings should be exercised very sparingly and with circumspection and that too to rarest of the rare cases and it was not justified for the court in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the inherent powers do not confer any arbitrary jurisdiction on the court to act according to its whims and fancies.”

14. The Apex Court in the case of Prabathai Ahir vs state of Gujarat, (2017) 9 SCC 641 referring to various cases has summarized following principles to

govern powers of High Court under section 482 Cr.P.C. and observed as under:-

“In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offence involving mental depravity or offense such as murder, rape and decoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offense.”

15. After considering all fact and gravity of allegations, the present petition cannot be quashed. It appears that though the complainant has settled the matter with the accused petitioner however, the victim has implicated the petitioner to be involved in this case. The victim is a minor girl and the alleged offence against the petitioner is that he sexually abused the minor victim.

16. In the result, the criminal petition is dismissed and disposed of accordingly.

JUDGE

Comparing Assistant