

GAHC010131592024



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

Case No. : Crl.Pet./779/2024

MD. FULBABU SK
S/O MOKBUL HUSSAIN
R/O VILL- UTTAR BANGTIMARI
P.S. MANKACHAR
DIST. SOUTH SALMARA MANKACHAR, ASSAM, PIN-783135

VERSUS

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

2:GAZIBOR RAHMAN
S/O LATE NAZMUL HOQUE
R/O VILL- MANULLYAPARA
P.O. FEKAMARI
P.S. SOUTH SALMARA
DIST. SOUTH SALMARA MANKACHAR
ASSAM
PIN-78313

Advocate for the Petitioner : MR. N J DUTTA, MR S PRODHANI, MR Z RAHMAN
Advocate for the Respondent : PP, ASSAM, MS. P AGARWAL, AMICUS CURIAE (R-2)

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

11.11.2024

Heard Mr. N. J. Dutta, learned counsel for the petitioner. Also heard Mr. M.P. Goswami, learned Additional Public Prosecutor for the State and Ms. P.

Agarwal, learned counsel representing the respondent No. 2.

2. By filing this application u/s 482 Cr.PC, the petitioner has prayed for quashing of the FIR dated 25/07/2023 vide Mankachar PS case No. 308/2023 u/s 376 AB/511 IPC read with Section 8/10 of POCSO Act and section 67 of IT Act.

3. The allegation as per FIR is that on the date of incident when the minor daughter of the informant while visited the house of her father-in-law, the present petitioner along with other co-accused No. 3 and 4 handed over the victim to accused no. 1. The accused no. 1 had kissed the victim girl on her face and different parts of her body and tried to commit rape on her. They also took the photographs of the said incident and made them viral through mobiles.

4. Learned counsel for the petitioner submits that the petitioner was working in the house of the co-accused, Abdul Wahab. Another accused Farida Khatun saw the alleged victim and the accused Zahirul Islam were talking to each other in the house of Abdul Wahab. The accused Farida informed the matter to the petitioner. Both the petitioner and accused Farida having seen the alleged victim and the accused Zahirul talking to each other which was found to be not a casual affairs. As such, as a matter of precaution, the petitioner informed the guardians of the alleged victim about the said meeting between the accused Zahirul and the alleged victim. The petitioner has no other involvement in the instant case.

5. It is also the submission of the learned counsel for the petitioner that the petitioner had neither made conspiracy nor he brought the informant's minor daughter to the house of the co-accused Wahab and for that matter he did not

hand over the alleged victim to the accused Zahirul. The petitioner neither took photographs of the alleged victim through his mobile hand set nor did he upload any photo of the alleged victim in the internet to become viral.

6. Further submission of learned counsel for the petitioner is that the alleged incident took place prior to two months of lodging of the FIR. But no specific date, time and day have been mentioned in the said FIR. The FIR has been lodged on 25/07/2023 after a lapse of more than two months. Hence, non-mentioning of the date of occurrence, place of occurrence and time in the FIR is fatal to the prosecution case and as such the said FIR cannot be sustained in the eye of law and which is liable to be set aside and quashed.

7. In response, learned Additional PP has produced the case diary and submits that the victim has implicated the accused/ petitioner in her statement recorded u/s 183 of BNSS, 2023 and the case is under further investigation and the mobile hand set has also been seized which reveals that the petitioner is very much involved in the instant case. This is not the case to quash the FIR at the nascent stage of investigation and prays to reject the prayer of the petitioner.

8. Learned Amicus curie, Ms. P. Agarwal, has also submitted in the same tune by stating that as the victim has alleged that the accused/ petitioner had videographed the alleged incident and uploaded the same which became viral, the FIR cannot be quashed without further investigation of the case.

9. Having heard the learned counsel for the parties and on perusal of the case diary, it reveals that the victim was sexually abused by the accused Zahirul and the accused/ petitioner videographed the said incident and uploaded the

same in the social media which became viral. This is also an offence as per provision of POCSO Act.

10. Hon'ble Supreme Court in **Narinder Singh & Ors. v. State of Punjab & Anr., (2014) 6 SCC 466**, has observed as under:

“.....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....”.

11. Similarly, in the case of **Gian Singh v. State of Punjab, (2012) 10 SCC 303**, and **State of MP vs. Laxmi Narayan and others, reported in (2019) 5 SCC 688**, Hon'ble Supreme Court has observed that the power conferred u/s 482 of Cr.PC is not to be exercised in those prosecution 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.

12. In a recent case of Hon'ble Supreme Court vide **Criminal Appeal No. 3403 of 2023 (Ramji Lal Bairwa & Anr. vs. State of Rajasthan & Ors.)** has observed as follows –

“.....The objects and reasons for the enactment of the POCSO Act, as extracted above, would undoubtedly show that quashment of proceeding initiated under POCSO Act abruptly by invoking the power under Section 482, Cr. PC without permitting it to mature into a trial, except on extremely compelling reasons ex facie malafidely initiated or initiated solely to settle the score etc., would go against the very intention of the legislature behind the enactment. As noted earlier, it is the inadequacy of

the existing laws to address certain issues relating sexual offences against the children that made the legislature to come up with the aforesaid legislation with a view to protect and respect the privacy and confidentiality of children and to ensure their physical, emotional, intellectual and social development. The POCSO Act also addressed the lack of provisions defining various offences against the children and also adequate penal provisions therefor. A careful scanning of the various provisions under the POCSO Act would reveal that with a view to achieve the aforesaid objects and purposes various offences against the children are specifically defined and provisions for adequate penalisation are also inserted in the Act. Obviously, rubbing the breast of a child would constitute an offence of 'sexual assault' under Section 7 of POCSO Act, punishable with imprisonment of either description for a term which shall not be less than three years and may extend to five years and also fine. They would reveal that the commission of such offences against the children should be viewed as heinous and serious. Needless to say, that commission of such offences cannot be taken lightly as offences of private nature and in fact, such offences are bound to be taken as offences against the society....".

13. In the decision in **Attorney General for India v. Satish and Anr.** reported in **(2022) 5 SCC 545**, Hon'ble Supreme Court held thus:-

"The act of touching any sexual part of the body of a child with sexual intent or any other act involving physical contact with sexual intent, could not be trivialised or held insignificant or peripheral so as to exclude such act from the purview of "sexual assault" under Section 7. As held by this Court in Balram Kumawat v. Union of India, the law would have to be interpreted having regard to the subjectmatter of the offence and to the object of the law it seeks to achieve. The purpose of the law cannot be to allow the offender to sneak out of the meshes of law."

14. A perusal of the above mentioned cases shows that the Supreme Court has categorically stated that heinous crime like offences under POCSO Act, cannot be quashed by the High Court by exercising power under Section 482 Cr.P.C. The petitioner is accused of an offence under the provision of POCSO Act.

15. In view of the above, this court is not inclined to exercise its jurisdiction u/s 482 Cr.PC for quashing the FIR dated 25/07/2023 of Mankachar PS case no. 308/2023, wherein the petitioner has been the accused of the offence u/s 8/10 of POCSO Act.

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

JUDGE

Comparing Assistant