

GAHC010131812024



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

Case No. : Crl.Pet./772/2024

NEPAL DAS
S/O LATE DHARANI DAS, R/O CHANDANPUR, KAWLI, P.O. AND P.S.-
TAMULPUR, PIN-781360, DIST- TAMULPUR, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:AJIT DAS
S/O LATE ARABINDA DAS
R/O VILL- CHANDANPUR
KAWLI
P.O.-KAWLI AND P.S.-TAMULPUR P.S.
OUTPOST KUMARIKATA O.P
PIN-781360
DIST-TAMULPUR
ASSA

Advocate for the Petitioner : MR V JAMMAR, MR R CHETRY,MR A V SINGH,MR P
TALUKDAR,MR W R MEDHI

Advocate for the Respondent : PP, ASSAM, MS. D PATHAK (R-2),MR. R DE (R-2)

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 29-11-2024

Heard Mr. W.R. Medhi, learned counsel for the petitioner. Also heard Mr. M.P. Goswami, learned Additional Public Prosecutor appearing for the State respondent and Mr. R. De, learned counsel for the respondent No.2.

2. This is an application filed under Section 482 Cr.PC for quashing of the Charge-sheet bearing No.44/2024 dated 29.03.2024 for the offences punishable under Sections 341, 354-A, 376(3) of IPC r/w Section 8 of POCSO Act corresponding to Tamulpur P.S. Case No.0053 dated 12.03.24 and the entire proceeding in connection with Special Case (POCSO) No.50/2024 pending before the learned Special Judge, POCSO, Baksa.

3. Scanned copy of the case record is received. Perused the same.

4. It is submitted by the learned counsel for the petitioner that the petitioner is innocent and has not committed any such offence as alleged against him. It is also submitted that the petitioner is a known person of the victim and she used to come to the house of the accused in other occasion also and on the day of the incident also as revealed from the statement of the mother of the victim recorded under Section 161 Cr.P.C. that she allowed her daughter to go with the accused petitioner to their house when there was no person in the house.

5. Learned counsel for the petitioner has submitted that the victim contradicts her own statement made before the I/O, which was recorded under Section 161 Cr.P.C. and her statement made before the Magistrate under Section 164 Cr.P.C. Before the I/O, she stated that her mother was not available at the time when the alleged incident had happened, whereas, while recording her statement under Section 164 Cr.P.C., she stated that her mother was inside the bathroom when the incident happened. He further submits that both the family members of the accused and the victim/informant are relatives and have cordial relationship with each other. The respondent No.2 also realized the fact that the FIR was lodged due to mistake of facts and the misrepresentation of the situation after a deep and conscious consultation with the girl. More so, the children of the petitioner and the complainant's house used to play regularly with each other and they particularly visit to the house of each other as the house of the complainant is near to the house of the respondent.

6. Learned counsel for the petitioner submits that at present the informant does not want

to proceed with the case and in that context, he also sworn an affidavit of declaration before the Notary Magistrate, wherein he stated that the FIR was lodged only due to some mistake of facts and misrepresentation of the situation and at present, he feels guilty and also tender his apology for his unintentional error done by him without any malafide intention.

7. Learned counsel for the petitioner submits that though the case is registered under Section 376(3) IPC, there is no ingredients to attract under Section 376(3) IPC, as there is no allegation of any rape against the present accused person. However, some sort of allegation of sexual assault was there in the statement made by the victim, but the informant already realized that only due to some mistake of fact and misrepresentation the FIR was lodged by him.

8. Learned counsel for the petitioner also relied on some decision of Hon'ble Apex Court as well as High Court including this Court which are as follows:

i) In the case of *Abhishek Ravani & Anr –vs- State of Jharkhand and Another* reported in 2023 Online Jhar 893

ii) In the case of *Md. Masar Ali –vs- State of Assam and Anr.* reported in 2014 SCC Online Gau 611; (2015) 1 Gau LR 425

iii) In the case of *Parbatbhai Aahir –vs- State of Gujarat & Anr.*, reported in (2017) 9 SCC 641

9. In all the referred cases it has been expressed that to secure the ends of justice, quashing can be allowed even in non-compoundable offence. He further submits that the case of ***Gian Singh –vs- State of Punjab & Anr.***, reported in **2012 (10) SCC 303** laid down some guiding principle to consider the application under Section 482 Cr.P.C. and the paragraph 61 of the said judgment reads as under:-

“the power of the High Court in quashing a criminal proceeding or FIR 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 fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like [Prevention of Corruption Act](#) or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

10. The Hon'ble Supreme Court in the case of **State of Haryana & Ors. Vs. Bhajan Lal & Ors.**, reported in **1992 Supp (1) SCC 335**, has held 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 channelized 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. Accordingly, it is submitted by the learned counsel for the petitioner that it is a fit case, wherein, by invoking Section 482 Cr.P.C. the Charge-sheet bearing No.44/2024 dated 29.03.2024 for the offences punishable under Sections 341, 354-A, 376(3) of IPC r/w Section 8 of POCSO Act corresponding to Tamulpur P.S. Case No.0053 dated 12.03.24 and the entire proceeding in connection with Special Case (POCSO) No.50/2024 pending before the learned Special Judge, POCSO, Baksacan be set aside and quashed.

12. Mr. R. De, learned counsel for the respondent No.2/informant submits in this regard that the FIR was lodged due to some misunderstand and only in the hit of the moment. But subsequently it was realized by the informant that by lodging the FIR may cause prejudice to the present petitioner and accordingly, he also sworn in an affidavit, wherein it has been declared that due to some misunderstanding and misrepresentation of facts, the FIR was lodged,. The original copy of the said affidavit is also furnished by the learned counsel Mr. R. De. He accordingly submits that the informant raised no objection if the present petition is allowed. He also admits that though the cases registered and charged under Section

376(3) IPC, but from the medical report as well as from the statement made by the victim herself it is seen that there is no ingredients to fulfill the Section 376(3) IPC as charged against the present petitioner.

13. Mr. M.P. Goswami, learned Additional Public Prosecutor has submitted in this regard that State has no objection if the parties arrived at an amicable settlement and if the proceeding is quashed accordingly. He further submits that it is an admitted position that there is no ingredient of Section 376(3) IPC against the present petitioner. However, the allegation of sexual assault has been brought by the victim in her statement recorded under Section 161 as well as 164 Cr.P.C.

14. After hearing the submissions made by the learned counsel for both sides and on perusal of all the annexures and the statement made by the victim, it is seen that the FIR was lodged with the allegation of sexual assault on the victim and accordingly, it was registered under Section 341 354A 376(3) IPC read with Section 8 of the POCSO. But admittedly there is no ingredient found in the statement made by the victim under Section 161 and 164 Cr.P.C. to establish the case under Section 376(3) IPC. Further it is seen that the informant himself appeared before this Court with an affidavit of declaration that the case was filed by him only due to some misunderstanding and misrepresentation of facts and without deep thought and consultation, the FIR has been lodged at the hit of the moment. But it is seen that both the family members maintain a cordial relationship with each other as they are the family member and the accused is also known person of the victim. As the matter has already been settled amicably between the parties, the possibility of making statement against the accused petitioner is remote and bleak and accordingly, the conviction of the present petitioner is also cannot be expected, even if the proceeding is allowed to be continued. It is also admitted that the case is charged with Section 376(3) as well as 8 of the POCSO Act, which is considered to be serious in nature, but after perusal of the statement made by the victim as well as the other materials brought before this Court, it is seen that there is no material to establish the case against the petitioner under Section 376(3) IPC though some incriminating materials are there in the statement of the victim

recorded under Section 161/164 Cr.P.C.

15. Considering the entire facts and circumstances of the above case and in view of the decision of the Hon'ble Apex Court, I find it is a fit case where the jurisdiction under Section 482 Cr.P.C. can be invoked by setting aside and quashing of the Charge-sheet bearing No.44/2024 dated 29.03.2024 for the offences punishable under Sections 341, 354-A, 376(3) of IPC r/w Section 8 of POCSO Act corresponding to Tamulpur P.S. Case No.0053 dated 12.03.24 and the entire proceeding in connection with Special Case (POCSO) No.50/2024 pending before the learned Special Judge, POCSO, Baksa. Petition stands allowed.

16. Criminal petition is accordingly disposed of.

JUDGE

Comparing Assistant