

GAHC010136752024



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

Case No. : Crl.Pet./816/2024

MUNENDRA KUMAR AND ANR
S/O PRITAM SINGH, P/R/A UNIT 822 (FD WKSP COY EME) JAMMU AND
KASHMIR (PATTAN), PIN-906822. PERMANENT ADD- VILL- SALEMPUR,
P.O.-SALEMPUR, DIST- BULAND SAHAR, STATE- UTTAR PRADESH, PIN-
203001

2: CHAUDHARI RAMESH KUMAR VELA BHAI
S/O CHAUDHARI VELA BHAI
P/R/A 526 ASC BN A-COMPANY I - PALATOON
C/O 56 APO
PIN-905526
CITY - JAMMU
STATE - JAMMU AND KASHMIR
PERMANENT ADD - VILL- SALIMGADH
TEHSIL - KANKREJ
DIST - BANASKANTHA
P.O. - TERVADA
P.S. - TERVADA
PIN - 385320
STATE - GUJRA

VERSUS

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

2:SANEKA PARVIN
W/O HAF H. RAHMAN 952TPT COY ASE
C/O 99 APO
PIN - 905952
VILL - SURUN
P.O. - PARAHARIPUR
P.S. - ITAHAR
DIST - UTTAR DINAJPUR

WEST BENGAL
PIN - 73314

Advocate for the Petitioner : MR. ANANTA RAM MEDHI, MD. K AHMED,MS. K MEDHI

Advocate for the Respondent : PP, ASSAM, MR N A MAZARBHUIYA(R-2),MR N Z
CHOUDHURY(R-2),MR. A R BHUYAN (R-2)

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

17.12.2024

Heard Mr. A.R. Medhi, the learned counsel appearing for the petitioners. Also heard Mr. R.R. Kaushik, the learned Addl. Public Prosecutor, Assam representing the State/ Respondent No.1. Heard Mr. A. Borah, the learned counsel appearing for the Respondent No.2.

2. This is an application under Section 482 of the CrPC praying for quashing the FIR in respect of Satgaon P.S. Case No.158/2023 dated 20.08.2023 and the subsequent *charge sheet* being Charge Sheet No.106/2024 dated 28.09.2024.

3. On 20.08.2023, the wife of an Army personnel lodged an FIR before police alleging that while she was staying in the official quarter of her husband, the petitioner Munender Kumar who was a colleague of her husband, once committed rape upon her while her husband was not present in her house. For the subsequent six months, this petitioner regularly committed rape upon her in the absence of her husband. One day, while this petitioner having forceful intercourse with the informant lady, her husband arrived home and he witnessed the incident. On seeing her husband, this petitioner ran away. This time, she disclosed everything to her husband.

The informant lady has stated that for the sake of her family, she did not tell anything to anyone. The woman has alleged that the second petitioner Choudhury Rameshkumer Vela Bhai being one of the colleagues of the first petitioner, also tried to commit to rape upon her. According to the woman, before filing of the FIR, she was 15 weeks pregnant. She says that the petitioner Munender Kumar might be responsible for her pregnancy.

4. Mr. Medhi submits that it was a consensual relationship. According to Mr. Medhi, when the husband of the woman discovered everything, she had to lodge the FIR just to save her reputation in public.

5. Mr. Borah appearing for the said woman submits that she has no objection if the criminal proceeding against the petitioners is quashed.

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

7. The guidelines for consideration of a petition under Section 482 of the CrPC has been laid down by the Hon'ble Supreme Court in *State of Haryana v. Bhajan Lal*, AIR 1992 SC 604. 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."

8. Reverting to the case in hand, this Court is of the opinion that the relationship between the informant lady and the petitioner Munender Kumar was consensual. So far as the allegation against the petitioner Choudhury Rameshkumar Vela Bhai, it seems to be without any materials. Therefore, under the given circumstances of the case, there is no possibility of future conviction of the petitioners. So, allowing the criminal proceeding to continue before the trial court would be nothing but an abuse of the process of the court.

9. This is a fit case for exercising power under Section 482 of the CrPC. The criminal petition is allowed.

10. The criminal proceedings relating to the FIR in respect of Satgaon P.S. Case No.158/2023 dated 20.08.2023 and the subsequent *charge sheet* being Charge Sheet No.106/2024 dated 28.09.2024, is quashed and set aside.

The criminal petition is disposed of accordingly.

JUDGE

Comparing Assistant