

GAHC010181972019



2024:GAU-AS:11904

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

Case No. : Crl.Pet./887/2019

AMIR HUSSAIN
S/O BABUR ALI, VILL-DHARMASALA PART-IV, P.O.-DHARMASALA, P.S.
AND DIST-DHUBRI (ASSAM), PIN-783324

VERSUS

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

2:PRADIP MURAH
S/O LATE JIGA MURAH
R/O NO. 1 SOKOLIYA
P.O.-RAJGARH
P.S.-TINGKHONG
DIST-DIBRUGARH (ASSAM)

Advocate for the Petitioner : MR. S K ROY, MD K RAHMAN

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

29.11.2024

1. Heard Mr. K. Rahman, learned counsel for the petitioner. Also heard Mr. K. Baishya, learned Additional Public Prosecutor for the State respondent.

2. The present criminal petition under Section 482 of the Code of Criminal Procedure, 1973 is filed for quashment of proceeding of G.R. Case No. 1492/2009 pending for trial before the learned Court of Sub Divisional Judicial Magistrate (S), Dibrugarh under Section 366 IPC.
3. The brief facts of the present case is that one Pradip Murah lodged an F.I.R. before the Officer-in-Charge of Rajgarh Out Post inter alia alleging that the accused Md. Amir Hussain while was working under one contractor Sri Sapan Das at Rajgarh Community Hospital, on 22.08.2009 kidnapped his elder daughter who is aged about 16 years and kept her for 6 days with him. Thereafter, he fled away leaving behind his daughter in the house of his maternal uncle and thereafter, the contractor brought back her daughter.
4. Accordingly, after registering a G.D. Entry, being GDE No. 470 dated 28.08.2009, the F.I.R. was forwarded to the Officer-in-Charge, Tingkhong Police Station and resultantly, Tingkhong Police Station case No. 116/2009 under Section 366(A) of IPC was registered.
5. As the victim was already recovered, she was sent for her medical examination and her medical investigation of sexual offences was done at the Forensic Medicine Department, Assam Medical College, Dibrugarh. A copy of the aforesaid medical investigation of sexual offences is part of the record. The aforesaid report discloses that the radiological examination was done for age determination and as per the medical opinion she is more than 20 years of age. In the format of medical examination, the victim disclosed before the Doctor that she loves the accused namely, Amir Hussain of Dhubri working as carpenter since 5 months. She went with him 22.08.2009 to his house at Dhubri and got married and stayed there for 5

days. On 28.08.2009, a man named Habibul came and brought her back to her parents house and reported to Police Station on the same day. It was further recorded by the Doctor that she had enjoyed sexual intercourse for several time after marriage. She changed her cloth, took bath and had passed urine and stool after the last act and she was brought to Forensic Medicine Department for medical examination.

6. In the medical examination report, the Doctor recorded that on physical, laboratory and radiological examination, no evidence of recent sexual intercourse detected on her person, no evidence of recent violation marks detected on her private parts and she is above 20 years of age.
7. Thereafter, the victim's statement was also recorded under Section 164 of Cr.P.C., which is also part of the record. In her 164 statement, she stated before the Magistrate that she is in love with accused last since 7 months while he was working as a labour at Rajgarh. He expressed his love to her and he also proposed to marry her 11 days before and they went to his native place. Such fact was not known to her family members and they stayed at Dhubri in his house and they got married and she stayed with accused for four days. Thereafter, the contractor of Amir Hussain took back her. It was also stated that the Amir Hussain said that if she will not marry him, he will die. She further stated that after their marriage they had physical relation.
8. On the basis of the aforesaid material i.e. her statement recorded under Section 164 of Cr.P.C. and the medical evidence, Investigating Officer filed Charge Sheet under Section 366 IPC.
9. Now in the backdrop of aforesaid facts, let this Court consider whether

this is a fit case where this Court should exercise its inherent power under Section 482 of Cr.P.C.

10. Law is by now well settled that where uncontroverted allegations made in FIR or complaint and the materials collected in support of same, donot disclose commission of any offence and don't make out a case against an accused, this Court can exercise its power under Section 482 of Cr.P.C. to quash such proceeding.
11. In the aforesaid settled propositions of law, in the backdrop of the facts narrated hereinabove and accepting the aforesaid materials to be correct, now this Court is to consider whether any offence under Section 366 IPC is made out to allow a prosecution against the present petitioner.
12. Section 366 of IPC deals with kidnapping, abducting or inducing woman to compel her marriage and prescribes the following:-

“Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid’.

13. Reading of the aforesaid, there is no hesitation in the mind of this Court that the following prima facie ingredients shall be required to proceed of prosecution on the basis of the fact disclosed in the FIR/Complaint as well as the material collected by the Investigating Officer i.e.

(i) there is kidnapping or abducting of an woman,

- (ii) such kidnapping or abducting must be with intent that she may be compelled or knowing it to be likely that she will be compelled, to marry any person against her will, or
- (iii) in order that she may be forced or seduced to illicit, or knowing it to be likely that she will be forced or seduced to illicit intercourse or by means of criminal intimidation or otherwise inducing any woman to go from any place with intent that she may be or knowing that she will be forced or seduced to illicit intercourse.

14. In the aforesaid backdrop, therefore, what will be required is either abduction or kidnapping. Abduction is defined under Section 362 of IPC and mandates that whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person. Thus, there must be forceful compulsion or inducement by deceitful means and the object of such compulsion or inducement is going of a person from one place to another. "Deceitful" is also a necessary ingredient, which includes "misleading statement".
15. It is by now well settled that to rope into a person under prosecution under Section 366 IPC mere abduction of a woman is not enough, what more is required is that the purpose of abduction is as mentioned and as recorded by this Court in the forgoing paragraph.
16. Now coming to the case in hand, the materials so far collected including the statement of the victim recorded under Section 164 Cr.P.C., the medical report are accepted and treated to be correct what is discernible is that the victim was a major, she went with the accused out of love, they got married

and they had sexual intercourse and she came back from the place of the accused by some other person and not by her. Though her statement before the Medical Officer may not have any relevance for the purpose of trial or investigation, however, it is on record that she stated in a similar nature before the Magistrate what she stated before the Doctor who examined her on production by Investigating Officer. Therefore, in the totality of the matter, this Court is of the view that the essential condition for application of Section 366 of IPC that there is a kidnapping or abduction with an intention to compel her and knowing it to be likely that she will be compelled, to marry a person against her will, or will be forced or seduced to illicit intercourse are not available at all in the present case inasmuch as it is the case of the victim that she had love affair and she had nowhere stated that the marriage was under compulsion. She had also not stated anything that she had physical relation with the accused either on compulsion or inducement rather she stated that after the marriage they had physical relation.

17. Therefore, in the aforesaid backdrop, this Court donot find the ingredients either of Section 362 or Section 366 IPC and therefore, in the backdrop of the statement of the victim herself, the prosecution, if allowed shall result in miscarriage of justice. Accordingly, the present criminal petition stands allowed by setting aside and quashing the proceeding of G.R. Case No. 1492/2009 pending for trial before the learned Court of Sub Divisional Judicial Magistrate (S), Dibrugarh under Section 366 of IPC.
18. LCR be returned back.

JUDGE

Comparing Assistant