

GAHC010206872022



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

Case No. : Crl.Pet./1119/2022

GOLAP HUSSAIN
S/O JUBBAR ALI
R/O VILL- HELENARPAM, P.O. GOBARDHANA, P.S. GOBARDHANA, DIST.
BARPETA, ASSAM

VERSUS

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

2:MALEKHA KHATUN
W/O FAKAR UDDIN
R/O VILL- GOLAPARA
P.S. ABHAYAPURI
P.O. ABHAYAPURI
DIST. BONGAIGAON
ASSAM
PIN-78338

Advocate for the Petitioner : A RAHMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND
ORDER

30.05.2024

Heard Mr M Ahmed, learned counsel for the petitioner, Golap Hussain.

2. The petitioner has filed this application under Section 482 CrPC, with prayer for

quashing the entire proceeding of PRC Case No. 414/2020, arising out of Kalgachia PS Case No. 313/2019, registered under Section 366-A IPC.

3. Heard Mr B B Gogoi, learned Additional Public Prosecutor for the State of Assam/respondent No. 1 and Mr N A Mazarbhuiyan, learned counsel for the respondent No 2-‘X’ (name withheld).

4. The FIR unfolds that the petitioner induced the minor victim X and thereafter kidnapped her from the victim’s house at 12:00 noon, on 04.04.2019.

5. It is submitted on behalf of the petitioner that the victim had a love relationship with the petitioner and she eloped with him on her own volition. The statement of the victim, marked as Annexure-3 of the petition, clearly reveals that the victim eloped with the petitioner and she got married with him as per social norms. Thereafter, the victim’s father brought her back to her parental home by promising to solemnize her marriage with the petitioner. The victim’s father did not keep his promise, and then the victim again went away with the petitioner, Golap Hussain. The Police, thereafter brought her back as her mother has lodged the instant FIR.

6. Annexure-A of the additional affidavit filed on behalf of the petitioner clearly reflects that a deed of settlement was executed between the victim and the petitioner. Annexure-A reflects that on a misunderstanding, the FIR was lodged against the petitioner. It has been clarified that the victim’s mother lodged the FIR on some misunderstanding. The petitioner neither kidnapped the victim nor committed sexual

assault on her.

7. Annexure-I is the deed of settlement executed between the informant and the petitioner, which clearly reflects that on a misunderstanding, the informant had lodged the FIR against the petitioner, which was registered as Kalgachia PS Case No. 313/2019 and subsequently, PRC Case No. 414/2020 was registered.

8. It is submitted that the victim voluntarily went away with the petitioner and the petitioner did not kidnap the victim.

9. I have also considered the submissions at the Bar that as the informant and the victim have no allegations against the present petitioner, possibility of conviction appears to be remote and bleak. Further proceeding will indeed be an abuse of the process of the Court, as the key witnesses will not implicate the petitioner.

10. The learned counsel for the petitioner has relied on the decision of a coordinate Bench of this Court in *Lohit Das and 2 Others –vs- State of Assam*, rendered in connection with Criminal Petition No. 1112 of 2022, dated 19.04.2023, wherein it has been observed that-

“9. While dealing with the issue of quashing of FIR in the cases which are not compoundable, under Section 320 CrPC, the Hon’ble Supreme Court in the case of State of Madhya Pradesh vs. Laxmi Narayan and others, reported in (2019) 5 SCC 688, referring to two of its earlier decisions, in Gian Singh Vs. State of Punjab, reported in (2012) 10 SCC 303 and Narinder Singh Vs. State of Punjab, reported in (2014) 6 SCC 466, held that when the parties have

reached at the settlement and on that basis petition for quashing the Criminal Proceeding is filed, the guiding factor in such cases would be: (i) to secure end of justice or (ii) to prevent the abuse of the process of the court. It is further held that while exercising the power, the High Court is to form an opinion on either of the aforesaid objectives. Further, Hon'ble Supreme Court, in the case of Laxmi Narayan (Supra), has held 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".

11. Likewise, in the conspectus of the above decision, this instant petition is also allowed, as the allegations against the petitioner appear to be misconceived, stemming out of a misunderstanding. This is a fit case to invoke the jurisdiction under Section 482 CrPC.

12. Petition is allowed.

13. The entire proceeding of PRC Case No. 414/2020, arising out of Kalgachia PS Case No. 313/2019, is hereby quashed and set aside.

JUDGE

Comparing Assistant