

GAHC010210862023



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

Case No. : Crl.Pet./1015/2023

MEHBISH BEGUM AND 5 ORS
D/O MD. GULAM MUSTAFA
R/O VILL- SIALMARI
P.O. DAKARGHAT
P.S. NAGAON SADAR
DIST. NAGAON, ASSAM

2: MD. SARFORAS ANSARY
S/O MD. NURUL ISLAM
R/O VILL- KOCHGAON
P.S. RUPOHIHAT
DIST. NAGAON
ASSAM

3: BENJEER ANSARI
D/O NURUL ISLAM
R/O VILL- KOACH GAON
P.O. SAIDARIA
P.S. RUPUOHIIHAT
DIST. NAGAON
ASSAM

4: NURUL ISLAM
LATE ABU BAKKAR SIDDIQUE
R/O VILL- KOACH GAON
P.O. SAIDARIA
P.S. RUPUOHIIHAT
DIST. NAGAON
ASSAM

5: MONUWARA BEGUM
W/O NURUL ISLAM
R/O VILL- KOACH GAON
P.O. SAIDARIA

P.S. RUPUOHIIHAT
DIST. NAGAON
ASSAM

6: AZIZUL HAQUE
S/O MD. AMAR ALI
R/O VILL- SIALMARI
P.O. DAKARGHAT
P.S. NAGAON SADAR
DIST. NAGAON
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M BISWAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 12-06-2024

Heard Mr. M Biswas, learned counsel for the petitioners and Mr. B B Gogoi, learned Additional Public Prosecutor, Assam for the respondents State.

2. The petitioners have jointly filed this petition under Section 482 Cr.P.C. praying for quashing the FIR lodged by the petitioner No. 6 against the petitioner Nos. 2 to 5.

3. The FIR unfolds that the petitioner No. 1 was having a love relationship with the petitioner No. 2 for one year. On 05.11.2021, the petitioner No. 2 committed sexual assault on the petitioner No. 1 in a rental room of one of his

friend at Stadium Market, Nagaon and at that point of time, the petitioner No. 1 was only 17 years 9 months old. The petitioner No. 1 was impregnated by the petitioner No. 2 and then the other petitioner Nos. 3, 4 and 5 administered tablets for her abortion. Thereafter, on 14.11.2022, the petitioner No. 2 again committed sexual assault on the petitioner No. 1. In the next morning, the petitioner No. 2 called the petitioner No. 1 to his rental room at Tarun Nagar and then petitioner No. 2 along with his sister, Benjir Ansary, i.e., petitioner No. 3 assaulted her.

4. It is submitted on behalf of all the petitioners that the birth certificate of the petitioner No. 1, marked as Annexure-3 clearly reveals that at the time of the alleged incident, the petitioner No. 1 was above 18 years and she was not a minor at the time of the incident. The accused named in the FIR have been erroneously booked under the POCSO Act and in that regard, an additional affidavit has been submitted including the marriage certificate of the petitioner Nos. 1 and 2 marked as Annexure-A to the affidavit. At present both the petitioner Nos. 1 and 2 are married and thus further proceeding will be an abuse of the process of the Court as the petitioner No. 1 will not adduce evidence against her husband or her in-laws. Annexure-5 is the Deed of Mutual Settlement annexed to the petition.

5. It is stated through the deed of mutual settlement that the FIR was lodged because of some misunderstanding between the families and they have mutually settled their dispute and both the petitioner Nos. 1 and 2 have decided to tie their knot and they have already applied for registration of their marriage under the Special Marriage Act. Thereafter the petitioner No. 1 and 2 have got their marriage registered. Annexure-A of the additional affidavit is their marriage

certificate and Annexure-3 of the petition is the birth certificate of the victim, i.e., the petitioner No. 1.

6. I have considered the submissions at the bar with circumspection.

7. The informant by annexing the Annexure-5, i.e., the deed of mutual settlement submitted that the FIR was lodged due to misunderstanding between the families.

8. The petitioners have relied on the decision of this Court in Crl. Pet. No. 192/2018 decided on 22.03.12018 (*Madhab Chutial @ Titikon Chutia and Another Vs. the State of Assam and Another*), wherein it has been observed that :

“In case of like nature where the parties are immediately settled the matter and when the victim is not exclusively a minor even at the time of filing the FIR and the mother as well as the victim has asserted that victim is not at all minor then obviously the case under section 376 IPC Read with Section 4 of POSCO Act, 2012 will not come. On the other hand, the victim in her affidavit has asserted all about fact that has been given by the accused petitioner that she is now residing happily with accused petitioner. In such scenario it can be assumed that the neither the victim nor the informant will support the case in course of trial even proceeded till end. All these reflects the picture that case was filed out of misunderstanding. Further proceeding with the aforementioned case will be nothing but abuse of process of law and there is no any chance of conviction as well.”

9. Reverting back to this case, it is apparent that possibility of conviction

appears to be remote and bleak, as the prime accused, i.e., the petitioner No. 2 is now married to the victim, i.e., the petitioner No. 1. The other accused are related to the petitioner No. 2 as they are his parents. Possibility of the victim implicating her husband and her in-laws appears to be remote and bleak and thus, possibility of conviction also appears to be remote and bleak.

10. In the wake of the foregoing discussions, it is thereby held that this appears to be a fit case to invoke the inherent jurisdiction under Section 482 of the Cr.P.C. All the petitioners are family members and the victim and the accused are husband and wife. Further proceeding will indeed be an abuse of the process of the Court.

11. I have also relied on the decision of this Court in *Madhab Chutial @ Titikon Chutia (supra)*. In the instant case too, the victim has asserted that she is a major and she had already attained majority at the time of the incident.

12. The FIR being Nagaon Sadar Police Station Case No. 1410/2022 under Sections 376/313/325/34 of the Indian Penal Code, 1860 read with Section 4/15 of the Protection of Children from Sexual Offences (POCSO) Act is hereby set aside and quashed.

13. No order as to costs.

14. In the above terms, this Criminal Petition stands disposed of.

JUDGE

Comparing Assistant