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

Case No. : Crl.Pet./753/2021

KUTHAL PEGU
S/O SRI JATIN PEGU
R/O VILL- TONGANI UNDER SILAPATHAR POLICE STATION, IN THE
DISTRICT OF DHEMAJI, ASSAM

VERSUS

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

2:JYOTISHNA TAYE
S/O SRI HAKIM TAYE
R/O VILL- TONGANI UNDER SILAPATHAR POLICE STATION

IN THE DISTRICT OF DHEMAJI
ASSA

Advocate for the Petitioner : MR. M K DAS, MS J SAIKIA,MR. U S BORA,MS Z ANJUM

Advocate for the Respondent : PP, ASSAM,

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

18/07/2024

Heard Mr. Manjit Kumar Das, learned counsel for the petitioner and Ms. S Jahan, learned Additional Public Prosecutor, Assam for the State respondent.

2. The respondent No.2 on 08.12.2018 lodged an FIR before the Officer-in-Charge of Silapathar Police Station alleging that on 06.12.2018 around 07:00 PM, one Priyanath Pegu kidnapped her from the courtyard of her residence with the help of two other accused persons including the petitioner and the said accused Priyanath Pegu committed rape on her and on hearing her hue and cry, the villagers around came to the place of occurrence and at that point of time, the accused persons threatened her of dire consequences directing her not to say anything. The accused persons kept her in the house of one Numal Pegu and thereafter, she informed her relatives over phone and then they came and recovered her on 08.12.2018 at around 08:00 PM.

3. On the basis of the said FIR, Silapathar P.S. Case No. 562/2018 under Sections 366/376/506 IPC, corresponding to G.R. No. 1203/2018 (SLP) (PRC No. 198/2021) was registered.

4. The statement of the informant victim under Section 161 CrPC was recorded by police, whereas her statement under Section 164 CrPC was recorded by the learned Judicial Magistrate, First Class, Dhemaji on 10.12.2018. Later, on completion of the investigation, the concerned Investigating Officer on 29.06.2020 submitted the chargesheet in said Silapathar P.S. Case No. 562/2018 implicating the petitioner of committing the offence under Sections 376/511 showing him to be an absconder.

5. After receipt of the said chargesheet in said Silapathar P.S. Case No. 562/2018, the learned Chief Judicial Magistrate (CJM), Dhemaji transferred the case to the learned Judicial Magistrate, First Class (JMFC), Dhemaji for its disposal of the said PRC No. 198/2021, corresponding to G.R. No. 1203/2018 (SLP), arising out of Silapathar P.S. Case No. 562/2018. On the basis of the chargesheet, finding sufficient grounds, the learned JMFC, Dhemaji on 08.03.2021 took cognizance of the offence and issued summon to the petitioner for his appearance. But the petitioner did not appear before the JMFC, Dhemaji in said Silapathar P.S. Case No. 562/2018. Later, the petitioner filed this criminal petition on 10.12.2021, wherein notice was issued on 16.12.2021.

6. The petitioner contended that the FIR lodged by the respondent No.2 on 08.12.2018 clearly

reflects that it is one Priyanath Pegu who committed rape on her and there is no such allegation against the petitioner and in spite of that in the chargesheet filed in said Silapathar P.S. Case No. 562/2018, the investigating authority had implicated him under Sections 376/511 IPC.

7. Placing the medical report of the informant victim (Annexure-IV to this criminal petition), the petitioner submitted that there is no such injury on the person of the victim during her medical examination conducted on 09.12.2018 relating to Section 376 IPC, where her hymen was found to be intact and in spite of that the investigating authority implicated him under Section 376 IPC.

8. Mr. Das, learned counsel for the petitioner also placed before the Court that the 161 CrPC statement of the relevant witnesses recorded by the investigating authority as has been mentioned in the chargesheet clearly indicates non-involvement of the petitioner in the alleged crime and in spite of that the investigating authority implicated him under Sections 376/511 IPC of which the learned JMFC, Dhemaji took cognizance of the offence.

9. Relying on the decision of the Hon'ble Supreme Court in the cases of *Prashant Bharti Vs. State (NCT) of Delhi*, reported in (2013) 9 SCC 293 as well as the *State of Haryana Vs. Bhajan Lal* reported in 1992 Supp (1) SCC 335, Mr. Das, learned counsel for the petitioner submitted that the relevant chargesheet filed against the petitioner involved in this criminal petition should be set aside and quashed on the basis of the materials available before the Court as none of such materials indicated involvement of the petitioner in the alleged crime.

10. It is also contended by Mr. Das, learned counsel for the petitioner that in the case of *Bhajan Lal* (supra), the Hon'ble Apex Court have laid down that if the allegations made in the FIR or the complaint, though it may be taken at their face value and accepted in their entirety does not prima-facie constitute any offence or make out a case against the accused and the Court has the power to exercise the provisions of Section 482 CrPC to quash the proceeding against the accused person.

11. Relying on the same judgment, i.e., *Bhajan Lal* (supra), Mr. Das, learned counsel for the petitioner also submitted that if 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 in that case also the High Court in exercise of the power under Section 482 CrPC can set aside and quash the chargesheet filed against the accused person, thereby to prevent the abuse of the process of the Court and to secure the ends of justice favouring the petitioner, i.e., the accused person.

12. It is well settled that in a proceeding under Section 482 CrPC, the Court is not required to make a roving enquiry or does not have to go through the evidence on record. Further, in the present case from the reading of Section 164 CrPC statement of the victim recorded by the learned JMFC, Dhemaji, it is seen that the victim implicated the petitioner that he tried to commit rape on her but fail.

13. Section 376 IPC is triable by the Court of Sessions.

14. The learned JMFC, Dhemaji is yet to commit the case to the Court of the learned Sessions Judge, Dhemaji and the matter is only at the stage of appearance. The petitioner in spite of receipt of summon did not appear before the learned Magistrate for which the case could not be committed to the Court of the learned Sessions Judge, Dhemaji as required under Section 209 CrPC.

15. Before framing the charge under Section 220 CrPC, the Trial Court has ample power to discharge an accused under Section 227 CrPC after hearing the submissions of the accused and the prosecution and considering the relevant materials available before it.

16. In both the cases of the Hon'ble Apex Court, cited by the petitioner, charges were framed against the accused persons involved in those cases and in the present case, the said stage has not yet reached.

17. Only after going through the relevant medical documents of the victim, statements of the victim recorded by the Judicial Magistrate under Sections 164 CrPC as well as the statements of the victim and other witnesses acquainted with the facts recorded by the investigating officer of the case under Section 161 CrPC, it is the Trial Judge, who on its prima-facie satisfaction on the involvement of the accused persons shall proceed in the case though chargesheet may be filed against the accused persons in a criminal case. If the Trial Judge, as noted above, does not find any such prima-facie material to proceed against the accused persons implicated in the chargesheet, the concerned Trial Court have such power to discharge the accused.

18. Though, the petitioner submitted that the materials available in the case record is sufficient to set aside and quash the chargesheet filed against him in said Silapathar P.S. Case No. 562/2018 implicating him of the offence under Sections 376/511 IPC so as to prevent the abuse of the process of the Court and to secure the ends of justice, this Court is of the view that at this stage, there is no requirement to make any such roving enquiry of the statements of the witnesses named in the chargesheet as well as the medical report and the statement under Section 164 CrPC of the victim and

the FIR, as the petitioner has the option to appear before the learned Sessions Judge, Dhemaji on committing the said PRC No. 198/2021, corresponding to G.R. No. 1203/2018 (SLP), arising out of Silapathar P.S. Case No. 562/201 by the learned JMFC, Dhemaji.

19. Accordingly, this criminal petition, being devoid of merit, stands dismissed.

20. The interim order staying the further proceeding of said PRC No. 198/2021, corresponding to G.R. No. 1203/2018 (SLP), arising out of Silapathar P.S. Case No. 562/2018 passed earlier in this proceeding stands vacated.

JUDGE

Comparing Assistant