

GAHC010216152023



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

Case No. : Crl.Pet./1030/2023

AFSARUL ISLAM AND ANR
S/O LT. ANOWAR HUSSAIN VIL. GUTIPARA PT. VI ANDAMARI P.S.
BILASIPARA DIST. DHUBRI ASSAM

2: ABIDA EASMIN @ ABIDA BEGUM
W/O SANTOSH ALI SK D/O LT. ANOWAR HUSSAIN VILL. KATHALBARI P.S
BAGRIBARI DIST KOKRAJHAR BTR ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

2: SHAJIDA KHATUN
W/O HOSEN ALI VILL. SUAPATA PART I P.O. SUAPATA BO P.S CHAPAR
DIST. CHAPARA DIST. DHUBRI ASSAM PIN 78334

Advocates for the petitioner : Mr. N. J. Dutta, Adv.
Advocates for the respondents : Mr. P. S. Lahkar, Addl. P. P. Assam
Mr. R. A. Ahmed, Adv. for R- 2

:::BEFORE:::
HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 28.03.2024

Date of Judgment & Order : 17.05.2024

JUDGMENT & ORDER (CAV)

Heard Mr. N. J. Dutta, learned counsel for the petitioners. Also heard Mr. P. S. Lahkar, learned Additional Public Prosecutor for the State respondent No. 1 and Mr. R. A. Ahmed, learned counsel for the respondent No. 2/informant.

2. This is an application under Section 482 of the Code of Criminal Procedure for quashing the impugned Charge-Sheet No. 64/2021, dated 08.07.2021, arising out of Bagribari P.S. Case No. 91/2021, under Sections 376/313 of the Indian Penal Code *read with* Section 6 of the POCSO Act, and the subsequent criminal proceeding in Sessions Trial No. T.2/11/2023 (GR Case No. 733/2021), pending before the Court of learned Assistant Session Judge, Kokrajhar.

3. In brief, the case of the petitioner is that on 16.06.2021, one Shajida Khatun lodged an F.I.R. before the Bagribari Police Station, Mahamaya, Assam alleging *inter alia* that her minor daughter (name withheld) was working as maid servant in the house of one Sontosh Ali in village Kathalbari. During that period, the accused/petitioner No. 1- Afsarul Islam developed love relationship with the victim daughter of the informant for last 2 (two) years and he also promised to marry her and had sexual intercourse with the victim girl for several occasion as a result of which, the victim got pregnant. Upon receipt of the said F.I.R., the Officer-In-Charge, Bagribari Police Station registered a case, being Bagribari P.S. Case No. 91/2021, under Section 376/313 IPC *read with* Section 6 of the POCSO Act, and investigated the matter. On completion of investigation, the police submitted Charge-Sheet vide Charge-Sheet No. 64/2021, dated 08.07.2021, against the accused/petitioners under Sections 376/313 IPC.

4. It is stated that though initially Section 6 of the POCSO Act was also registered, along with other Sections, but subsequently after investigation of this case, police filed Charge-Sheet against the present accused/petitioner under Section 376/313 IPC and dropped Section 6 of the POCSO Act. The case was accordingly committed before the learned Session Judge, Kokrajhar, which was accordingly registered as Sessions Case No. T.2/11/2023 (GR Case No. 733/2021) and accordingly, on 15.02.2023, the learned Assistant Session Judge, Kokrajhar framed charges against the present accused/petitioner No. 1 under Sections 376/313 IPC and against the accused/petitioner No. 2 under Section 313 IPC.

5. After framing of the charges, the learned Assistant Session Judge, Kokrajhar issued summons to the witness No. 1 (informant) and witness No. 2 (victim) fixing 15.06.2023 for evidence. But both the witness did not turn up as they are not interested to proceed with the case.

6. It is further stated that the informant and the victim girl are the relatives of the accused persons, but due to their financial hardship, the petitioners family gave shelter to the victim girl on their request and she was staying in their house for last 5 (five) years. But, subsequently, the victim tried to attract accused/petitioner No. 1 physically as her main intention was to marry the accused/petitioner No. 1. But, when she could not successful in her attempt, she along with her mother (informant), lodged the false and concocted case against the accused/petitioners.

7. It is further stated that though the summons were received by the

informant and the victim, they did not appear before the learned Court below as the victim already got married with one Abu Bakkar Ali on 05.08.2023 and since then, they are living their married life peacefully. But, due to pendency of the present case, both the victim and the informant are facing some problem as it may hamper the marital life of the victim and for this reason only, the victim decided not to proceed with the case for the sake of her marital life. Rather, she is facing mental agony due to pendency of the case against the accused/petitioners. More so, both the victim and the informant tendered their unconditional apology regarding the incident that took place on 16.06.2021 due to misunderstanding and for which, they falsely implicated the accused persons. The informant also proposed to compromise the matter amicably to save the conjugal life of her daughter. Accordingly, the informant call for village meeting on 13.08.2023 in presence of villagers and both the parties agreed with the terms and conditions of the village meeting. In pursuant to the said village meeting, the informant/respondent No. 2 agreed to withdraw the Court proceeding to save the matrimonial life of her daughter/victim. The victim also executed an affidavit on 14.08.2023 after the village meeting, but in spite of that, the Charge-Sheet was filed against the present accused/petitioners and for which, they preferred the present petition for quashing the entire criminal proceedings pending before the Court of learned Assistant Sessions Judge as well as the F.I.R. and Charge-Sheet of this case.

8. Mr. Dutta, learned counsel for the petitioners, has submitted that the allegation made in the F.I.R., though criminal in nature, but it is predominantly civil in nature and both the parties have already resolved their disputes by executing an affidavit after the village meeting and accordingly, on the basis of

the said compromise, the said criminal proceeding is liable to be set aside and quashed. More so, the victim was major at the relevant time of incident and she also refused to go for medical examination which otherwise reveals that with a false allegation, the informant lodged the F.I.R. only due to some family disputes.

9. He further submitted that as the matter has already been settled/compromised, the possibility of conviction is remote and bleak and hence, the continuation of such criminal proceeding will be an abuse of the process of the Court. The victim already executed an affidavit to save her matrimonial life.

10. In support of his submission, Mr. Dutta, learned counsel for the petitioners, further placed reliance on the decision of the Apex Court in *Narinder Singh & Ors. Vs. State of Punjab & Anr.*, reported in (2014) 6 SCC 466, wherein it has been held that *"those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves."*

11. He further relied on another decision of the Supreme Court passed in case of **Kapil Gupta Vs. State of NCT of Delhi & Anr.**, reported in **2022 0 Supreme(SC) 1108**, wherein it has been held that *"it is further to be noted that since the respondent No. 2 herself is not supporting the prosecution case, even if the criminal trial is permitted to go ahead, it will end in nothing else"*

than an acquittal, if the request of the parties is denied, it will be amounting to only adding one more criminal case to the already overburdened criminal courts."

12. Mr. Dutta also relied on a decision of Co-ordinate Bench of this Court passed in the case of **Rajen Gohain Vs. State of Assam & Anr. (Crl. Pet. No. 122/2019)**, wherein this Court has observed as under:

"In the case of Parbatbhai Aahir Vs. Bhimsinhbhai Karmur and Others reported in 2017 (9) SCC 641, the Hon'ble Supreme Court has held that heinous crimes such as rape, murder, dacoity cannot be compounded and therefore, such proceedings cannot be quashed by invoking the jurisdiction under section 482 Cr.P.C. But at the same time, it is also to be noted herein that the scope and ambit of the power of the High Court to quash a criminal proceeding in exercise of jurisdiction under Section 482 of the Cr.P.C. has been firmly settled since the decision of the Apex Court in the case of Bhajan Lal and others (supra)."

13. In this context, Mr. R. A. Ahmed, learned counsel for the respondent No. 2/informant, has submitted that both the parties have already settled/compromised the matter and to that effect, both the victim and the informant also sworn an affidavit and hence, they have no objection in setting aside and quashing of the criminal proceeding pending against the present accused/ petitioners. Rather, both the informant and the victim are facing mental agony due to the pendency of the present case as the victim already got married with another person and the further proceeding of the said case may affect her marital life.

14. Mr. P. S. Lahkar, learned Additional Public Prosecutor for the State

respondent No. 1, has submitted that it is a heinous crime wherein the allegation of rape is brought against a minor girl along with an allegation of abortion of the child is also brought against the present accused/petitioners and hence, in such nature of case, the matter cannot be set aside or quashed by exercising power under Section 482 Cr.P.C. In this context, he relied on a judgments of Apex Court passed in **Gian Singh Vs. State of Punjab & Anr.**, reported in **(2012) 10 SCC 303**, as well as **State of Haryana & Ors. Vs. Bhajan Lal & Ors.**, reported in **1992 Supp (1) Supreme Court Cases 335**.

15. I have considered the submissions made by the learned counsels for both sides and also perused the case record of Sessions Case No. T.2/11/2023.

16. It is seen that the F.I.R. has been lodged by the mother of the victim with the allegation that her minor daughter was sexually exploited by the accused/petitioner No. 1 and she was forced to have sexually intercourse with him on a false promise of marriage and for which, she got pregnant and subsequently her pregnancy was terminated by both the accused/petitioner Nos. 1 & 2. It is a fact that at the time of registration of the case, it was registered under Sections 376/313 IPC *read with* Section 6 of the POCSO Act. But, after investigation, the I.O. filed Charge-Sheet against both the accused/petitioners under Sections 376/313 Cr.P.C. and Section 6 of the POCSO Act was accordingly dropped. As per the case of the petitioners, it was only due to misunderstanding the case was lodged by the mother of the victim, but subsequently they have settled the matter and the victim also got married with another person and at present, she is living happily with her husband. It is also submitted by the learned counsel for the petitioners that due to the pendency of the criminal proceeding, the victim as well as the informant is facing mental

agony as it may affect the married life of the victim, who is peacefully living with her husband at present. To avoid all these circumstances, the matter was also settled/compromised in village meeting and in pursuant to the said meeting, both the victim as well as the informant also sworn affidavit stating that they have no objection if the criminal proceeding is set aside and quashed.

17. Here in the instant case, it is seen that a serious allegation of rape on minor girl is brought against the accused/petitioner No. 1 along with the allegation of abortion of child against both the accused/petitioners. However, it is also a fact that the matter has already been compromised between the parties and both the victim and the informant also executed affidavit stating that they do not have any objection in the event of quashing the entire criminal proceeding as the F.I.R. was lodged only due to some misunderstanding and moreover, the informant and the victim are suffering from mental agony due to pendency of the said proceeding which may affect the married life of the victim

18. In the case of **Narinder Singh (supra)**, the Supreme Court has expressed the view that while exercising the power under Section 482 Cr.P.C., the timing of settlement is very crucial and in cases where the settlement is arrived immediately after the alleged commission of offence or the matter is still under investigation, the High Court may be liberal in accepting the statement to quash the criminal proceeding/investigation. In cases where the charge is framed, but the evidence is yet to be commenced and evidence is still in initial stage, the High Court can show benevolence in exercising its power favourably, but after *prima facie* assessment of the circumstances/material mentioned above.

19. Here in the instant case, it is seen that the charge was framed by the learned Assistant Sessions Judge, Kokrajhar on 15.02.2023, under Sections 376/313 IPC, and the village meeting was held on 13.08.2023 and in pursuant to the said village meeting, both the victim and the informant also executed their affidavit on 14.08.2023. More so, the victim got married with another person on 05.08.2023 and it is seen that even after issuance of summon and after framing of charge, the vital witnesses, i.e. the informant and the victim, did not appear before the Court as the matter has already been settled/compromised between the parties. It is the case of the petitioners as well as the respondent No. 2 that as the victim already got married with another person and the F.I.R. was lodged only due to some misunderstanding, both the informant and the victim are not interested to proceed with the case further. Rather, they are suffering from mental agony due to pendency of the said proceeding which may affect the married life of the victim.

20. The Apex Court in the case of **Gian Singh v. State of Punjab**, reported in **(2012) 10 SCC 303**, has held that *"the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or First Information Report (FIR) if it is satisfied that on the face of such settlement, there is hardly and likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated."*

21. In the instant case, it is seen that both the victim and the informant are facing severe mental agony only for the pendency of the criminal proceeding

against the present accused/ petitioners and they have already settled the matter amicably which was lodged against the present accused/ petitioners only due to some misunderstanding. The ground behind their mental agony is also that the further proceedings of the criminal case may also affect the married life of the victim and with that view, both the victim and the informant, the vital witnesses of the prosecution, are not interested to proceed with the case further.

22. Thus, it can be held that even if the case is allowed to be proceeded further, the chance of conviction is remote and bleak. Further, since the matter has already been settled between the parties, it is unlikely that the informant and the victim will depose against both the accused/petitioners and in that event allowing the proceeding to continue before the learned Court below, it will be nothing but an abuse of the process of the Court.

23. In view of above and also considering the view expressed by the Apex Court in the case laws referred to herein above as well as for ends of justice, I am of the view that this is a fit case where the extra-ordinary power under Section 482 of the Code of Criminal Procedure can be invoked to quash the criminal proceeding pending against the present accused/petitioners. Accordingly, the petition stands allowed. The F.I.R. of Bagribari P.S. Case No. 91/2021, under Sections 376/313 of the Indian Penal Code *read with* Section 6 of the POCSO Act; Charge-Sheet No. 64/2021, dated 08.07.2021; as well as the subsequent criminal proceeding in Sessions Trial No. T.2/11/2023 (GR Case No. 733/2021), pending before the Court of learned Assistant Session Judge, Kokrajhar, stands set aside and quashed.

24. In terms of above, this criminal petition stands disposed of.

JUDGE

Comparing Assistant