

GAHC010222932022



2024:GAU-AS:11809

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

Case No. : Crl.Pet./1115/2022

LAL MIA AND ANR
S/ O LATE NAYAN ALI
R/O VILL- GARAIMARI GAON, P.S. BARPETA
DIST. BARPETA, ASSAM, PIN-781315

2: NURUL AMIN @ NUR AMIN
S/O LAL MIA
R/O VILL- GARAIMARI GAON
P.S. BARPETA
DIST. BARPETA
ASSAM
PIN-78131

VERSUS

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

2:RAFIQULISLAM
S/O SAYEDUL ISLAM
R/O VILL- MOURIPAM
P.S. BAGHBAR
DIST. BARPETA
ASSAM
PIN-781308

3:TARA BANU
W/O HIKMAT ALI
R/O VILL.-SATRAKANARA
NO.1 CHASRA
P.S.-BAGHBAR
DIST.-BARPETA
ASSAM
PIN-781308

Advocate for the Petitioner : MD I H LASKAR, MR. R A MAZUMDER

Advocate for the Respondent : PP, ASSAM, MR. D HUSSAIN (R-3), MD. E AHMED (R-3)

Linked Case : CrI.Pet./906/2024

HIKMAT ALI
S/O LATE JAYNAL ALI
R/O VILL- SATRAKANARA
NO. 1 CHASRA
P.S. BAGHBAR
DIST. BARPETA
ASSAM
PIN- 781308

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE PP
ASSAM

2: RAFIQUUL ISLAM
S/O SAYEDUL ISLAM
R/O VILL- MOURIPAM
P.S. BAGHBAR

DIST. BARPETA
ASSAM
PIN-781308

3:XXX
D/O HIKMAT ALI
W/ONURUL AMIN @ NUR AMIN
R/O VILL- SATRAKANARA NO. 1 CHASRA
P.S. BAGHBAR
DIST. BARPETA
ASSAM
PIN-781308

Advocate for : MR. M AHMED
Advocate for : PP

ASSAM appearing for THE STATE OF ASSAM AND 2 ORS

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

JUDGMENT

Date of hearing : 28.11.2024

Date of Judgment : 28.11.2024

JUDGEMENT AND ORDER(ORAL)

1. Heard learned counsel Mr. M. Ahmed for the petitioner nos. 1 and 2 in Criminal petition no. 1115/2022 and the petitioner of Criminal petition no. 906/2024.
2. Heard Mr. K. Baishya, learned Additional Public Prosecutor, Assam for the respondent State and Mr. D. Hussain, learned counsel for the respondent no. 3 in both the Criminal petition nos. 1115/2024 and 906/2024.
3. Notices have been served on the respondent no. 2 but the respondent no. 2 is not represented today.
4. Both the applications have been filed under Section 482 of the Cr.PC for quashing the entire proceeding of Special POCSO Case no. 36/2022 arising out of Baghbar P.S Case No. 308/2021 registered under Sections 120(B)/376/34 of the IPC read with Section 4 of Protection of Children from Sexual Offences Act, and read with Section 9/10/11 of the Prohibition of Child Marriage Act.
5. The petitioner no. 1 of Criminal petition no. 1115/2022, is the father-in-law

of the victim, the petitioner no. 2 is the husband of the victim and the petitioner of Criminal petition no. 906/2024 is the father of the victim. The FIR unfolds that, a marriage was stealthily solemnized between the victim 'X' and her husband 'Y', and the father-in-law as well as the father of the victim are also complicit. There was apprehension of aggravated sexual abuse on the minor victim, and an FIR was lodged by the respondent no. 2. After investigation, the FIR culminated into charge-sheet being charge-sheet no. 05/2022 dated 20.01.2022. The petitioners and the respondent no. 3 i.e., the victim are not at all willing to proceed with this case. The respondent no. 3 is married to the petitioner no. 2/'Y' of Criminal petition no. 1115/2022. The victim has attained majority by now.

6. It is submitted that the petitioners as well as the respondent no. 3 will be highly prejudiced if the case is proceeded against the family members of respondent no. 3.

7. The learned counsel for the petitioners has relied on the decision of this Court in ***Criminal Petition No. 812/2023***, wherein it has been held that:

“7. The learned counsel for the petitioners has submitted that though both sides are now living peacefully as husband and wife and though they have become parents of a baby boy, they are not entitled to file any application before the trial court for compounding the offences because the offences are not compoundable according to Section 320 of the Code of Criminal Procedure.

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8. Appearing for the girl, Mr. Ahmed has submitted that since the boy and the girl are married and they have now attained majority, the offences against the present petitioners deserve to be compounded by

exercising the power under Section 482 of the CrPC.

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11. *The guidelines for consideration of a petition under Section 482 of the Cr.PC has been laid down by the **Hon'ble Supreme Court in State of Haryana v. Bhajan Lal, AIR 1992 SC 604.** Paragraph 102 of the judgment reads as under:*

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where 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.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

12. Reverting to the case in hand, I find that under the given circumstances, there is no possibility of conviction in this case in future. So, allowing the criminal proceeding to continue before the trial court would be nothing but an abuse of the process of the court.

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14. Accordingly, the criminal proceedings of Special Case No.02/2023, arising out of Diyungmukh P.S. Case No.05/2023 under Sections 376(3) of the Indian Penal Code read with Section 9/11 of the Prohibition of Child Marriage Act r/w section 4/6/17 of the Protection of Children from Sexual Offences Act, 2012 pending in the court of learned Special Judge, Dima Hasao, is quashed and set aside.”

The petitioners has also relied on the decision of this Court in **Lohit Das And**

Ors Vs. The State Of Assam reported in **2023 0 Supreme (GAU) 76**, wherein it has been held that:

“10. Here in this case, perusal of the record of the learned Court below reveals that the petitioner No. 2 has already been charge sheeted under Section 366(A) of the IPC, showing him absconder in the charge sheet. Indisputably, the offence under Section 366(A) IPC is a non-compoundable offence under Section 320 Cr.PC. It also reveals from the petition that all the three petitioners have approached this Court for quashing of the proceeding of Gohpur P.S Case No 71/2020, under Section 366(A) of the IPC, as after attainment of majority by the petitioner No.3, her marriage has solemnized with the petitioner No 2, as per the Hindu rites and rituals and now they are living together as husband and wife and leading a happy married life. Indisputably the dispute between petitioner Nos. 1 and 3 with that of petitioner No.2 arises out of matrimonial relationship of family dispute, and further, it appears that the parties have resolved the entire dispute among themselves.

11. Since the matter has already been settled by the petitioners and since they are not willing to pursue the matter further, and since the matter has arisen out of matrimonial relationship or family dispute, this Court is of the view that end of justice will be meted out if the petition is allowed. It is unlikely that in the event of dismissing the petition, the petitioner No.3, who is now wife of the petitioner No 2 would depose against him before the learned Court below and in such event, further continuation of the proceeding of Gohpur PS Case No. 71/2020, corresponding to GR. Case No 83/2020 and PRC No. 102/2022 under section 366(A) of the IPC would be an abuse of the process of the Court and it would be an exercise in futility.

12. Under the facts and circumstances and also drawing premises from the ratios, laid down in the Cases discussed hereinabove, this Court is inclined to allow this petition, and accordingly, the same is allowed. Resultantly, the proceeding of Gohpur PS. Case No. 71/2020, corresponding to G.R. Case No 83/2020 and PRC No. 102/2022, under section 366(A) of the IPC stands quashed.”

8. I have considered the submissions at the Bar with circumspection.
9. I have also relied on the decision of the **Hon'ble Supreme Court in State of Haryana v. Bhajan Lal, AIR 1992 SC 604**. In the light of the decision of the **Bhajan Lal's case (Supra)**, both the petitions are allowed. It is held that further proceeding will indeed be an abuse of the process of this Court as the respondent no. 3/'X' is the married wife of the petitioner/'Y'.

10. It appears that possibility of conviction appears to be remote and bleak. This appears to be a fit case to invoke the inherent jurisdiction under Section 482 of the Cr.PC.

11. Thereby, the proceedings of Special POCSO Case no. 36/2022 arising out of Baghbar P.S Case No. 308/2021 is hereby set aside and quashed.

JUDGE

Comparing Assistant