

GAHC010224662013



2024:GAU-AS:11899

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

Case No. : Crl.Pet./645/2013

MD. ARIFULLAH
S/O MD. ABDUL ZABBAR R/O VILL - GANGPAR P.S. KARIMGANJ DIST.
KARIMGANJ, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR

2:AJMAL HUSSAIN
S/O LT. JOYAHIR ALI VILL- GANGPAR P.S. KARIMGANJ DIST. JOGANATHI
DIST. KARIMGANJ
ASSAM

Advocate for the Petitioner : MS.A DEY, MR.S C BISWAS,MR.R D PURAKAISTHA,MR.B CHOUDHURY

Advocate for the Respondent : MD.GIASH UDDIN, MR.A UDDIN,PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 29.11.2024

1. Heard Mr. S.C. Biswas, learned counsel for the petitioner. Also heard Mr. K Baishya, learned Addl. PP, Assam.
2. Though Ajmal Hussain (respondent No.2) entered appearance

through Mrs. M Buragohain, learned counsel, however, none appears for the respondent No.2 today.

3. The present petition is filed under section 482 Cr.P.C, 1973 assailing an order dated 18.06.2012, whereby the learned JMFC, Karimganj refused to accept the final report submitted by the Investigating Officer in connection with Karimganj PS Case No.21/2012 under sections 366(A)/387/34 IPC and directed for fresh investigation by a separate officer.

4. The brief facts leading to filing of this petition is that the respondent No.2 Ajmal Hussain filed a complaint case before the court of learned CJM inter alia alleging that the petitioner had kidnapped the complainant's daughter and there was an extortion call for the release of the informant's daughter. Such application was forwarded by the learned CJM to the Officer in Charge, Karimganj police station with a prayer to register a case and file a final form.

5. Accordingly Karimganj PS case No.21/2012 under sections 366A/387/34 IPC registered. The statement of the victim was recorded before the Magistrate under section 164 Cr.P.C. The aforesaid statement is part of the record and quoted herein below:

“Statement under section 164 Cr.P.C in connection with Karimganj PS Case No.21/2012 under sections 366(A)/387/34 IPC.

Parbin Begum

D/O Ajmal Hussain

R/O Gangpar

P.S. Karimganj

On oath,

My age is about 18 years 3 months. I voluntarily left with Arif. I am in love with Arif. We got married. We were at Nagaon. Police arrested us from Nagaon. I want to go with my husband.

R.O. & A.C

Sd/- Illegible

CJM

Karimganj

13.2.2012

6. Subsequently, Final Form was filed in the shape of closure report. Being aggrieved by such final report submitted by the investigating officer, the informant (father) lodged a Narazi Petition and the learned Magistrate by the order dated 18.06.2012 once again recorded the statement of the victim on his own, wherein the victim deviated from her earlier recorded statement and in the aforesaid backdrop, reinvestigation was directed by another officer by order dated 18.06.2012. Being aggrieved, the present petition is filed.

7. It is by now well settled in the case of ***Vinay Tyagi Vs Irshad Ali alias Deepak and Others*** reported in ***(2013) 5 SCC 762***, the Hon'ble Apex Court laid the following proposition of law:

40. Having analyzed the provisions of the Code and the a various judgments as afore-indicated, we would state the following conclusions in regard to the powers of a magistrate in terms of Section 173(2) read with Section 173(8) and Section 156(3) of the Code:

40.1. The Magistrate has no power to direct 'reinvestigation' or 'fresh investigation' (de novo) in the case initiated on the basis of a police report.

40.2. A Magistrate has the power to direct 'further investigation' after filing of a police report in terms C of Section 173(6) of the Code.

40.5. The Code is a procedural document, thus, it must receive a

construction which would advance the cause of justice and legislative object sought to be achieved. It does not stand to reason that the legislature provided power of further investigation to the police even after filing a report, but intended to curtail the power of the Court to the extent that even where the facts of the case and the ends of justice demand, the Court can still not direct the investigating agency to conduct further investigation which it could do on its own.

40.6. It has been a procedure of propriety that the police has to seek permission of the Court to continue 'further investigation' and file supplementary chargesheet. This approach has been approved by this Court in a number of judgments. This as such would support the view that we are taking in the present case."

8. In view of the aforesaid settled proposition of law, this court is of the view that in the given facts of the present case, the learned Magistrate could not have recorded the statement of the victim once again on his own and asked for re-investigation by a different investigating officer on the ground that though the victim in her statement recorded under section 164 Cr.P.C admitted to have a love affair with the accused as well as admitting that she is more than 18 years of age, however, she had contradicted such fact before the learned Magistrate.

9. It is needless to say that the Magistrate is within his right not to accept a Final Form filed by the Investigating Officer and he is also within his power to either take cognizance on the basis of the materials available on record or to direct for further investigation for the reasons to be recorded, if the Magistrate is satisfied or register the objection petition to be a complaint case and proceed accordingly. However, none of the aforesaid course of action has been taken by the Magistrate, rather the learned Magistrate directed for reinvestigation by a different investigating officer, which is not within the power of a Magistrate, as held by the hon'ble Apex court in **Vinay**

Tyagi(supra).

10. In view of the aforesaid, this court is of the view that the learned Magistrate has committed patent illegality and serious error of law. Accordingly, this court is inclined to exercise its power under section 482 Cr.P.C to correct the aforesaid defect.

11. Accordingly, the order dated 18.06.2012 passed in connection with Karimganj PS Case No.21/2012 under sections 366(A)/387/34 IPC is set aside and quashed.

JUDGE

Comparing Assistant