

GAHC010254282022



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

Case No. : Crl.Pet./1260/2022

MD HUSSAIN ALI AND 2 ORS
S/ LATE RUSMAT ALI
R/O VILL- BALIJAN, P.O. AND P.S. MIKKIRBETA, DIST. MORIGAON, ASSAM,
PIN-782413

2: NUR NAHAR BEGUM
W/O AMINUL ISLAM
D/O MD. HUSSAIN ALI
R/O VILL- DHANKHALI
P.O. AND P.S. JAGIROAD
DIST. MORIGAON
ASSAM
PIN-784172

3: AMINUL ISLAM
S/O LATE ABDUL ALI
R/O VILL- DHANKHALI
P.O. AND P.S. JAGIROAD
DIST. MORIGAON
ASSAM
PIN-78417

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE LEARNED PP, ASSAM

Advocate for the Petitioner : ALHAJJ I UDDIN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

JUDGMENT & ORDER (ORAL)

Date: 28.05.2024

1. Head learned counsel Mr. A.I. Uddin for the petitioners (name withheld). The petitioner No. 1 is the informant, the petitioner No. 2 is the victim and the petitioner No. 3 is the accused.
2. It is submitted on behalf of the petitioners that the petitioner Nos. 2 and 3 are at present married, and they are living together peacefully as husband and wife and they are blessed with a child. Both the parties have jointly and amicably settled their dispute. Basically the petitioner No. 1 was aggrieved by the relation between the petitioner Nos. 2 and 3 as he did not approve of the marriage between his daughter and the accused. The petitioner No. 3 was the accused and the FIR was lodged against him which was registered as Mikirbeta P.S. Case No. 29 of 2016, G.R. Case No. 179 of 2016 registered u/s 366()A/343 of the IPC.
3. Heard Mr. B.B. Gogoi, learned Addl. PP., Assam.
4. The learned Addl. PP has also fairly submitted that both the parties have amicably settled the dispute and possibility of conviction appears to be remote and bleak as the wife will never implicate her husband in a criminal case.
5. This application was filed u/s 482 Cr.PC with prayer for quashing the entire proceeding of the G.R. Case No. 179/2016. At present charge-sheet has been submitted

and the case has been pending for commitment. The case is not even before the trial Court. Charge-sheet was laid against the petitioner No. 3 i.e. the accused u/s 366(A)/342 IPC. As this case is not compoundable, the petitioner has filed this application u/s 482 Cr.PC.

6. The petitioner has relied on the decision of the Hon'ble Supreme Court in ***Kapil Gupta v. State of NCT of Delhi and Another in Criminal Appeal 1217 of 2022*** decided on 10th August, 2022 wherein it has been held and observed that:-

“15. The facts and circumstances as stated hereinabove are peculiar in the present case. Respondent No.2 is a young lady of 23 years. She feels that going through trial in one case, where she is a complainant and in the other case, wherein she is the accused would rob the prime of her youth. She feels that if she is made to face the trial rather than getting any relief, she would be faced with agony of undergoing the trial.

16. In both the cases, though the charge sheets have been filed, the charges are yet to be framed and as such, the trial has not yet commenced. 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.

17. In that view of the matter, we find that though in a heinous or serious crime like rape, the Court should not normally exercise the powers of quashing the proceedings, in the peculiar facts and circumstances of the present case and in order to give succour to Respondent No. 2 so that she is saved from further agony of facing two criminal trials, one as a victim and one as an accused, we find that this is a fit case wherein the extraordinary powers of this Court be exercised to quash the criminal proceedings.”

7. Reverting back to this case it is held that although the petitioner No. 3 is alleged with a serious offence u/s 366(A)/342 IPC yet possibility of conviction appears to be remote and bleak. The informant and the victim themselves are not willing to proceed against the accused. The accused i.e. the petitioner No. 3 is the husband of the victim i.e. the petitioner No. 2. As the informant and the victim are not willing to proceed against

the petitioner No. 3, further proceeding will indeed be an abuse of the process of the Court.

8. In the light of the decision of Hon'ble Supreme Court in *Kapil Gupta (supra)* the proceeding of the G.R. Case No. 179/2016 is hereby set aside and quashed.

9. In terms of the above observation, petition is disposed of.

JUDGE

Comparing Assistant