

GAHC010255732023



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

Case No. : Crl.Pet./1213/2023

NURUL HAQUE AND ANR
S/O LATE ISMAIL ALI
R/O VILL- DIMRUPAR, P.S. AND DIST. HOJAI,
ASSAM, PIN-782435

2: AHSANUL HOQUE
S/O NURUL HOQUE
R/O VILL- DIMRUPAR
P.S. AND DIST. HOJAI
ASSAM
PIN-782435

VERSUS

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

2:DEBASIS KAR
S/O LATE HIMANSHU KR.
R/O SINGARI BASTI
MATIKHOLA
P.S. AND DIST. HOJAI
ASSAM
PIN-782435

:: BEFORE ::

HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

For the Petitioners : Mr. K. A. Mazumder, Advocate.

For the Respondents : Ms. S. Jahan, Addl. PP.
: Ms. M. K. Brown, Amicus Curiae

Date of Judgment : 15.07.2024

JUDGMENT

1. Heard Mr. K. A. Mazumder, learned counsel for the petitioners. Also heard Ms. S. Jahan, learned Additional Public Prosecutor for the State respondent as well as Ms. M. K. Brown, learned Amicus Curiae, representing the informant.

2. This application under Section 482 of the Code of Criminal Procedure, 1973, read with Article 227 of the Constitution of India, has been filed by the petitioners, namely *1. Nurul Haque and 2. Ahsanul Hoque*, praying for quashing of the Charge-sheet No. 73/2023 dated 30.03.2023 and the criminal proceeding which has been initiated on the basis of the same, namely, Special [POCSO] Case No. 72 (H)/2023, pending in the Court of learned Special Judge, Hojai.

3. The facts relevant for consideration of the instant criminal petition, in brief, are as follows:-

i. On 06.02.2023, one Debasis Kar, (respondent No. 2) had lodged an FIR before the Officer-in-Charge of Hojai Police Station, *inter alia*, alleging that one Nurul Haque (the petitioner No. 1) had forcibly married his 17 years old daughter to one Adnan Ahmed. Though, no specific allegation has been levelled against the Petitioner No. 2, *Ahsanul Hoque*, in the FIR, however, he has been named in the FIR along with some other co-accused persons. On receipt of the said FIR, Hojai P.S. Case No. 81/2023 under Sections 9/10/11 of the Prohibition of Child Marriage Act, 2006, read with Sections 4/17 of the POCSO Act, 2012 was registered and investigation was initiated.

ii. Ultimately, on completion of the investigation, the Investigating Officer laid the Charge-sheet bearing No. 73/2023 dated 30.03.2023 against five numbers of accused persons, including the above named petitioners under Sections 9/10/11 of the Prohibition of Child Marriage Act, read with Section 17 of the POCSO Act, 2012.

4. The learned counsel for the petitioners has submitted that the date of birth of the daughter of the petitioner No. 1 is 31.12.2004 and she was married to 21-years-old Adnan Ahmed on 10.01.2023 as per Islamic Rights and Customs. It is submitted by the learned counsel for the petitioners that on the date of marriage of the daughter of the petitioner No. 1, her age was more than 18 years and her marriage was also registered before the Government Qazi of Morigaon, Assam on 08.02.2023.

5. Learned counsel for the petitioners has also submitted that the informant (respondent No. 2) had lodged a false FIR against the petitioners without verifying the facts making certain concocted allegations, in the FIR, against the above-named petitioners, only on the basis of hearsay. The learned counsel for the petitioners has also submitted that during the course of investigation, the Investigating Officer had also collected the certificate of date of birth of the daughter of the petitioner No. 1 and other educational certificates where her date of birth has been clearly mentioned as 31.12.2004, therefore, on the date of her marriage i.e., on 10.01.2023 she was more than 18 years of age and no offence under Prohibition of Child Marriage Act, 2006 or under POCSO Act, 2012 has been committed neither any ingredients of same are there in this case.

6. Learned counsel for the petitioners has submitted that the continuation of the criminal proceedings against the above-named petitioners would only be an abuse of the process of Court without yielding any fruitful results. Learned counsel for the petitioners has also submitted that in a proceeding under Section 482 of the Code of Criminal Procedure, 1973 where the pending criminal proceeding has been challenged on the ground that the ingredients of offence alleged in the FIR as well as in the charge-sheet are not there, it is inevitable on the part of the Court to undertake an examination of the materials available on record, including the charge-sheet, to verify as to whether it, *prima facie*, shows the presence of the ingredients of the offence under which the charge-sheet has been laid.

7. Learned counsel for the petitioners has cited following rulings in support of his submissions:-

- I. **“*Abhishek –Vs- State of Madhya Pradesh*”** reported in **“2023 Live Law (SC) 731”**.
- II. **“*Abhishek Saxena –Vs- State of Uttar Pradesh*”** reported in **“2023 live law (SC) 1072”**.
- III. **“*Dr. Dhruvaram Murlidhar Sonar –Vs- State of Maharashtra and Others*”** reported in **“(2019) 18 SCC 191”**.
- IV. **“*Shambhu Kharwar –Vs- State of Uttar Pradesh and Another*”** reported in **“2022 0 Supreme (SC) 1747”**

8. On the other hand, Ms. S. Jahan, learned Additional Public Prosecutor as well as Ms. M. K. Brown, learned Amicus Curiae has submitted that from the documents available on record, it appears that the date of birth of the daughter

of the petitioner No.1 is 31.12.2004 and, hence, she was a major on the date when her marriage was solemnized with Adnan Ahmed. It is also submitted by the learned counsel for the petitioners that the daughter of the petitioner No. 1 is now living a happy married life with her husband Adnan Ahmed.

9. I have considered the submissions made by learned counsel for both the sides and have perused the materials available on record, including the scanned copy of the Case Diary of the Hojai P.S. Case No. 81/2023, as well as Case Record of Special [POCSO] Case No. 72(H)/2023, which was requisitioned in connection with the instant criminal petition.

10. On perusal of the FIR, which was lodged by the respondent No. 2 and on the basis of which Hojai P.S. Case No. 81/2023 has been registered, it appears that the FIR was lodged on the basis of hearsay information that the victim has been married on 27.11.2023 when she was 17 years of age.

11. It also appears that during the course of the investigation, the Investigating Officer has collected the date of birth certificates as well as other documents indicating the date of birth of the victim and in all the documents, the date of birth of the victim has been shown as 31.12.2004. Thus, if the marriage was held on 27.11.2023, the victim girl was of the age of more than 18 years and 11 months on the said date. However, the learned counsel for the petitioners has fairly submitted before this Court that the marriage of the victim girl was not held on 27.11.2023, rather it was held on an earlier date i.e., on 10.01.2023 and thereafter the marriage was registered before the Government Qazi on 08.02.2023. Even if we regard the said date as the date of marriage i.e., 10.01.2023, the victim was more than 18 years of age, which is a valid age of

marriage. Thus, it appears that the material collected during investigation does not indicate that the victim girl was a minor on the date of her marriage.

12. In the case of "***State of Haryana –Vs- Bhajan Lal***" reported in "***1992 Supp. 1 SCC 335***", the Apex Court of India has held that, *inter alia*, quashing of a criminal proceeding may be appropriate in following circumstances: -

"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.

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.

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".

13. In the instant case, the documents relating to age/date of birth of the victim girl collected by the Investigating Officer during the course of investigation clearly shows that the date of birth of the victim was 31.12.2004 and in light of that revelation the victim clearly appears to be a major on the date when her marriage is alleged to have been held in the FIR. Otherwise also on the date of actual marriage, i.e., on 10th of January 2023, the victim was a major and, therefore, the most essential ingredient of any offence under the provisions of Prohibition of Child Marriage Act, 2006 or the POCSO Act, 2012

i.e., the minority of the age of the victim, is missing in the instant case. Hence, no offence is made out against the petitioners under the provisions of Prohibition of Child Marriage Act, 2006 or the POCSO Act, 2012.

14. In view of above, continuation of the criminal proceedings in Special [POCSO] Case No. 72(H)/2023 would be an exercise in futility and would be an abuse of the process of court. Accordingly, the Charge-sheet No. 73/2023 dated 30.03.2023 laid in Hojai P.S. Case No. 81/2023 is hereby quashed. Consequently, the proceeding of Special [POCSO] Case No. 72(H)/2023, pending in the Court of learned Special Judge, Hojai is also quashed.

15. This criminal petition is accordingly allowed.

JUDGE

Comparing Assistant