

GAHC010279162023



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

Case No. : Crl.Pet./1309/2023

JAHANARA BEGAM AND ANR
D/O ABUL KALAM AZAD
W/O MUJIBUR RAHMAN
VILL- CHINANAL, P.O. DARGARBAND BAZAR, P.S. RAM KRSHNA NAGAR,
DIST. KARIMGANJ, ASSAM
PIN-788156

2: MUJIBUR RAHMAN
S/O AJAB ALI
VILL- CHINANAL
P.O. DARGARBAND BAZAR
P.S. RAM KRISHNA NAGAR

DIST. KARIMGANJ
ASSAM
PIN-78815

VERSUS

THE STATE OF ASSAM
REP BY THE LEARNED PP, ASSAM

2:ABUL KALAM AZAD
S/O ARMAN ALI
VILL- DANIRBOND
P.O. DARGARBAND BAZAR
P.S. RAM KRISHNA NAGAR

DIST. KARIMGANJ
ASSAM
PIN-78815

Advocate for the Petitioner : MR. S B LASKAR

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

16.02.2024

Heard Mr. S.B. Laskar, learned counsel for the petitioners. Also heard Ms. A. Begum, learned Additional Public Prosecutor, Assam, appearing for the State respondent No.1 and Mr. A.H. Ahmed, learned counsel for the respondent No.2.

2. This petition under Section 482 Cr.P.C. is preferred by two petitioners, namely, Jahanara Begum and Mujibur Rahman, for quashing the Charge-Sheet No.71/2019, dated 31.10.2019, arising out of Ramkrishna Nagar P.S. Case No.75/2019, under Section 366(A)/34 IPC, pending before the Court of learned Chief Judicial Magistrate, Karimganj.

3. It is to be noted here that the above-noted case has been registered on the basis of an FIR lodged by one Abul Kalam Azad on 02.07.2019. The essence of allegation made in the aforesaid FIR is that on 22.06.2019 in the morning hours, the daughter of the informant, namely, Smt. X (name withheld), aged 17 years 7 months, was found missing from his house and accordingly, a missing report was lodged with the Kalibari Police Out Post and later on it has been found that one Mujibur Rahman, Kalam Uddin, Ashikur Rahman and Ajab Ali had kidnapped his daughter. Upon the said report, the O/C Ramkrishna Nagar P.S. has registered a case being Ramkrishna Nagar P.S. Case No.75/2019 under Section 366(A)/34 IPC and carried out investigation and on completion of investigation the I.O. had laid charge-sheet, being Charge-Sheet No.71/2019 against the petitioner No.2.

4. Mr. Laskar, learned counsel for the petitioners submits that the petitioner No.1 and the petitioner No.2 are the husband and wife and at the relevant time of filing of the FIR, the petitioner No.1 was above 18 years and they got married and living together as

husband and wife and they have also blessed with a child and as such, they have settled the dispute amicably and no longer willing to pursue the case and that the victim girl in her statement stated categorically that she eloped with the petitioner No.2 voluntarily and therefore, it is contended to allow the petition by setting aside the impugned Charge-Sheet No.71/2019, dated 31.10.2019.

5. Mr. Ahmed, learned counsel for the informant/respondent No.2 also submits that the matter has been settled amicably and the informant has no objection in the event of allowing this petition.

6. Ms. A. Begum, learned Additional Public Prosecutor, Assam, also submits that since the matter has amicably been settled between the parties and they are living together as husband and wife peacefully, the State has no objection in the event of allowing the petition.

7. Having heard the submission of learned Advocates of both sides, I have gone through the petition and the documents placed on record.

8. It appears that the case has been registered on the basis of one FIR lodged by father of the victim girl, namely, Abul Kalam Azad on 02.07.2019. The allegation was that the petitioner No.2 Mujibur Rahman along with one Kalam Uddin, Ashikur Rahman and Ajab Ali have kidnapped his daughter, who was 17 years 7 months old at the relevant point of time. But the School Leaving Certificate of the victim woman i.e. petitioner No.1, which is enclosed with the petition as Annexure-4, reveals that her date of birth was 01.01.2001 and it also appears that the occurrence took place on 22.06.2019 and as such, at the relevant point of time the age of the victim girl was above 18 years. Though the statement of the victim girl recorded under Section 164 Cr.P.C., the same has not been enclosed with the petition, but, the petitioners have enclosed the order of the learned Sub-Divisional Judicial Magistrate, Karimganj, dated 11.07.2019, wherein it is reflected that after recording of the statement of the victim girl under Section 164 Cr.P.C., she was allowed to go on executing a bond of ₹ 7,000/-, as she appears to be a major girl.

9. The learned counsel for the informant/respondent No.2 also submits that the matter has been settled amicably and therefore, the informant is not willing to pursue the matter. Same stand is taken by the learned Additional P.P. also.

10. Since the dispute between the parties is a matrimonial dispute and since the same has been settled amicably between the parties and now they are living together as husband and wife and also blessed with a child also, this Court is of the view that ends of justice will be meted out if the petition is allowed. In arriving at such a decision this Court is supported by judgment of Hon'ble Supreme Court in **Gian Singh Vs. State of Punjab & Anr.** reported in **(2012) 10 SCC 303**, wherein dealing with issue of quashing of non-compoundable cases on compromise, it has been held that-

"But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

11. Accordingly, this Court is inclined to allow the petition by setting aside the Charge-Sheet No.71/2019, dated 31.10.2019, arising out of Ramkrishna Nagar P.S. Case No.75/2019, under Section 366(A)/34 IPC.

12. In terms of above, the criminal petition stands disposed of.

Sd/- Robin Phuikan
JUDGE

Comparing Assistant