

GAHC030005072024



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

Case No. : Crl.Pet./20/2024

Sh. Hmangaihtluanga and Anr.
S/o R. Lalhmachhuana
R/o Zonuam, Aizawl 2: Smt. Lalhriatkim

VERSUS

State of Mizoram and Anr.
R/b the Secretary
Home Department 2:The Officer-in-Charg

Advocate for the Petitioner : Mr. T Lalnunsiamia

Advocate for the Respondent : P.P./Addl.PP, Mizoram for R1&2

ORDER

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

11.09.2024

Heard Mr. T.Lalnunsiamia, learned counsel for the petitioners. Also heard Mrs. Linda L. Fambawl, learned Public Prosecutor for the State respondents.

2. This petition has been filed under Section 528 of the BNSS to quash the FIR which was registered against the petitioners, under All Women PS Case No. 47/2022

dated 20.09.2022 under Section 6 of the POCSO Act r/w Section 376 AB IPC.

3. The learned counsel submits that the petitioners are the husband and wife of the minor child that died on 16.09.2022, due to fever and respiratory distress. The Medical Officer who attended the child found unusual marks on the private parts of the child and as such, registered an FIR against the petitioners.

4. As there has been no progress in the investigation that had been initiated two years earlier, the petitioners have filed the present petition for quashing the FIR. The police have undertaken a Polygraph test on the parents and grandparents of the deceased child.

5. The petitioners counsel submits that despite the Polygraph test having been conducted against the grandparents and parents of the deceased child, there has been no further progress in the investigation of the case. He accordingly submits that as there is no materials found by the police to implicate the petitioners, with regard to the unusual marks that were found on the private parts of the deceased child, the FIR submitted against the petitioners should be quashed.

6. Mrs. Linda L. Fambawl, learned Public Prosecutor submits that the Polygraph test was conducted on the grandparents and parents of the deceased child on 14.12.2022. The Polygraph test indicated that the answers to the questions put to the father and grandmother of the deceased child were truthful, while the answers given by the grandfather and mother of the deceased child were deceptive. The learned Public

Prosecutor submits that the Polygraph test witnesses were re-summoned by the Police on 08.07.2023 and no further action has been taken by the police with respect to the investigation conducted in pursuance to All Women PS Case No. 47/2022 dated 20.09.2022 under Section 6 of the POCSO Act read with Section 376 AB IPC since then.

7. The learned Public Prosecutor submits that as no evidence incriminating the petitioners have been found till date, steps are being taken for closure of the case by filing a final report.

8. I have heard the learned counsels for the parties.

9. As can be seen from the Case Diary, which has been brought today, the second last entry made by the Investigating Officer was on 08.07.2023 which states that the mother and grandfather of the deceased child were summoned to the police station and reexamined. However, no fruitful information was disclosed as they had stated that they have not seen any incident with regard to what happened to the child before she passed away. The I/O made an entry on 08.07.2023 in the Case Diary, as follows:-

“I now, I closed case diary at the PS and the case is kept pending as under:

1) Awaiting instructions from higher authority for further necessary action

2) Awaiting Polygraph Test. ”

10. Subsequent to the above Case Diary entry dated 08.07.2023, the next and final Case Diary entry has been made on 27.08.2024, which states as follows:

*“**Note:** As per verbal instruction received from Superior officers, due to apprehension of Law & Order problem that could arise from the report, the polygraph test was not updated in the case diary. Hence, there is delay in case diary update.*

*Now as per instruction from higher authority, the case diary is updated along with the polygraph test result received from DIG (NR) vide No. R/CR-4(AZL)/20222/1532 Dated 22nd Dec 2022 which stated that on the basis of polygraph examination and analysis of polygrams, the following opinion has been formulated in respect of Hmangaihtluanga **“The analysis and evaluation of polygrams reveal Truthful response on the issue nos (i) to (iv). According to polygraph examination and analysis of polygrams. Hmangaihtluanga is truthful in his answers on the issues nos (i) to (iv)”.***

Copy of the Polygraph Test Report is enclosed in a separate sheet.

Now, I close my case diary at the PS. The case is kept pending waiting further instruction from superior officers.”

11. As can be seen from the above Case Diary, the police have made no headway in the investigation regarding the injury found on the private parts of the deceased child against the petitioners. The final decision with regard to whether the investigation is

to continue or is to be given a burial, is to be decided in terms of the instructions to be given to the case I/O by the superior officers. Keeping in view that fact that the Supreme Court in ***Pankaj Kumar v. State of Maharashtra & Others***, reported in ***(2008) 16 SCC 117***, has held that the right to speedy trial in all criminal persecutions is applicable not only to the actual proceedings in court, but also includes within its sweep the preceding police investigation as well, the police authorities should take a decision as to whether the FIR needs further investigation or as to whether the same should be closed, due to no incriminating facts being found against the petitioners, in relation to the injury found on the private parts of the deceased child. This is also in tandem with the entries made by the case I/O in the Case Diary.

12. A perusal of the Case Diary entry dated 27.08.2024 goes to show that the Polygraph test was not updated in the Case Diary, due to apprehension of a law and order problem. In this respect, it should be noted that when a person's life and liberty is in question, the apprehension of there being a law and order problem should not come in the way of the police taking a fair decision on the outcome of the investigation it has conducted. Further, if no incriminating evidence is forthcoming to implicate the petitioners, it would not be justifiable for the police to keep the FIR hanging.

13. On a perusal of Section 175 and 176 of the BNSS, 2023, it appears that the power of the police to investigate has been made independent of any control by a Magistrate. The above being said, the fact remains that no investigation has been

carried out after the Case Diary entry made on 08.07.2023. If there are no incriminating materials found, the State respondents would have to take a decision whether to continue with the investigation. The keeping of an FIR in cold storage without making any further attempt to investigate further, is not proper and the investigating authority will have to take a decision as to whether it wants to continue with further investigation or not. Every investigation by the police has to be completed without unnecessary delay and if charge-sheet is to be submitted, the same should be submitted at the earliest. In other cases, where investigation comes to a standstill, a decision will have to be taken as to whether to close the investigation by submitting a final report. In view of the fact that the learned Public Prosecutor has stated that steps are being taken for closure of the case by filing a final report, this Court is not inclined to pass any order quashing the FIR.

14. Accordingly, the state respondents are directed to take a decision as to whether further investigation is to be carried out pursuant to the All Women PS Case No. 47/2022 dated 20.09.2022 under Section 6 of the POCSO Act r/w Section 376 AB IPC or as to whether the case registered against the petitioner should be closed. The State respondents should take a decision on the same within a period of one (1) month from the date of receipt of a certified copy of this Order. The decision taken should thereafter be communicated to the petitioners.

15. Criminal Petition is accordingly disposed of.

JUDGE

Comparing Assistant