

GAHC020007412024

2024:GAU-NL:598



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

Case No. : CRAPL/3/2024

SHRI. XYZ
S/O ABC
KOHIMA NAGALAND

VERSUS

STATE OF NAGALAND
KOHIMA NAGALAND

Advocate for the Petitioner : JOSHUA SHEQI, NAGALI SHOHE, CHINGMEI
KONYAK, MIKA H AYE, ATOKA, P MHONBENI EZUNG, KEDI KOSO, K LILY
SWU, KETHO SEKHOSSE, KEVI KIRE, YEKA SUMI, KIVITOLI SWU, R WONCHIBENI
TSANGLO, TUNATO YEPHOSSE, RUBICA KIHO

Advocate for the Respondent : P.P, NAGALAND,

BEFORE
HON'BLE MR. JUSTICE BUDI HABUNG

ORDER

Date : 18-11-2024

Heard Mr. Joshua Sheqi, learned counsel for the petitioner. Also
heard Ms. S. Mere, learned PP for the State of Nagaland.

2. By filing this appeal under Section 382 read with Section 386 (d) of Cr.P.C the appellant has challenged the order dated 12.09.2023 passed by the Principal District & Sessions Judge, Kohima in GR case no. 76/2023 arising out of Kohima Women PS case no. 0004/2023 under Section 312/313/376/326/511 IPC.

3. The case of the appellant leading to the filing of this appeal is that he learnt about an FIR being lodged against him before the Women PS, Kohima, Nagaland by the alleged victim on 30.05.2023. In the said FIR, the alleged victim made an allegation against the alleged accused/appellant that he had committed rape on her on 26.04.2023 with the intention to infect her with HIV virus. The informant has also made several other allegations against the appellant. Based on the said written FIR, a case was registered being Kohima Women PS case no. 0004/2023 under Section 312/313/376/326/511 IPC as GR case no. 76/2023 and investigated into.

4. During the investigation of the case, the IO of the case did not find any material against the appellant. Therefore, after the completion of investigation, the IO of the case has submitted the case into Final Report being No. 0001/2023 dated 28.07.2023. In her final report, the IO stated that the FIR filed by the alleged victim is totally on false allegations. The IO also stated that a prima facie case could not be established against the alleged accused under the registered sections of law. Accordingly, the IO of the case while submitting the case into final report has further stated that the case may be reopened as and when new evidence is found.

5. It is submitted that on receipt of the final report submitted by the IO of the case, the learned Chief Judicial Magistrate, Kohima had two options- either to accept the final report and pass necessary order in which case the alleged accused is to be discharged; and or to issue notice to the informant giving him/her at least 30 days' time period to file protest petition against the final report submitted by the IO of the case, if not satisfied or aggrieved. However, in the instant case, instead of passing necessary order by itself, the learned Chief Judicial Magistrate, Kohima has committed the final report before the Court of the Principal District & Sessions Judge, Kohima which was not required in the instant case. However, on such committal, the learned Principal District & Sessions Judge, Kohima also instead of discharging the alleged accused who was found to be innocent and or giving any notice to the informant has passed the impugned order whereby while observing that no prima facie case could be established against the alleged accused under the registered sections of law, i.e., Section 312/313/376/326/511 IPC ordered that the matter may be reopened as and when new evidence is found. Not only that, the learned Principal District & Sessions Judge, Kohima has also passed an order stating that the case against the alleged accused, be filed for the time being which means that the case is kept pending for an indefinite period without passing any effective order.

6. It is further submitted that the appellant is a Central Government employee and keeping the case perpetually will not only affect the service record, but also his image before the authority, as well as the society in general. Therefore, the appellant approached by filling the discharge petition No.331/2024 before the learned Court below, but the same was

not admitted. Hence, this appeal for setting aside and quashing of the impugned order and for discharge of the appellant.

7. The learned PP, Ms. S. Mere, while referring to the final report and the impugned order fairly submitted that in fact, there is some procedural error in passing the above impugned order dated 12.09.2023. And while conceding with the submission made by the learned counsel for the appellant that the learned Magistrate could have either accepted the final report and discharged the alleged accused or a notice could have been issued to the informant inviting protest petition if not satisfied with the investigation of the case. She further fairly submits that the matter may be sent back to the learned Court below with a direction to deal with the matter and dispose the same in accordance with law.

8. Heard both the learned counsel for parties. Also perused the available documents annexed in the petition.

9. From the documents annexed in the petition, it appears that after completion of the investigation, the IO of the case did not find any prima facie case against the alleged accused for commission of the alleged offence in the FIR; therefore, the IO has submitted the case into final report before the Court of Chief Judicial Magistrate, Kohima. It is also discernible from the impugned order that on receipt of the final report, the Chief Judicial Magistrate, Kohima instead of passing necessary order has committed the final report before the Court of Principal District & Sessions Judge, Kohima who then has passed the following order:

"Received case record on being committed by the court of learned

Chief Judicial Magistrate which us taken in to my file.

Perused the final form along with the accompanying documents. However, no list of witnesses.

On going through the final form it is stated by the I/O that in the course of investigation, no concrete evidence could be established to charge the alleged accused Thonchulo Magh @ Albert under the sections of law as alleged by the victim and FIR was filed out of her emotional break down with the alleged accused mentioned above. That prima facie case could not be established against the alleged accused under the registered section of law is U/S 312/313/376/326/511 IPC and the case may be re-opened as and when new evidences is found. Therefore, case record to be put up when new evidences is found by the I/O. Case against alleged accused Thongchulo Magh is filed for the time being."

10. From the above order, it appears that the final report submitted by the IO of the case has not been disposed of. The case instead has been kept into file with the further order that the case may be re-opened as and when new evidences is found by the IO of the case. After filing of final report, it is expected that the informant is given notice informing that she may file protest petition, if dissatisfied with the final report submitted by the IO of the case. However, in instant case no such notice seems to have been issued to the informant. And after giving such notice to the informant, if she failed to file any protest petition within the given time period which normally should be 30 days, the concerned Magistrate is expected to pass necessary order for disposal of the case in which case it has to discharge the alleged accused person from the case. That having not done in the instant case, I find substance in the submission of the learned counsel for the parties that there have been some procedure lapses in the instant case.

11. In the light of the submissions made by the learned counsel for parties and in view of the observation made herein above, this Court propose to dispose of the appeal at the motion stage itself. Accordingly, while setting aside the impugned order dated 12.09.2023, the matter is remanded back to the Principal District & Sessions Judge, Kohima with a direction to pass necessary order on the final report submitted by the IO of the case in accordance with the procedure prescribed in law.

12. With the above, this criminal appeal stands disposed of.

JUDGE

Comparing Assistant