



Serial No.15
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.Petn. No.59 of 2024

Date of Hearing: 05.05.2025

Date of Order: 05.05.2025

Dr. Ahanthem Santa Singh
Son of (L) Brajamani Singh
Quarter No.A-23, NEIGRIHMS,
Mawdiangdiang, Shillong.

Vs 1.State of Meghalaya represented
by Public Prosecutor.

2. Smt. Balahun Thangkhiew,
Resident of Nongkseh, 3rd Mile,
Upper Shillong, East Khasi Hills
District, Meghalaya.

.....Petitioner.

.....Respondents.

Coram:

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. D.K. Mishra, Sr.Adv with
Mr. B. Prasad, Adv
Dr. N. Mozika, Sr.Adv. with
Mr. M.L. Nongpiur, Adv

For the Respondent(s) : Mr. K. Khan, PP with
Mr. S. Sengupta, Addl.PP

(JUDGMENT & ORDER)

By this petition under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, the petitioner has prayed for quashing of the FIR dated 24-10-2024 in Rynjah PS Case No. 191 (10) 2024 under Section 75 (2)/76



Bharatiya Nyaya Sanhita, 2023 (BNS).

1. The petitioner is a doctor by profession and was serving as Senior Professor and Head of the Department of Gynecology and Obstetrics and also the Dean at North Eastern Regional Institute of Health and Medical Science (NEIGRIHMS), Shillong at the time of filing of this petition.

2. On 24-10-2024, the respondent No.2 lodged an FIR before the Officer-in-Charge Nongmensong Police Outpost alleging that on 23-10-2024, at NEIGRIHMS Hospital, the petitioner had examined her in spite of the fact that she just came to show a report without looking and briefing on her report which was an ultrasound report and blood report. The petitioner literally asked the respondent No.2 to lie down for the examination whereby without using any hand glove he initiated to roll up her cloth and asked her to loosen them up in which he laid his hand in an uncomfortable way on her private parts. After that the petitioner did not prescribe her with any medicine, instead shared his personal contact number with her and asked her to meet him at any day whenever she visited the hospital and left the room in a hurry. The respondent No.2 requested for taking up her complaint as priority and for initiation of immediate action. The said FIR was forwarded to the Officer-In-Charge, Rynjah PS and was registered vide Rynjah PS Case No. 191(10) 2024 under Section 75 (2)/76 BNS for investigation in the matter. Being aggrieved, the petitioner has filed this application before this Court seeking quashing of the case registered against him.

3. Mr. D. K. Mishra, learned Senior Counsel appearing for the petitioner submits that on 23-10-2024 (Wednesday) at about 12:40 PM, the petitioner was in OPD (Room No.17) at NEIGRIHMS, which is the Gynecology and Obstetrics OPD as well as the Head of the Department of the Gynecology and Obstetrics at NEIGRIHMS. As the petitioner was



about to leave his OPD to attend one official meeting, the respondent No.2 entered the OPD. The respondent No.2 was visibly agitated and stated that she was examined by the consulting doctor on 11-10-2024 and was prescribed some medicines as well as some tests and was asked to revisit with the reports. The OPD card disclosed that her visiting dates were scheduled on Thursday and Friday. As it was not the scheduled visiting day, the respondent No.2 was not able to meet the consulting doctor to show her reports. The respondent No.2 was agitated and was sent to Room No.17 i.e. HOD Office-cum-OPD. The petitioner in order to pacify and calm her down, perused the report in the presence of his personal assistant and also enquired about history of ailment of the respondent No.2. The petitioner noticed some abnormality in the report of the respondent No.2 and suspected possibility of Galactorrhea. After explaining the situation, the petitioner examined the respondent No.2 behind the screen for about 5 seconds and found no Galactorrhea. The petitioner, after noticing that the previous consulting doctor had prescribed correct medicine, left the OPD by informing the respondent No.2 that she could contact him in case of any medical emergency.

4. The learned Senior Counsel submits that the impugned FIR, even if accepted at its face value, do not make out any offence against the petitioner under Section 75 (2) and 76 BNS. He submits that none of the ingredients constituting offences under Clauses (i), (ii) and (iii) of sub-Section (1) of Section 75 has been disclosed in the FIR. He submits that there is no whisper in the FIR that the medical examination of the respondent No.2 was carried out by the petitioner with unwelcome and sexual overtures. He submits that the FIR does not even disclose that there was a demand or request for sexual favour by the petitioner. He also submits that there is nothing in the FIR to show that the petitioner



had shown pornography to the respondent No.2. Learned Senior Counsel further submits that in the impugned FIR, there is no allegation of any assault or use of criminal force by the petitioner against the respondent No.2 and there is no disclosure of any intention of disrobing or compelling the respondent No.2 to be naked. He contends that the allegations made in the FIR do not even disclose that the respondent No.2 was not willing to undergo physical examination and that she had protested or resisted the medical examination by the petitioner. It is further submitted by the learned Senior Counsel that the impugned FIR has been lodged with a *malafide* intention to damage the prospect of appointment of the petitioner as he was shortlisted for the post of Director in a leading medical institution/college at that relevant point of time. He submits that no case of sexual harassment or assault or use of criminal force intending to disrobe the respondent No.2 is made out against the petitioner and prays for quashing the impugned FIR dated 24-10-2024. On the necessity of examining the ingredients of alleged offences and whether the allegations made in the FIR, read on their face value, attract those offences under BNS, the learned Senior Counsel referred to the decisions of the Apex Court in *(1992) Supp.1 SCC 335, State of Haryana and Ors. Vs. Bhajan Lal and Ors., (2014) 10 SCC 663, Binod Kumar and Ors. Vs. State of Bihar and Anr., (2019) 16 SCC 739, Prof. R.K. Vijayasarathy and Anr. Vs. Sudha Seetharam and Anr. and Many/SC/0227/2024, A.M. Mohan Vs. The State Represented by SHO and Ors.*

5. Mr. K. Khan, learned AAG appearing for the State-respondent No.1, submits that the allegation made in the FIR discloses that the petitioner without looking at and briefing on medical test reports, asked the respondent No.2 to lie down for the examination and laid his hand in



an uncomfortable way on her private parts. He submits that whether the examination was necessitated by the circumstances and was done in permissible way or not is a subject matter of investigation. The learned AAG, however, fairly concedes that the FIR does not disclose about any assault or use of criminal force by the petitioner and that the examination of the respondent No.2 was conducted in the OPD i.e. the Room No.17, HOD Gynecology Department at the NEIGRIHMS Hospital.

6. None appeared on behalf of the respondent No.2. The office-note dated 20-02-2025 indicates that the respondent No.2 was duly served. However, the respondent No.2 has chosen to remain silent despite service of due notice upon her.

7. For better appreciation of the submission made by the rival parties, it is appropriate to refer to the relevant part of the FIR dated 24-10-2024 which reads as follows: -

“Respected Sir,

I..... (Respondent No.2) with reference to the subject cited above would plead you to lodge an FIR against the HOD Dr. Santu Singh Gynecology Dept NEIGRIHMS Hospital Shillong that without any female attendant he examined me inspite of the fact that I just came to show a report without looking and briefing on my reports which is an ultrasound report and blood report he literally asked me to lie down for the examination whereby ~~he literally ask me to lie down~~ Sd/-24/10/2024 without using any hand glove he initiated to roll up my clothes and asked me to loosen them up in which he laid his hand in an uncomfortable way on my private parts. After that he didn't prescribed me with any medicine instead he shared his personal contact no. with me (Dr. Santu *****) and asked me to meet him anytime at any day whenever I visited the hospital and left the room in a hurry.”

8. Section 75 (2) BNS lays down that any man who commits the offence specified in Clause (i) or Clause (ii) or Clause (iii) or sub-Section



(1) of Section 75 shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine or with both. Therefore, it is essential that the allegation made in the FIR or complaint must make out the ingredients of Clauses (i) (ii) and (iii) of sub-Section (1) of Section 75 BNS. Section 75 (1) reads as under: -

“75. Sexual harassment. - (1) A man committing any of the following acts: -

- (i) Physical contact and advances involving unwelcome and explicit sexual overtures; or
 - (ii) a demand or request for sexual favours; or
 - (iii) showing pornography against the will of a woman; or
 - (iv) making sexually coloured remarks,
- Shall be guilty of the offence of sexual harassment.”

9. Unwelcome and explicit sexual overtures refer to unwanted sexual advances or behaviour that are clearly and directly intended to elicit a sexual response or that are sexually suggestive in nature. In the impugned FIR there is no allegation by the respondent No.2 that the petitioner carried out any physical contact and advances involving unwelcome and explicit sexual overtures. There is not even a whisper in the FIR that the petitioner examined the respondent No.2 against her will and she protested or tried to resist the examination. There is also no allegation that there was a demand or request for sexual favour by the petitioner from the respondent No. 2. There is also nothing in the FIR alleging that the petitioner had shown pornography to the respondent No.2 against her will. Looking at the allegation in the complaint on the face of it, it is clear that no allegation has been made out attracting the ingredients of Clauses (i) (ii) and (iii) of sub-Section (1) of Section 75 BNS. Further, Clause (iv) of sub-Section (1) of Section 75 BNS is not applicable in the facts and circumstances as the petitioner has not been



booked under sub-Section (3) of Section 75 BNS in the present case.

10. Section 76 of BNS lays down that whoever assaults or uses criminal force to anyone or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but may extend to seven years, and shall also be liable to fine. The terms “criminal force” and “assault” are defined in Section 129 BNS and Section 130 BNS respectively. A careful scrutiny of the allegations made in the FIR does not show that any assault or criminal force was used by the petitioner to compel the respondent No.2 to undergo the examination conducted by him on 23-10-2024. There is no allegation in the FIR that the petitioner had made any effort to cause injury, fear or annoyance to the respondent No.2. There is also no mention of making of any gesture or any preparation by the petitioner to cause apprehension in the mind of the respondent No.2 of use criminal force to her compelling her to undergo the examination conducted by the petitioner. The FIR, therefore, does not contain any statement constituting the ingredients of offence under Section 76 of BNS.

11. The contents of the FIR make it clear that the respondent No.2 was examined by the petitioner in the Room No.17 (HoD Office-cum-OPD), NEIGRIHMS Hospital, Shillong. There is no dispute to the fact that the OPD in NEIGRIHMS Hospital is an absolute open-door room having constant footfall due to frequent visits by doctors, students, staffs and faculty members etc. There is no allegation in the FIR that the respondent No.2 did not visit the petitioner voluntarily of her own free-will. There is also no assertion by the respondent No.2 that the medical test/examination was not required or was medically unjustified. In essence, while medical examination of a patient’s private part is not



inherently a crime, it can become one if it is performed by applying force and is not medically justified. In the present case, no allegation is made in the FIR that the examination of the respondent No.2 was performed by the petitioner by applying force and that it was not necessary and was medically unjustified.

12. The Apex Court in the case of *Prof. R.K. Vijayasathy (supra)* observed that where the ingredients required to constitute a criminal offence are not made out from the bare reading of the complaint, the continuation of the criminal proceeding will constitute an abuse of process of the Court. In the present case, as has been observed in the foregoing paragraphs, the allegations made in the FIR do not constitute the ingredients necessary for the offences under Sections 75 (2) and 76 of BNS. In absence of ingredients necessary to constitute a criminal offence, continuation of investigation on the basis of the impugned FIR dated 24-10-2024 will result in abuse of process of law.

13. In view of the discussions made above, this criminal petition succeeds. The FIR dated 24-10-2024 in Rynjah PS Case No. 191 (10) 2024 under Section 75 (2) /76 Bharatiya Nyaya Sanhita, 2023 (BNS) stands quashed.

14. The Criminal petition stands allowed.

Judge

Meghalaya
05.05.2025
"Biswarp PS"