GAHC010154282018

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

Case No. : Crl.Pet./671/2018

JAYANTA SAIKIA AND 2 ORS.
S/O. SRI PUNA SAIKIA, R/O. NANGAL GAON, P.O. BORHOLLA, P.S. BORHOLLA, DIST. JORHAT, ASSAM-785631.

2: RITUL SAIKIA
S/O. SRI PUNA SAIKIA
R/O. NANGAL GAON
P.O. BORHOLLA
P.S. BORHOLLA
DIST. JORHAT
ASSAM-785631.

3: PINKU SAIKIA

S/O. SRI TULSI SAIKIA
R/O. NANGAL GAON
P.O. BORHOLLA
P.S. BORHOLLA
DIST. JORHAT
ASSAM-785631

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY P.P., ASSAM.

2:SMT. JURIKA SAIKIA

W/O. SRI JAYANTA SAIKIA
D/O. SRI HITESWAR GOGOI
AT PRESENT R/O. SOKIAL DULIA GAON
P.O. PULIKAITONI
P.S. GHILADHARI
DIST. GOLAGHAT

ASSA

Advocate for the Petitioner : MR. M DUTTA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MIR ALFAZ ALI

ORDER

Date : 07-12-2020

Heard learned counsel, Mr. M. Dutta, for the petitioners. Also heard learned counsel Mr. K. R. Boruah for the respondent no. 2 and the learned Addl. PP, Assam.

2) By this application under section 482 CrPC, the petitioners pray for quashing the FIR dated 06.05.2018 giving rise to Borholla P.S. Case No. 38/2018, corresponding to G.R. Case No. 207/2018 under sections 498A/376/325/354/34 IPC.

3) The learned counsel for the petitioners submits that FIR does not make out any offence of rape so far as the petitioner no. 1 is concerned. It is also submitted that no offence is made out against the petitioner No. 2 & 3 and as such, the FIR and the criminal proceeding arising out of Borholla P.S. Case No. 38/2018 should be quashed.

4) The learned counsel for the respondent no. 2 submits that the police has already investigated the case and submitted the charge sheet having found the accusation prima facie established and as such there is no question of quashing the FIR at this stage.

5) In the FIR lodged by the respondent No. 2, it was alleged that the informant/respondent no. 2, was married to the petitioner no. 1 Sri Jayanta Saikia and after marriage due to their wedlock two children were born. However, the respondent no. 2 alleged that after their marriage, the accused/petitioner no.1 has been torturing her physically and mentally. The petitioner no. 1 also demeaned Rs. 5,00,000/- and for not fulfilling the demand she was subjected to cruelty. It was further alleged in the FIR that respondent nos. 2 & 3 who happen to the brother of petitioner no. 1 harassed and torture her mentally and outraged her modesty.

6) The respondent No. 2 also submits that doctor's report substantiating the allegation of physical assault was submitted with the charge-sheet against the petitioners under section 498 (A)/376/323 IPC, which is annexed as annexure no. 3.

7) A perusal of the FIR and the charge-sheet would show that there are various allegations made against the petitioner from which it cannot be said that no prima facie case has been made out. When charge sheet is filed after investigation, having found prima facie

case, it is for the Magistrate to consider the materials placed before it along with the charge sheet and to take a decision under section 239 and 240 of the CrPC, whether to proceed against the accused or not. The High Court is not supposed to undertake the function of the learned Magistrate at this stage to scrutinize the materials. Once the learned Magistrate takes a decision upon consideration of the records and materials, the petitioner shall always have the liberty to approach this Court, if feel aggrieved. Therefore, this Court is of the view that it would not be appropriate to pre-empt the trial Court at this stage.

8) Having regard to the scope of interfere with the criminal procedure at the threshold by exercising inherent power, and facts and circumstances of the case as well as the allegation made in the FIR and the charge-sheet, I am unable to concur the submission of the learned counsel for the petitioner for quashing the proceeding.

9) In view of the above, this petition is dismissed.

JUDGE

Comparing Assistant