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2026:GAU-AS:16052

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

Case No. : Crl.Pet./1473/2026

ABUL HUSSAIN
S/O LATE MUKSED ALI
R/O- KATAHBARI NIZARARPAR, NEAR 3 NO. MASJID, P.S.- GARCHUK,
DISTRICT - KAMRUP (METRO), ASSAM.

VERSUS

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

2:AMBIYA KHATUN ALIAS AMINA KHATUN
D/O ABDUL ALI
W/O ABUL HUSSAIN
R/O- KATAHBARI NIZARARPAR
NEAR 3 NO. MASJID
P.S.- GARCHUK
DISTRICT - KAMRUP (METRO)
ASSAM

Advocate for the Petitioner : MR. N UDDIN, MR. M ISLAM

Advocate for the Respondent : PP, ASSAM, MR. S K CHHETRY(R-2)

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 03-11-2026

Heard Mr. N Uddin, the learned counsel for the petitioner. Also heard Ms. S H. Bora, the learned Addl. PP appearing on behalf of State respondent no. 1 and Mr. S K Chetry, the learned counsel appearing for the respondent no. 2.

2. In view of order dated 15.10.2026 the respondent no. 2 also filed one affidavit-in-opposition which is identified by the counsel for the respondent Mr. S K Chetry.

3. This is an application u/s 528 of BNSS for quashing of the concerned FIR, Charge Sheet and subsequent criminal proceedings in Sessions (Spl.) Case No. 289/2024 u/s 6 of the POCSO Act pending before the learned Sessions Judge-cum-Special Judge, POCSO, Kamrup (M), Guwahati arising out of Garchuk P.S. Case No. 279/2024.

4. It is submitted by Mr. Uddin that both the petitioner and the respondent no. 2 had love affairs and they were supposed to get married with each other. But, as there was still some days to attain her majority, the petitioner asked her to wait for marriage on which she lodged the FIR as per the ill advice of some of the villagers. However, after attaining her majority, both the petitioner and the respondent no. 2 got married through special marriage and one certificate of marriage is also produced along with the petition. He further submitted that at present both the petitioner as well as the victim/informant are staying happily as husband and wife and she has no grievance against the petitioner at present and hence has no objection if the FIR, Charge Sheet and the subsequent criminal proceeding is set aside and quashed, which is pending against the present petitioner before the learned Special Judge, POCSO, Kamrup (M), Guwahati.

5. Mr. Uddin further cited some of the decisions passed by the Coordinate

Benches of this Court wherein it is observed that it will be abuse of the process of Court, if the case is allowed to be continued as there is no chance of conviction and probability of adducing evidence against the present petitioner is also nil.

6. Mr. Chetry the learned counsel appearing for the respondent no. 2 submitted that she has no objection if the entire criminal proceeding is set aside and quashed by invoking power u/s 528 BNSS as presently she is staying with the petitioner as husband and wife after their marriage through special marriage. To that extent, the respondent no. 2 also filed an affidavit-in-opposition stating that she has no objection if the criminal case pending against the present petitioner is set aside and quashed. Mr. Chetry further submitted that he personally met the respondent no. 2 who sworn the affidavit also and on enquiry she submitted that she is not interested to proceed with the case further.

7. Ms Bora, the learned Addl. PP raised objection and submitted that the case is registered u/s 6 of the POCSO Act which is a non-compoundable offence and serious in nature. She further submitted that there cannot be any compromise in such nature of case and accordingly raised objection in quashing the entire criminal proceeding pending against the present petitioner. Further, she submitted that at the time of incident she was a minor and considering this aspect of the case it is not a fit case to quash the proceeding u/s 528 of BNSS.

8. Hearing the submissions made by learned counsels for both sides, I have also perused the case record and the annexures filed along with the petition.

9. It is an admitted position that the case is registered u/s 6 of the POCSO Act wherein the allegation was brought against the present petitioner that he had

physical/sexual relationship with the victim, who was a minor at the relevant time of incident. Her minor age is also admitted by the petitioner and it is the case of the petitioner that due to her minor age at the relevant point of time, he could not marry her and only for that reason she lodged the FIR with the instigation of some other villagers. But, it is seen from the record that after the lodging of the FIR as soon as she attained her majority, both the petitioner as well as the respondent no. 2 got married and in that context one marriage certificate is also produced wherefrom it is seen that a special marriage took place between the parties after attaining her majority. From the submission made by learned counsel for respondent no. 2 also it reveals that both of them are living peacefully as a husband and wife and at present the respondent no. 2 has no grievance against the present petitioner. Rather, it reveals that she would be in trouble or she would be the actual victim of this case if the case proceeded further against the present petitioner. Further, it is seen that the probability of conviction is also very bleak and remote even if the proceeding is allowed to be continued. Further, there is no probability of deposing against the petitioner even if the proceeding is allowed to be continued. Rather, it will be an abuse of the process of the Court. But, at the same time it also cannot be denied that the case is of serious of nature wherein a minor victim was allegedly subjected to penetrative sexual assault by the accused/petitioner. But, considering overall situation and circumstances of this case it is seen that if the case is allowed to be proceeded further or in the event of conviction, the victim would be the worst sufferer as she is presently residing with her husband i.e. the petitioner peacefully as a husband and wife. More so, by filing an affidavit-in-opposition the respondent also made a prayer for quashing of the entire proceeding which she instituted on the instigation of some village people.

10. Considering all these aspects of the case and the facts and circumstances of this case, it is seen that the probability of conviction in the present case is remote and bleak even if the case is allowed to be proceeded further as there is no probability of adducing evidence against the petitioner by the respondent no. 2 as both of them are happily residing as an husband and wife. Rather, it would be an abuse of the process of the Court if the criminal proceeding is allowed to be continued further.

11. Accordingly, it is the opinion of the Court that the FIR, Charge Sheet and the subsequent criminal proceeding pending under the Sessions (Spl.) Case No. 289/2024 before the learned Sessions Judge-cum-Special Judge, POCSO, Kamrup (M), Guwahati arising out of Garchuk P.S. Case No. 279/2024 is liable to be set aside and quashed by invoking the power u/s 528 of BNSS.

12. The criminal petition is accordingly stands allowed and disposed of.

JUDGE

Comparing Assistant