

GAHC010039552017



2024:GAU-AS:12182

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

Case No. : Crl.Pet./748/2017

BABUL BARMAN
S/O- LATE BIDYA BARMAN, R/O- PANJABARIBOTAHGHULI, P.S- SATGAON,
DIST- KAMRUPM, ASSAM

VERSUS

THE STATE OF ASSAM and ANR.

2:RATNESWAR GOSWAMI
S/O- LATE ANANTA DEB GOSWAMI
R/O- PANJABARI BOTAHGHULI
P.S- SATGAON
DIST- KAMRUPM
ASSA

Advocate for the Petitioner : MR.B K DAS, MR D CHUTIA,MR. K R BORA,MS.P DAS

Advocate for the Respondent : PP, ASSAM, MR. N D SARMA,MR. D K KOTOKY

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
ORDER

03.12.2024

1. Heard Mr. KR Bora, learned counsel for the petitioner. Also heard Mr. DK Kotoky, learned counsel for the informant and Mr. B Sarma, learned Additional Public

Prosecutor, Assam.

2. The present application is filed under Section 482 Cr.P.C. for quashing the charge-sheet and FIR in GR case No. 9538/2012 arising out of Satgaon PS case No. 147/2012 and charge under Section 366A IPC.

3. It is argued by Mr. Bora, learned counsel for the petitioner that the petitioner sought to be tried for the same offences thrice inasmuch as he has already been convicted in Sessions case No. 140/2014 arising out of All Women PS case No. 56/2013 under Section 376 IPC and acquitted for charges under Section 366A IPC arising of the same incident.

4. Per contra, the learned counsel for the respondents submits that the incident and offences are different and therefore, three FIRs were lodged and in one of the FIR, charge-sheet was filed and the petitioner was tried and convicted. As the offences arose at different points of time and there were different cause of actions, therefore, the Investigating Officer had already submitted charge-sheet in Satgaon PS case No. 147/2012 and it cannot be said that the petitioner is tried twice for the same offences. Accordingly, the petition is liable to be dismissed.

5. Before dealing with the argument of the learned counsel for the parties, it is important to record the uncontroverted facts of the present case, which are as under:

(I) On 07.09.2012, the informant filed a petition under Section 156(3) of the Cr.P.C. before the learned Chief Judicial Magistrate, Kamrup (M) for a direction to the Officer-in-Charge, Satgaon police station to register a case and to take necessary action upon the accused. In the aforesaid complaint, the petitioner was named as accused. The learned Chief Judicial Magistrate, Kamrup (M) on 07.09.2012 forwarded the same to the Satgaon police station to register a case, investigate into the matter and submit report on F.F. early. Accordingly, Satgaon PS case No. 147/2012 under Section 120/366A/506/511/344/376/34 was registered. The basic allegation

levelled is quoted hereinbelow:

“3. That, on 02.05.2012 when complainant’s daughter who is a minor aged about 15 years, a student of Class X was coming back from school, accused No. 1 and 2 by a conspiracy made her to sit on an Indica car and taken her to unknown place at afternoon. When complainant went to enquire about the girl to their home accused No. 3 has totally denied and told the complainant and his wife that it was not known to her about the minor daughter of the complainant namely Rinkumoni @ Dinkumoni Goswami (age-15 years).

4. That the complainant searched his daughter all around but he could not trace her, later on he came to know about the kidnapping of his daughter by the accused persons making a conspiracy”

6. Subsequently, on 29.09.2012, another FIR was lodged in the Khetri police station, which was registered as Khetri PS case No. 128/2012 under Section 366A IPC. The allegation levelled in the FIR is quoted hereinbelow:

“Humble submission is that I am a resident of Panjabari Batahghuli, Guwahati-37, PS Satgaon. On last 25.09.2012 my daughter Rinkumoni Goswami aged 15 years, went to visit Haren Das of Maloibari. But she is missing from the home of Haren Das since yesterday. Though we have made a search she could not be traced. It is to be mentioned that one of our neighbourer Babul Barman S/o Sabitri Barman took away my daughter on 2nd May by inducing. We could recover out daughter with the help of police. In this connection there is case pending before the Hon’ble Court. After recovery of my daughter it came to know that my daughter was sexually harassed by said Babul Barman. I suspect that Babul Barman has involvement in missing of my daughter as few days ago he along with few of his accomplices was threatening me and my

daughter to kill in case of not withdrawing the case.”

7. Thereafter, on 07.03.2013, another FIR was lodged before the Officer-in-Charge, All Women Police Station, which was registered as All Women PS case No. 56/2013 under Section 376/342/366A IPC. It is seen that in the aforesaid FIR lodged before the All Women Police Station, the facts alleged in the earlier FIRs registered by Satgaon Police Station as well as Khetri Police Station were also incorporated. The relevant portion of the FIR is quoted hereinbelow:

“I want to inform you that my daughter Rinkumoni Goswami (aged about 15 years 9 months) has been kidnapped by one Babul Barman, son of Mrs. Sabitri Barman of Punjabari, Botahghuli on 02.05.2013 while she was coming back from School, and sexually enjoyed her against her will keeping her in an unknown place. In this effect an F.I.R. was lodged in Satgaon P.S. Though Satgaon Police recovered her again she has been removed from my sister’s home of Khetri by physical assault and threatening. In this respect one F.I.R. was lodged in Khetri P.S. but Khetri Police could not recover her. On 08.03.2013 my daughter rang me up from the home of one Goswami of Botahghuli and I could recover my daughter from there. I came to know from her that said Babul Barman has sexually harassing her and compelled her for physical relation, throughout the period she was kept in confinement to avoid interaction with other persons. During these days she was getting pregnant and due to physical torture there was abortion. On last 07.03.2013 said Babul Barman has brought three unknown persons and allowed them to enter in the room of my daughter and forcing her for physical relation. On her refusal Babul Barman and Sabitri Barman kept her confined in a room, physically assaulted her and kept her in starvation. On next day somehow she could manage to escape through an window and took shelter in said Goswami’s home and rang me up in telephone.

Madam it is therefore, prayed for an investigation, arrest the accused and punish."

8. All Women Police Station, after completion of investigation submitted charge-sheet and thereafter the matter was committed to the learned Sessions Judge as offences being Sessions triable. Subsequently, after completion of the trial, by judgment dated 29.06.2016 the petitioner was convicted for commission of offence under Section 376 IPC and sentenced him to undergo Rigorous Imprisonment of 7 (seven) years and to pay a fine of Rs. 10,000/-. While dealing with the charge under Section 366A IPC, the learned trial court framed the following point of determination:

"1. Whether the accused on 02.05.2012 and again on subsequent dates after her recovery induced the victim, a minor daughter of informant to go with him with intent or knowing that she will be forced to illicit intercourse with some other persons?"

9. The learned trial court had made the following conclusion on point No. 1.

"So far the offence under Section 366A of IPC is concerned, from the evidence on record, it is seen that the accused induced the victim to go from one place to another for the purpose of seducing her for sexual intercourse with himself. So, prosecution has failed to prove that accused intended that girl would be forced or seduced to illicit intercourse with some other person than the accused. So, in my view, the failure of prosecution to prove the existence of this specific intention or knowledge, accused cannot be convicted under the purview of the Section 366 A of IPC. So, I do not find the accused guilty under section 366A of IPC."

10. From the aforesaid, it is clear that all the incidences of alleged kidnapping, which started from 02.05.2012 (allegation in Satgaon PS case No. 147/2012) and all subsequent allegations of kidnapping (the allegation made in the FIR registered in Khetri Police Station as well as the FIR registered in All Women Police Station) were dealt with and the petitioner was acquitted from the offences under Section 366A IPC.

11. In the meantime, charge-sheet has been filed in Satgaon PS case No. 147/2012, which involves the allegation of offence under Section 366A, allegedly committed by the petitioner on 02.05.2012 and same is pending trial before the learned Sessions Judge, Kamrup in GR case No. 9538/2012.

12. From the uncontroverted sequences of event aforesaid, more particularly, the allegation levelled and quoted hereinabove in different FIRs and the findings recorded by the learned Sessions Judge in Sessions case No. 140/2014, this court is having no doubt and hesitation in mind that the petitioner has already been acquitted from the commission of offence under Section 366A IPC on 02.05.2012, which is the subject matter of the trial in GR case No. 9538/2012 under challenge in this prosecution.

13. That being the position, more particularly, when the offences are not distinct and arises out of the same transaction, the petitioner cannot be allowed to be prosecuted twice. Accordingly, the present criminal petition stands allowed by setting aside and quashing the GR case No. 9538/2012 arising out of Satgaon PS case No. 147/2012 under Section 120B/ 366A/ 506/ 511/ 344/ 376/ 34 IPC and charge sheeted under Section 366A IPC and criminal proceeding arising out of Khetri PS case No. 128/2012 otherwise there will be failure and miscarriage of justice.

14. While parting with the record it is clarified that the observation made in this case may not be treated as any comment on the determination already made in Sessions Case No. 140/2014, which is pending in an appeal before this court.

15. Criminal petition stands disposed of. Parties to bear their own costs. LCR be returned back.

JUDGE

Comparing Assistant