

GAHC010059102021



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

Case No. : Crl.Pet./217/2021

ABDUL AWAL
S/O NAJIMUDDIN, R/O VILL-BAMUNJARI, P.S.-MAYONG, DIST-MORIGAON,
ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:MISS KALPONA KHATOON
W/O MD. MOJIBUR RAHMAN
R/O VILL-BAMUNJARI
P.S.-MAYONG
DIST-MORIGAON
ASSAM

3:MISS AITU DEVI
D/O LATE KHAGEN NATH
C/O IFTIKAR HUSSAIN
R/O VILL-MORIMUSALMANGAON
P.O.-MORIGAON
P.S.-MORIGAON
DIST-MORIGAON
ASSA

Advocate for the Petitioner : MR. M A SHEIKH

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

Date : 23.04.2024

1. Heard Mr. M.A. Seikh learned counsel for the petitioner. Also heard Mr. D Gogoi learned Amicus Curiae and Mr. M.P. Goswami learned Addl. PP, Assam.
2. The present application under section 482 Cr.P.C, 1973 is filed by the petitioner Abdul Awal seeking quashment of the proceeding in GR Case No.1323/2018 under sections 376/506 IPC pending in the court of learned Additional Judicial Chief Magistrate, Morigaon arising out of CR Case No.484/2018 in Mayong PS Case No.213/2018.
3. A complaint was filed before the court of learned CJM Morigaon by one Kalpana Khatun inter alia alleging that the petitioner has committed rape upon one Miss Aitu Devi, on the basis such complaint, the matter was sent to the jurisdictional police station for investigation and filing report. Accordingly, a police station case being Mayong PS Case No.213/2018 was registered and after completion of investigation, charge sheet was filed.
4. The present application is filed on the alleged backdrop that the victim has sworn an affidavit on 10.03.2021 before a Notary public declaring that the CR Case No.494/2018 lodged against the petitioner is totally false and concocted and therefore, according to the petitioner in view of such unambiguous and clear declaration, the criminal proceeding should not be allowed to proceed and it is a clear case of the abuse of the process of the court.

5. The learned counsel for the petitioner further argues that the petitioner had also lodged an FIR on 22.04.2018 against one Abdul Sattar and Abdul Kader alleging that the daughter of the petitioner was kidnapped by the said two accused and the accused No.2 named in the said FIR is a relative of the informant in CR Case No.494/2018. Therefore, it is clear that the impugned case has been filed to take revenge and therefore, this is an abuse of the process of the court.

6. While concluding his argument the learned counsel for the petitioner further submits that in view of the affidavit and declaration made by the victim herself, it will be a futile exercise to proceed with the criminal proceeding. It is further contended that the actual name of the victim is Aitu Devi and the same has been changed to Aitu Khatun in the FIR and her father's name was also stated to be Khogen Ali and therefore, entire basis of lodging the CR case is malafide and at the behest of Kalpana Khatun and not by the victim herself.

7. Per contra, learned amicus curiae and learned Addl. PP submits that on a bare reading of the FIR in question, a prima facie case of rape is made out and after due investigation charge sheet has also been filed and therefore, after filing of the charge sheet on the basis of an affidavit purportedly sworn before a notary by the victim cannot be a ground for quashing the entire proceeding.

8. The hon'ble Apex Court in the case of ***State of Haryana and Ors Vs. Ch. Bhajan Lal and others*** reported in ***1992 AIR 604*** has laid down certain principles where the inherent powers under section 482 Cr.P.C can be exercised for quashing of an FIR/complaint. It is well settled that when an allegation in an FIR or a complaint, even if

accepted at the face value, does not constitute any offence or make out a case against the accused, this court can exercise its power under section 482 Cr.P.C to quash an FIR.

9. In the case in hand, bare perusal of the FIR discloses a specific allegation of rape by the accused upon the victim. Another aspect of the matter is that when an investigation was initiated on the basis of an FIR and charge sheet has been filed, subsequent declaration of innocence of the accused by the alleged victim cannot be a ground to quash such an FIR. Authenticity or veracity of such declaration cannot be ascertained in a proceeding under section 482 inasmuch as the said victim is a vital witness to the case in question. She is also not a party in the present proceeding.

10. Further this court in exercise of power under section 482 Cr.P.C cannot make a determination whether the FIR was lodged as a counter blast to the FIR lodged by the petitioner dated 22.08.2018 inasmuch as there is no material to suggest any relation between the accused in FIR dated 22.08.2018 and the informant.

11. As regards the change of name and father's name are disputed questions of fact and those can be a subject matter of investigation and or trial and such determination cannot be made in an application under section 482 Cr.P.C.

12. There is no doubt that on the basis of undisputed record/document, if the high court exercising power under section 482 Cr.P.C, comes to a conclusion that proceeding initiated is malafide or it is an abuse of the process of the court, this court shall not be powerless to quash a proceeding. However, no cogent and undisputed

material has been placed in this case to come to such a conclusion that this is an abuse of the process of the court, more particularly, whole case is based on an affidavit purportedly sworn in by the victim before the notary public after completion of the investigation and filing of charge sheet.

13. Therefore, in the aforesaid backdrop, this court is of the view that no case of interference for quashing a proceeding in exercise of power under section 482 Cr.P.C is made out. Accordingly, the present petition stands dismissed.

JUDGE

Comparing Assistant