

GAHC010020902024



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

Case No. : Crl.Pet./104/2024

GAURAV UPADHAY
S/O- LATE SHYAM SUNDER UPADHYAY, R/O- ROYAL SILVER HEIGHT,
SILPUKHURI, GUWAHATI, P.O. SILPUKHURI, PIN- 781003, DIST.
KAMRUP(M), ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REPRESENTED BY THE P.P., ASSAM

2:LEENA DOLEY
W/O- LATE NILOTPAL LAHAN
R/O- ZONE-II POLICE OFFICERS HOUSING COMPLEX
ULUBARI
GHY-781005.

3:ADDITIONAL DIRECTOR GENERAL OF POLICE (CID)

ULUBARI
GHY-781007
DIST. KAMRUP(M)
ASSA

Advocates for the petitioner : Mr. A. M. Bora, Sr. Adv.
Mr. K. P. Pathak, Adv.

Advocates for the respondents : Mr. P. Borthakur, Addl. P. P. Assam
Ms. G. Goswami, Adv.

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

Date of judgment & order : 08.02.2024

JUDGMENT & ORDER

Heard Mr. A. M. Bora, learned Senior Counsel assisted by Mr. K. P. Pathak, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent Nos. 1 & 3 and Ms. G. Goswami, learned counsel appearing on behalf of the informant/respondent No. 2.

2. This is an application under Section 482 of the Code of Criminal Procedure, 1973 praying for setting aside and quashing the Order dated 15.12.2023, passed by the learned Special Judge (POCSO), Karbi Anglong, Diphu in connection with Petition No. 1257/2022, dated 21.12.2022, in POCSO Case No. 37/2022, and also prayed for a direction to the learned Court below to consider the said petition along with the additional affidavit dated 21.01.2023.

3. It is stated that while the accused/petitioner was serving as Superintendent of Police, Karbi Anglong, an F.I.R. was lodged by the respondent No. 2 alleging sexual harassment on her daughter. On 06.01.2020, the matter was transferred to CID and on the basis of an application made by the respondent No. 2, the learned SDJM No. 1, Kamrup(M), Guwahati, vide Order dated 07.01.2020, added the provision of Scheduled Castes & Scheduled Tribes

(Prevention of Atrocities) Act, 1989 (in short "Act of 1989") without application of mind.

4. On being aggrieved by the institution of the false and frivolous case against the petitioner, he preferred a writ petition before this Court, which was registered as WP(C) No. 258/2020. In the said proceeding, this Court, vide order dated 10.01.2020, was pleased to suspend the investigation. However, subsequently, the said writ petition was again renumbered as Criminal Petition No. 55/2020, wherein this Court directed the Investigating Officer to conduct an investigation as to whether the alleged victim belongs to ST(P) category to attract the provision of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 with a further direction to Additional Director General of Police (CID), Assam to supervise and monitor the investigation. The said order was again assailed by the respondent No. 2 in SLP(Crl.) No. 3704-3705/2020 and the Hon'ble Apex Court, vide Order dated 11.09.2020, declined to interfere and clarified that the investigation would include all aspects of the complaint.

5. In pursuant to the direction of this Court, passed in Crl. Pet. No. 55/2020, an affidavit was filed by the Inspector General of Police(CID) on 21.08.2020 stating that in absence of Caste Certificate in the name of the victim, the materials collected so far by the Investigating Officer, does not support SC/ST status claim of the victim, though the status of the victim could not be conclusively established at this stage of investigation.

6. Subsequently, the petitioner preferred another writ petition, which was numbered as WP(C) No. 4523/2020, praying that as the status of the respondent No. 2 and her victim daughter is uncertain, the provision of Act of

1989 should not be applied in criminal proceeding against him, which is initiated under All Women Police Station Case No. 05/2020. Accordingly, this Court, vide order dated 21.10.2020, held that until the time the question of validity of the ST Certificates of the respondent No. 2 and her daughter are not decided by the competent authority, the provision of Act of 1989 shall not be applied against him in the said proceeding.

7. Thereafter, on being aggrieved by the said order dated 21.10.2020, the respondent No. 2 again preferred a writ appeal, being W.A. No. 190/2020, and vide Order dated 21.01.2021, the learned Appellate Court refused to interfere with the said order dated 21.10.2020 and directed the Screening Committee to decide upon the validity of the Caste Certificates of the respondent No. 2 and her daughter within 15 days and in the meantime, the investigation in the matter was to continue unhindered. However, in pursuant to the order of this Court, passed in the said writ petition, writ appeal as well as in criminal petition, and the order passed by the Hon'ble Apex Court in SLP(Crl.) No. 3704-3705/2020, the Investigating Agency has not conducted any investigation whatsoever on these aspects of the matter.

8. Thereafter, the petitioner filed an application for transfer of the case from the Court of learned Sessions Judge, Kamrup(M) to the Court of learned Additional Sessions Judge No. 2, Kamrup(M), Guwahati and the learned Court below took the cognizance of the same under Sections 354/354(A) of the Indian Penal Code *read with* Section 10 of the POCSO Act, added Section 3(1)(xi)(w)(i) (ii) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989. Thereafter, another criminal petition was instituted by the present petitioner under Section 482 Cr.P.C. and vide order dated 17.11.2021, passed in Crl. Petn.

No. 543/2021, this Court directed that the entire proceedings pertaining to Sessions Case No. 115/2021 be transferred from the Court of learned Additional District & Sessions Judge No. 2, Kamrup(M) at Guwahati to the Court of learned Special Judge (POCSO), Diphu. Accordingly, the case was transferred and renumbered as POCSO Case No. 37/2021 before the learned Special Judge (POCSO), Diphu.

9. In the above circumstances, the petitioner filed a petition, being Petition No. 1257/2022, dated 21.12.2022, before the Court of learned Special Judge (POCSO), Diphu seeking a direction to the Investigating Officer to submit the investigation report before the learned Special Judge (POCSO), Diphu in POCSO Case No. 37/2021 in the light of the orders and directions passed by this Court and Hon'ble Supreme Court. The petitioner also filed an additional affidavit to bring some additional materials for just and proper determination of prayer made in above mentioned petition dated 21.12.2022. However, to the utter dismay of the petitioner, the learned Special Judge (POCSO), Diphu completely disregarded the said affidavit while rejecting the prayer made by the petitioner in Petition No. 1257/2022, dated 21.12.2022, and vide order dated 15.12.2023, the learned Court below observed that since the Investigating Officer had submitted a Part Charge-Sheet against the petitioner under Sections 354/354(A) of the Indian Penal Code *read with* Section 10 of the POCSO Act, there was no scope for directing any further investigation nor there was any scope for calling for further investigation report and the matter was fixed for framing of charge on 18.12.2024.

10. Mr. A. M. Bora, learned Senior Counsel for the petitioner, has submitted

that the ground shown in the additional affidavit are sufficient for the learned Special Judge (POCSO), Diphu to direct the further investigation into the matter as well as for calling the further investigation report from the Investigating Officer. Further, the learned Special Judge (POCSO), Diphu did not consider the facts provided in the additional affidavit and rejected the prayer for calling the status of the investigation from the I.O. and the order has been passed arbitrarily without applying the judicial mind and thus, failed to pass a reasoned order while rejecting the petition filed by the present petitioner seeking the status of the investigation. Accordingly, finding no other alternative and efficacious remedy, the present petition has been filed before this Court seeking invocation of its inherent power under Section 482 Cr.P.C. and for quashing and setting aside the order of rejection passed by the learned Special Judge (POCSO), Diphu.

11. The learned Senior Counsel for the petitioner further submitted that the present petition has been filed with a limited prayer for setting aside and quashing the order dated 15.12.2023, passed by the learned Special Judge (POCSO), Dihpu, wherein the prayer for calling of the status report from the Investigating Officer specially in regards to the SC/ST status of the victim was rejected and with a further prayer to direct the learned Special Judge (POCSO), Diphu to consider the Petition No. 1257/2022, dated 21.12.2022, along with the additional affidavit dated 21.01.2023 and thereafter to pass a reasoned order considering all aspects of the matter.

12. Mr. P. Borthakur, learned Additional Public Prosecutor appearing on behalf of the State respondent Nos. 1 & 3, has submitted that the Charge-Sheet has already been filed in connection with this case and there cannot be a word like

“Part Charge-Sheet” though there may be prayer for the Investigating officer to continue the further investigation. However, the case has already been Charge-Sheeted against the present accused/petitioner under Sections 354/354(A) of the Indian Penal Code *read with* Section 10 of the POCSO Act and on the basis of which and after rejection of the prayer of the petitioner, the case is fixed for framing of charge. Thus, at this stage, calling for any status report of investigation from the I.O. in regards to addition of the provision of Act of 1989 will not arise. He further submitted that the learned Court below, considering all pros and cons of the matter, had passed a reasoned order rejecting the prayer for calling the stage of investigation from the Investigating Officer. Accordingly, there could not be any reason to make any interference in the order, dated 15.12.2023, passed by the learned Special Judge (POCSO), Diphu, in Petition No. 1257/2022, dated 21.12.2022, in connection with POCSO Case No. 37/2022.

13. Ms. G. Goswami, learned counsel appearing on behalf of respondent No. 2/informant, has submitted that the F.I.R. was lodged in connection with this case in the year 2019 and after filing of the Charge-Sheet, the case is presently pending for framing of charge, i.e. the trial may be commenced after 4-5 years of lodging of the F.I.R. The petitioner filed various applications/writ petitions before this Court only to delay the investigation as well as to deprive the victim to get the proper justice from the Court. She further submitted that in Criminal Petition No. 55/2020, a direction was already passed by this Court to investigate the matter as to whether the victim belong to SC/ST category and against the said order, the victim/informant moved an SLP before the Hon’ble Supreme Court, wherein in paragraph 5 & 6 of the order, the Hon’ble Supreme Court directed the Investigating Authority to continue the investigation. Thereafter, the

matter was placed before the Screening Committee and the Deputy Commissioner cancelled the Caste Certificate issued to the victim/informant vide order dated 22.09.2020 by holding the same to be invalid in the eye of law. The petitioner further moved a writ petition, being WP(C) No. 4523/2020, wherein this Court directed the Investigating Agency not to apply the provision of the Act of 1989 till the opinion on the validity of SC/ST Certificate is decided by the competent committee. Thereafter, though the respondent preferred a writ appeal before this Court, the Division Bench of this Court, vide Order dated 21.01.2021, dismissed the same however with a direction to the Screening Committee to decide the status of the validity of the Caste Certificate within 15 days from the date of order.

14. Further it is submitted that challenging the cancellation of ST Certificate, the respondent also filed a writ petition before this Court, which was numbered as WP(C)/8024/2022, and in the meantime, the petitioner also filed a writ appeal before this Court, however the said writ appeal was disposed of with a direction to the learned Single Judge to dispose of the writ petition expeditiously, which was filed by the present respondent challenging the order of cancellation of Caste Certificate. Thus, it is seen that the validity of the Caste Certificate is still pending before the competent authority and as per the order of this Court, passed in WP(C) No. 4523/2020, the provision of the Act of 1989 not applied for and accordingly, the Charge-Sheet was filed under Sections 354/354(A) *read with* Section 10 of the POCSO Act against the petitioner. And, as the validity of the Caste Certificate is still pending before the competent authority, the Investigating Agency did not investigate the matter to that effect and the Charge-Sheet was submitted without adding the provision of the

Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989. Thus, the police have no authority to investigate the matter under the provision of the Act of 1989 at present and the matter is still pending before the competent authority and hence, the question of investigating in respect of SC/ST status of the victim/informant does not arise and for that reason also, the Investigating Agency completed the investigation and without applying the provision under the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, the Charge-Sheet was submitted under Sections 354/354(A) of the Indian Penal Code *read with* Section 10 of the POCSO Act. She further submitted that the petitioner filed the Petition before the learned Special Judge (POCSO), Diphu only to delay the proceeding and to harass the respondent, who filed the F.I.R. in the year 2019 and till date, due to several petitions/writ petitions and the pending investigation in regards to Caste Certificate etc., the case is already delayed by 4 (four) years and after long 4 (four) years, the case is fixed for hearing on consideration of charge and by filing such kind of petition, the petitioner only tried to delay the disposal of the case with a view to harass the present informant/victim. Thus, the learned Special Judge (POCSO), Diphu committed no error or mistake by rejecting the prayer for calling of the status report from the Investigating Officer specially in regards to the SC/ST status of the victim vide Order dated 15.12.2023, passed in Petition No. 1257/2022, dated 21.12.2022, in POCSO Case No. 37/2022.

15. After considering the submissions made by the learned counsels for both sides, I have also perused the case record and the various orders passed by this Court in writ petitions and in Criminal Petition No. 55/2020 as well as the order passed by Hon'ble Apex Court in SLP(Crl.) No. 3704-3705/2020. From all these

orders and discussions as well as from the submissions from both sides, it is seen that the validity of the Caste Certificate and the SC/ST status of the informant/victim is still under enquiry before the competent authority and in pursuant to the order of this Court, the Investigating Agency also did not investigate to that aspect and the provision under the Act of 1989 is also not applied and the Charge-Sheet is submitted only under Sections 354/354(A) of the Indian Penal Code *read with* Section 10 of the POCSO Act. Thus, calling the status report of investigation in regards to SC/ST status of the victim does not arise as the Investigating Agency was already barred from investigating or applying the provision of the Act of 1989 as the same is pending before the competent authority.

16. In view of discussions made above and also considering all above aspects of the case as well as the long pendency of this case, which was filed way back in the year 2019, I find that the learned Special Judge (POCSO), Diphu, committed no illegality or mistake to make any interference of this Court while passing the order dated 15.12.2023, in POCSO Case No. 37/2021, rejecting the Petition No. 1257/2022. Resultantly, the present criminal petition, being devoid of merit, stands dismissed.

17. In terms of above, this criminal petition stands disposed of.

JUDGE

Comparing Assistant