

(2024) 03 GAU CK 0011
In the Gauhati High Court
Case No : Criminal Petition No. 1045 Of 2022

Dulanta Jyoti Kakati

APPELLANT

Vs

State Of Assam And 2 Ors

RESPONDENT

Date of Decision : 04-03-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 164, 207, 482
Indian Penal Code, 1860 — Section 420, 509
Information Technology Act, 2000 — Section 67A
Evidence Act, 1872 — Section 65

Citation : (2024) 03 GAU CK 0011

Hon'ble Judges : Robin Phukan, J

Bench : Single Bench

Advocate : M A Sheikh

Final Decision : Allowed

Judgement

1. Heard Mr. M.A. Sheikh, Adv., learned counsel for the petitioner, and also heard Ms. A. Begum, learned counsel for the respondent No. 2 & 3; and Mr. B. Sharma, learned Addl. P.P. for the State respondent No. 1.

2. This application, under section 482 of Cr.P.C., is preferred by Sri Dulanta Jyoti Kakati for quashing the proceeding in PRC Case No. 260/21 (GR Case No. 416/2021) arising out of Bokajan P.S. Case No. 152/2021, under sections 420/509 IPC read with section 67 A IT Act.

3. The background facts leading to filing of the present petition are adumbrated herein below:-

"On 19.08.2021, the informant, namely, Shri Dilip Kalita lodged one FIR with the O/C Bokajan Police Station alleging inter alia amongst others that on 13.08.2021, he had seen an obscene video of his daughter in the mobile phone of his daughter and then on being asked about the same his daughter told him that accused Dulanta Kakati, having promised to marry her was in a relationship

with her and though his daughter stopped maintaining the same, as said Dulanta Kakati already being married, he forced her to meet him and on refusal he threatened her to make viral her photos and video, which were with him and also made the same viral. Upon the said FIR the O/C of Bokajan PS registered a case, being Bokajan P.S. Case No. 152/2021, under sections 420/509 IPC read with section 67(A) IT Act and carried out investigation and the same culminated in submission of charge sheet, being Charge Sheet No. 107/2021, dated 28.09.2021, against the accused Dulanta Kakati. Upon the said charge sheet the learned court below had taken cognizance and issued process to the accused. Upon appearance of the accused and complying the provision of section 207 Cr.P.C. the learned court below had framed charge against the accused under sections 420/509 IPC read with section 67(A) IT Act and on being read and explained over the accused pleaded not guilty to the same. Thereafter, the learned court below had examined as many as two witnesses.”

4. Being aggrieved by the said proceeding the petitioner has approached this court by filing the present petition for quashing and setting aside on the following grounds:-

(i) That, there are material contradictions in the versions of the victim under section 164 Cr.P.C. and in her evidence before the court as P.W.2;

(ii) That, the evidence of P.W.2 is unworthy of credence;

(iii) That, the allegation made in the FIR is baseless and it is an abuse of the process of the court;

(iv) That, the proceeding was imitated with the sole object of punishing the petitioner and there is material omission in her version and she has twisted the actual facts;

(v) That, the proceeding was conducted in contravention of section 65 of the Evidence Act;

5. It is to be mentioned here that the petitioner had filed an Additional Affidavit and placed on record an Affidavit (Annexure-14) of the informant and the victim to the effect that they are not willing to proceed with the case as they have effected compromise and they also have no objection if the criminal proceeding is quashed and the criminal petition filed by the petitioner is allowed.

6. Mr. M. A. Sheikh, learned Counsel for the petitioner, submits that in view of the additional affidavit and also in view of the Annexure -14 enclosed there with, and as the parties have decided not to pursue the matter before the learned court below, this petition may be allowed. And the criminal proceeding, pending against the petitioner before the court of learned Judicial Magistrate 1st Class, Bokajan may be quashed. Mr. Sheikh also submits that marriage of the victim is being arranged with another person and on such count also the victim is not willing to proceed with the case.

7. On the other hand, Mr. B. Sharma, learned Addl. P.P. for the respondent No.1, submits that since the parties have settled the dispute amicably, the state has no objection in the event of allowing the petition but he submits that some serious allegation have been made in the evidence of the victim.

8. On the other hand, Ms. A. Begum, learned counsel for the respondent No. 2 & 3 also submits that the respondent No.2 and 3 have no objection if the petition is allowed.

9. Having heard the submission of learned Advocates of both the parties, I have carefully gone through the petition and the documents placed on record and also perused the scanned copy of the record, so received from the learned court below.

10. It appears that Bokajan P.S. Case No. 152/2021, under sections 420/509 IPC read with section 67 A IT Act has been registered on the basis of the FIR dated 19.08.2021, lodged by the informant, namely, Shri Dilip Kalita. He is the father of the victim. And it also appears that having carried out the investigation, the I.O. had laid charge sheet, being Charge Sheet No. 107/2021, dated 28.09.2021, against the accused Dulanta Kakati. Further, it appears that the learned court below has taken cognizance of the offences under the said section, and thereafter, hearing both sides, had framed charges against the accused under sections 420/509 IPC read with section 67 A IT Act and thereafter, had examined as many as two witnesses.

11. It also appears from the Additional Affidavit, specially from the Annexure-14 that while the aforementioned case has been pending for further evidence before the learned court below, the matter has been compromised between the parties and the respondent No.2 and 3, i.e. the informant and the victim have no objection in the event of allowing the petition.

12. I have carefully gone through the Affidavit sworn by respondent No.2 and 3, which is being annexed as Annexure No. 14 and it appears that both the parties have compromised the matter and they are no longer willing to proceed with the case pending before the learned court below.

13. It is to be mentioned here that while dealing with the issue of quashing of criminal proceeding by exercising the power under section 482 Cr.P.C., Hon'ble Supreme Court in Gyan Singh Vs. State of Punjab: (2012) 10 SSC 303, held as under:-

"When the parties have reached the settlement and on that basis petition for quashing the Criminal Proceeding is filed, the guiding factor in such cases could be to secure:-

(I) end of justice and

(II) to prevent abuse of the process of any Court. While exercising the power the High Court, however, has to form an opinion on either of the aforesaid two

objectives.

14. It is further, held that-

"Those Criminal Cases having overwhelmingly and predominantly civil character, particularly, those arising out of commercial decision or arising out of the matrimonial relationship or family dispute should be quashed when the parties have resolved their entire dispute amongst themselves. It is also held that, while exercising its power, the High Court is to examine whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the Criminal Cases."

15. Same view is re-iterated in the case of *Narinder Singh Vs. State of Punjab* [(2014) 6 SCC 466, and also in the case of *State of Madhya Pradesh vs. Laxmi Narayan and others*, reported in (2019) 5 SCC 688.

16. Here in this case, the dispute between the parties appears to be matrimonial dispute and both the parties have amicably settled the entire dispute amongst themselves. They are not willing to pursue the PRC Case No. 260/21 (GR Case No. 416/2021) arising out of Bokajan P.S. Case No. 152/2021 under sections 420/509 IPC read with section 67 A IT Act. Since the parties have settled the disputes amicably, the possibility of conviction is remote and bleak and continuation of further proceeding would be an abuse of the process of the court and it will also cause grave injustice to the parties since the marriage of the respondent No.3 is being arranged with another person.

17. In view of above and also in view of the ratio laid down by the Hon'ble Supreme Court in the case of *Gyan Singh* (supra), *Narinder Singh* (supra) and in *Lakhmi Narayan* [supra] this court is of the view that ends of justice will be granted when the petition is allowed.

18. Accordingly this petition stands allowed. The PRC Case No. 260/21 (GR Case No. 416/2021) arising out of Bokajan P.S. Case No. 152/2021 under sections 420/509 IPC read with section 67 A IT Act, pending before the court of learned Judicial Magistrate 1st Class, Bokajan, Karbi Anglong, stands set aside and quashed. The parties have to bear their own cost.