

(2024) 03 GAU CK 0029

In the Gauhati High Court

Case No : Criminal Petition No. 92 Of 2022

Pinky @ Md. Mahrum Ali

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision : 11-03-2024

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 120B, 370A, 420
Immoral Traffic (Prevention) Act, 1956 — Section 6

Citation : (2024) 03 GAU CK 0029

Hon'ble Judges : Robin Phukan, J

Bench : Single Bench

Advocate : I. Rafique, Barnali Bhuyan, R.R. Saikia

Final Decision : Allowed

Judgement

1. Heard Mr. I. Rafique, learned counsel for the petitioner, and also heard Ms. B. Bhuyan, learned Additional P.P. for the State respondent No.1 and Ms. R.R. Saikia, learned counsel for the respondent No.2.

2. This application, under Section 482 of the Code of Criminal Procedure, is preferred by two petitioners, namely, (i) Pinky @ Md. Mahrum Ali and (ii) Saheba @ Sahjahan Ali for quashing the FIR of All Women P.S. Case No. 161/21, under sections 420/370(A)/120(B) IPC read with section 6 IT (P) Act, 1956 corresponding to G.R. Case No. 10769/21.

3. The factual background, leading to filing of the present petition, is briefly stated as under:-

"The respondent No.2, namely, Sahjahan Ali @ Helen was a daily wage labour at Chandmari, Guwahati. On 12.12.2018 she met Saheba who was a Kinnar and he took the respondent No.2 to Delhi to work as a cook of one Pinky, @ Rs. 50,000/ per month, who hails from Hajo. Then on 10th April 2019, while cooking, she got

cut injury over his hand. Then Pinky called one Pharmacist, who gave one injection to her as a result of which she fainted and woke up in a bed and found herself castrated and cheated by Pinky and Saheba. She could not report the matter to police as she was under surveillance. She also could not contact her parents as her mobile was broken by Pinky and she was forced to work as bonded labour under Pinky as per Hizra tradition and had to give 70 % of her income to Pinky and Pinky had forced her to become a prostitute. Then last year when Pinky come back to Assam, then she also fled to Assam and living at Tritiyo Nivas. In Guwahati also Pinky used to threaten her and as such she could not go out of Tritiyo Nivas.

Thereafter, she lodged the FIR with the O/C All Women Police Station, upon which the O/C has registered All Women P.S. Case No. 161/21, under sections 420/370(A)/120(B) IPC read with section 6 IT (P) Act, and started investigation of the same."

4. Being highly aggrieved, the petitioners have approached this court by filing the present petition for quashing and setting aside the FIR of All Women P.S. Case No. 161/21, under sections 420/370(A)/ 120(B) IPC read with section 6 IT (P) Act, on the following grounds:-

(i) That, continuation of the proceeding in All Women P.S. Case No. 161/21, is nothing but an abuse of the process of the court;

(ii) That, the filing of All Women P.S. Case No. 161/21, has caused mental harassment and humiliation in the society and has demoralizing effect upon their personal as well as professional life;

(iii) That, a perusal of the FIR does not discloses any offences against the petitioners;

(iv) That, the occurrence, as alleged in the FIR took place at Delhi which is beyond the territorial jurisdiction of All Women P.S. Guwahati and as such All Women P.S. Case No. 161/21 is liable to be set aside;

(v) That, the informant himself undergone surgery at Aspire Specialty Clinic at Delhi as is apparent from Annexure C, D & E and if she had any grievance it is against the said clinic not against the petitioners;

5. It is to be mentioned here that the respondent No.2 has filed affidavit-in-opposition admitting the facts mentioned in the petition and also admitting that the allegation made in the FIR are incorrect as she had willingly undergone castration surgery after following due medical process. Then on 09.07.2021 a dispute arises between two groups of transgender and there was also physical assault and as she belongs to Julie group she lodged the FIR under the guidance of Swati Bidhan Baruah and as she is an illiterate she was forced to give false statement before police.

6. Mr. I. Rafique, learned counsel for the petitioners submits that the allegations

made in the FIR is admittedly false and fabricated and as such continuation of the proceeding arising out of such false and fabricated FIR is nothing but an abuse of the process of court and therefore, it is contended to allow the petition by setting aside and quashing the FIR of All Women P.S. Case No. 161/21, under sections 420/370(A)/ 120(B) IPC read with section 6 IT (P) Act.

7. Whereas, Ms. Bhuyan, learned Addl. P.P. submits that though the respondent has filed affidavit in opposition admitting the averments and that the allegations leveled in the FIR are incorrect yet the I.O. has collected some materials in support of the allegations made in the FIR. Therefore, in view of the materials collected in the case diary, Ms. Bhuyan has opposed the petition.

8. On the other hand Ms. R.R. Saikia, learned counsel for the respondent No.2 has supported the contentions made in the affidavit in opposition. Ms. Saikia further submits that the allegations made in the FIR is admittedly false and fabricated and that petitioner is illiterate and on account of the same she was compelled to sign the FIR written by one Swati Bidhan Baruah and she was forced to give false statement before police. Therefore, Ms. Saikia submits that the respondent has no objection in allowing the petition.

9. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record. Also perused the case diary produced by the learned Addl. P.P.

10. It is to be noted here that in the State of Haryana And Ors vs. Ch. Bhajan Lal And Ors, reported in 1992 Supp (1) SCC 335, while dealing with the categories of cases where the power under section 482 Cr.P.C. can be exercised, held as under:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

11. Here in this case, it appears from the FIR that some serious allegations have been leveled against the petitioners, including trafficking and forceful castration and compelling the respondent No.2 to become a prostitute and misappropriation of the income of the respondent No.2. But, the pleading of the respondent No.2 speaks otherwise. The same reveals that the allegations leveled in the FIR are incorrect, false and fabricated. It also appears that the respondent No.2 had willingly undergone castration surgery after following due medical process. Annexure-?C?, ?D? and ?E?, enclosed with the petition, clearly indicates the same. It cannot be done in a day or two as it requires a long medical process. It also appears that on 09.07.2021, a dispute arises between two groups of transgender and there was also physical assault and as the respondent No.2 belongs to Julie group, she had lodged the FIR under the guidance of Swati Bidhan Baruah and under the impression that the allegation in the FIR relates to the disputes that took place on that day i.e. 09.07.2021, and as she is an illiterate she was forced to give false statement before police. Thus, it appears that the FIR of All Women P.S. Case No. 161/21, under sections 420/370(A)/120(B) IPC read with section 6 IT (P) Act, is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge as held in the case of Bhajanlal (supra) in point No.7 of paragraph No. 102.

12. Though, Ms. Bhuyan learned Addl. P.P. submits that the I.O. has collected some materials in support of the allegation leveled in the FIR, yet it appears that

the respondent No.2 is illiterate and she was not aware of the contents of the FIR and that she was forced to give false statement. In that view of the matter, if the proceeding of All Women P.S. Case No. 161/21, under sections 420/370(A)/120(B) IPC read with section 6 IT (P) Act is allowed to continue then it would be an abuse of the process of law and it would cause undue hardship to the parties.

13. Under the facts and circumstances discussed hereinabove, this Court is of the considered opinion that this is a fit case where the extra-ordinary power under Section 482 Cr.P.C. can be invoked to quash the FIR of All Women P.S. Case No. 161/21, under sections 420/370(A)/ 120(B) IPC read with section 6 IT (P) Act. Therefore, the petition stands allowed.

14. Accordingly, the FIR of All Women P.S. Case No. 161/21, under sections 420/370(A)/ 120(B) IPC read with section 6 IT (P) Act, stands set aside and quashed. The parties have to bear their own costs.