

(2021) 06 GAU CK 0060
In the Gauhati High Court
Case No : Criminal Petition No. 326 Of 2021

Rajib Ghosh And 2 Ors.

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

Date of Decision : 08-06-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Protection of Children from Sexual Offences (POCSO) Act, 2012 — Section 8, 12, 22, 22(3)
Indian Penal Code, 1860 — Section 34, 120B, 307, 323, 324, 341

Citation : (2021) 06 GAU CK 0060

Hon'ble Judges : Manish Choudhury, J

Bench : Single Bench

Advocate : Z Kamar

Judgement

1. The Court proceedings have been conducted through remote video conferencing mode due to the prevailing situation in the State due to Covid-19 pandemic.

2. Heard Mr. Z. Kamar, learned Senior Counsel assisted by Mr. S. Islam, learned counsel for the petitioners and Mr. R.J. Baruah, learned Additional Public Prosecutor for the respondent no. 1, State of Assam.

3. The petitioners by this criminal petition under Section 482, Code of Criminal Procedure (CrPC), 1973 have sought for setting aside and quashing of

the impugned order dated 19.12.2018 (Annexure-5) passed by the learned Special Judge, Tinsukia in POCSO Case no. 52(T)/2018 and the entire

proceedings of POCSO Case no. 52(T)/2018 pending before the said Court. By the said order dated 19.12.2018, the learned Special Court had taken

cognizance for the offence under Section 22 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 and also under Sections

323/324/34, Indian Penal Code (IPC) against 7 (seven) nos. of persons including the present 3 (three) accused-petitioners and issued process for their appearance.

4. Learned Senior Counsel for the petitioners has submitted that the cognizance under Section 22 of the POCSO Act could not have been taken by the

Court as it has not been established that a false complaint or false information has been made against the respondent no. 2. He has further submitted

that the genesis of the said order is one First Information Report (FIR) lodged by the respondent no. 2 on 19.09.2018, which was registered as

Tinsukia Police Station Case no. 1210/2018 for offences under Sections 120B/341/323/307, IPC read with Section 22(3) of the POCSO Act and the

said FIR, learned senior counsel submits, is a counter blast to an FIR lodged against the respondent no. 2 by one Sabina Begum on 18.09.2018,

registered as Tinsukia Police Station Case no. 1202/2018 under Section 8, POCSO Act. A charge sheet has already been submitted in Tinsukia Police

Station Case no. 1202/2018 against the respondent no. 2 on 07.11.2018 finding a prima facie case for the offence under Section 12, POCSO Act and

accordingly, POCSO Case no. 51(T)/2018 has been registered.

5. Issue notice to the respondents, returnable in 4 (four) weeks.

6. The scanned copies of the records of POCSO Case no. 52(T)/2018 and concerned case diary along with a status report be requisitioned from the

Court of Special Judge, Tinsukia.

7. As Mr. R.J. Baruah, learned Additional Public Prosecutor has accepted notice on behalf of the respondent no. 1, no formal notice needs to be

issued to the respondent no. 1. Learned counsel assisting Mr. Kamar shall, however, serve an extra copy of the petition along with the annexures to

Mr. Baruah within 3 (three) days.

8. The petitioner shall take fresh steps for service of notice on respondent no. 2 by way of registered post with A/D within 7 (seven) days from today.

9. The prayer for interim order will be considered on the returnable date.

10. This order be brought to the notice of the Registrar (Judicial) for doing the needful from his end.