2024 INSC 39

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 185 OF 2024
(Arising out of SLP(Crl.) No. 9142 of 2022)

SURESH GARODIA **...APPELLANT(S)**

VERSUS

THE STATE OF ASSAM
AND ANOTHER **...RESPONDENT(S)**

J U D G M E N T

B.R. GAVAI, J.

1. Leave granted.

2. The appellant has approached this Court being aggrieved by the order dated 22nd August 2022 passed by the learned Single Judge of the Gauhati High Court, dismissing the application filed by the appellant under Section 482 of the Criminal Procedure Code, 1973 (for short, "Cr.P.C.") for quashing of criminal proceedings under Sections 376/506 of the Indian Penal Code, 1860 (for short, 'IPC') so also for quashing of the order dated 4th July 2017 passed by the

learned Magistrate for taking cognizance under Section 376/506 of IPC.

3. The facts, giving rise to the present appeal, are thus:-

3.1 On 4th December 2016, the prosecutrix lodged a First Information Report (for short, "FIR") before the Bharalumukh Police Station, District Kamrup (M), Guwahati, alleging therein that when she was fifteen years of age, the appellant herein committed rape on her and as a result of which she gave birth to a child, namely, Jasim Ahmed Garodia on 7th April 1983.

3.2 After the FIR was lodged, final report came to be filed. However, the learned Magistrate, after considering the said final report, rejected the same and directed that the cognizance be taken on the basis of the police report. Being aggrieved thereby, the appellant filed a petition under Section 482 Cr.P.C. before the High Court, which was rejected vide impugned order. Hence, the present appeal.

4. We have heard Mr. Ibad Mushtaq, learned counsel appearing for the appellant, Ms. Diksha Rai, learned counsel appearing for the State and Ms. S. Janani, learned counsel appearing for the *de facto* complainant.

5. Mr. Mushtaq, learned counsel appearing for the appellant, submits that the present case is nothing else but

an abuse of process of law. The FIR was filed after 34 years only in order to blackmail the appellant herein. He therefore submits that the order passed by the learned Magistrate dated 4th July 2017 for taking cognizance is not sustainable in law.

6. Ms. Diksha Rai, learned counsel appearing for the State and Ms. S. Janani, learned counsel appearing for the *de facto* complainant, vehemently opposed the present appeal.

7. Learned counsel for the complainant submitted that merely because there is a delay of 34 years in lodging the FIR, the same cannot be a ground for quashing of the proceedings. She submits that *prima facie* the statement of the prosecutrix has to be taken on face value. It is submitted that since the *de facto* complainant stated in the FIR that she was a minor at the time of the commission of offence, even if it is said to be consensual, the offence under Section 376 IPC would be made out.

8. After completion of the investigation, the Investigating Officer (for short, "I.O.") filed the final report, which reads as under:-

> "The brief of the final report is that on 04.12.2016 the informant lodged an FIR before the Police Station and informed that in the year 1982 she was raped by Suresh Garodia and as a result of which

> on 07.04.1983 a male child, Jasim Ahmed Garodia was born and further the accused coerced her and threatened the informant not to lodge FIR. The investigation was done on receipt of the FIR.
>
> During the investigation the statement of informant and her son Jasim Ahmed Garodia and the statement of accused was recorded. The statement under Section 164 Cr.P.C. of informant and her son was recorded. The blood sample of all the three persons were collected and sent for ossification test at F.S.L. Kolkata the report of the same was collected. During investigation it was found that Jasin Ahmed Garodia is the son of Suresh Garodia. It is further found during investigation that Suresh Garodia even provided cash money and other facilities as his son. Due to greed of property of Suresh Garodia, his son Jasim Ahmed Garodia with the aid of his mother Sabina Ahmed lodged this FIR after a period of 34 (thirty four) long years. Due to property dispute between Suresh Garodia and Jasim Ahmed Garodia this case has been lodged. And I pray before this Hon'ble Court that as the matter relates to civil matter as such Suresh Garodia shall be discharged from this case and as such, the final report is submitted. A notice was though sent to the informant but the notice could not be served as the informant refused to receive the notice."

9. A perusal of the said report clearly reveals that the statement of the prosecutrix as well as her son were recorded. In the statement, the son of the prosecutrix even admitted that the appellant herein was providing cash money and other facilities to him as his son. The final report states that only on account of greed for property of the appellant-

Suresh Garodia, the prosecutrix, in connivance with her son, has filed the FIR after a period of 34 years. The I.O. opined that the case was of a civil nature and therefore the appellant herein should be discharged from the said case. No doubt that the learned Magistrate, while exercising his powers under Section 190 Cr.P.C., is not bound to accept the final report of the I.O. However, if the learned Magistrate disagrees with the finding of the I.O., the least that is expected of him is to give reasons as to why he disagrees with such a report and as to why he finds it necessary to take cognizance despite the negative report submitted by the I.O. Nothing of that sort has been done by the learned Magistrate in his order dated 4th July 2017.

10. This Court, in the case of ***State of Haryana and Others v. Bhajan Lal and Others***[1], has observed thus:

> "**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,

1 **1992 Supp (1) SCC 335**

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.
>
> **103.** We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

11. In the said case, the Court has given a caution that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The Court would normally not embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the

complaint.

12. However, we find that the present case would fall under category Nos. 5 and 7 of the categories of cases culled out by this Court in the said case.

13. We find that lodging a case after 34 years and that too on the basis of a bald statement that the prosecutrix was a minor at the time of commission of offence, could itself be a ground to quash the proceedings. No explanation whatsoever is given in the FIR as to why the prosecutrix was keeping silent for a long period of 34 years. The material on record shows that the relationship was consensual, inasmuch as the son who is born out of the said relationship has been treated by the appellant as his son and all the facilities, including cash money, have been provided to him.

14. We find that the finding of the I.O. that the case was filed only for the greed for the property of the appellant herein cannot be said to be erroneous. We find that the continuation of the proceedings would lead to nothing else but an abuse of process of law.

15. Therefore, the impugned order dated 22nd August 2022 passed by the High Court and the order of the learned Magistrate dated 4th July 2017 are hereby quashed and set aside and the present appeal is allowed.

16. Pending application(s), if any, shall stand disposed of.

.....J.
(B.R. GAVAI)

.....J.
(SANDEEP MEHTA)

NEW DELHI;
JANUARY 09, 2024