

GAHC010123152025



2026:GAU-AS:348

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

Case No. : Crl.Rev.P./213/2025

MOUSUMI MAHANTA
D/O- SRI UPEN MAHANTA.
R/O- VILL.- CHECHAMUKH, DIMOUGURI,
P.O.- POLAKHONI, P.S.- NAGAON,
DIST.- NAGAON, ASSAM. PIN-782140

VERSUS

THE STATE OF ASSAM AND ORS
REPRESENTED BY THE PP, ASSAM

2:SRI DIPANKAR DAS
S/O- LATE KASHIRAM DAS.
R/O- DIMORUGURI
P.S.- NAGAON(SADAR)
DIST.- NAGAON
ASSAM
PIN-782140

3:SRI BIKRAMJIT DEY.
S/O- SRI RANJIT DEY.
R/O- DIMORUGURI
P.S.- NAGAON(SADAR)
DIST.- NAGAON
ASSAM
PIN-782140

4:SRI RAJKUMAR DAS.
S/O- LATE KASHIRAM DAS.
R/O- DIMORUGURI
P.S.- NAGAON(SADAR)
DIST.- NAGAON
ASSAM
PIN-782140

5:SRI DIPAK DAS.
S/O- LATE KASHIRAM DAS.
R/O- DIMORUGURI
P.S.- NAGAON(SADAR)
DIST.- NAGAON
ASSAM
PIN-782140

6:SRI RAJIT DAS
S/O- LATE KASHIRAM DAS.
R/O- DIMORUGURI
P.S.- NAGAON(SADAR)
DIST.- NAGAON
ASSAM
PIN-782140

7:SMTI. BENU DAS
W/O- LATE KASHIRAM DAS.
R/O- DIMORUGURI
P.S.- NAGAON(SADAR)
DIST.- NAGAON
ASSAM
PIN-782140

8:SMTI. PUTULI DAS.
W/O- LATE KASHIRAM DAS.
R/O- DIMORUGURI
P.S.- NAGAON(SADAR)
DIST.- NAGAON
ASSAM
PIN-782140

9:SMTI. RAJSHREE DAS.
D/O- LATE KASHIRAM DAS.
R/O- DIMORUGURI
P.S.- NAGAON(SADAR)
DIST.- NAGAON
ASSAM
PIN-782140

10:SMTI. POMI DAS.
W/O- SRI RAJAT DAS.
R/O- DIMORUGURI
P.S.- NAGAON(SADAR)
DIST.- NAGAON
ASSAM
PIN-782140

11:SMTI. RAJKUMARI DAS
W/O- SRI BIKRAMJIT DAS.
R/O- DIMORUGURI
P.S.- NAGAON(SADAR)
DIST.- NAGAON
ASSAM
PIN-78214

Advocate for the Petitioner : MR. A GANGULY, MS. M ROY,MR T CHHETRI

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT

Date : 06-01-2026

Heard Mr. A. Ganguly, learned counsel for the petitioner and Mr. M.P. Goswami, learned Additional Public Prosecutor for the respondent no. 1, State of Assam.

2. The present criminal revision petition under Section 438 read with Section 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 is directed against an Order dated 22.04.2025 passed in Petition no. 173/2025 by the Court of Additional Sessions Judge-cum-Special Judge [POCSO], Nagaon, Assam [‘the Special Court’, for short] in the course of proceedings of Special POCSO Case no. 48[N]/2018.

3. The case of the petitioner, sans the unnecessary details, is that the petitioner as the informant lodged a First Information Report [FIR] before the Officer In-Charge, Sadar Police Station, Nagaon on 16.08.2017 alleging inter alia that the accused nos. 1, 2 & 3 on 15.08.2017 had gang-raped her. In the FIR,

the petitioner-informant mentioned her age to be 16 years and twelve persons as accused. On receipt of the FIR, the same was registered as Nagaon Police Station Case no. 2212/2017 for the offences under Sections 143/341/342/328, Indian Penal Code [IPC] read with Section 6, Protection of Children from Sexual Offences [POCSO] Act, 2012 on 16.08.2017 itself and entrusted the investigation to a Sub-Inspector of Police attached to the said Police Station.

4. After completing the investigation, the Investigating Officer of the case submitted a charge-sheet vide Charge-Sheet no. 699 on 31.05.2018 finding a prima facie case established against the accused no. 1-respondent no. 2 under Section 4, POCSO Act. Other than the accused no. 1-respondent no. 2, the I.O. did not send the other accused persons named in the FIR to face the trial on the ground that sufficient materials could not be found against them to forward a case for trial. In the FIR, the I.O. listed fifteen nos. of witnesses who deposed to establish the case of the prosecution in the trial.

5. On receipt of the Charge-Sheet, the Special Court registered the same as Special [POCSO] Case no. 48[N]/2018 and after taking cognizance, issued process to the accused no. 1-respondent no. 2 for his appearance before the Court to face the trial.

6. Aggrieved by the fact that the other accused persons named in the FIR were not charge-sheeted, the petitioner-informant as the victim took recourse of law by initiating proceedings in the form of Petition no. 1761/2018 before the Special Court, followed by Criminal Revision Petition no. 138/2019 before this Court. By a Judgment and Order dated 16.09.2022, this Court disposed of the

criminal revision petition by setting aside an Order dated 26.02.2019 passed by the Special Court. By the Order dated 26.02.2019, the Special Court had observed that even if the other accused persons named in the FIR were not charge-sheeted, the Court had power under Section 319, Code of Criminal Procedure, 1973 [CrPC] to bring any other accused, not named in the Charge-Sheet, if there appears evidence against them regarding their involvement in the offences/charges under the trial. While setting aside the Order dated 26.02.2019, this Court remanded the matter back to the Special Court to consider the matter afresh after affording an opportunity of being heard to both the parties and to pass an order on the Charge-Sheet submitted under Section 173[2], CrPC.

7. Aggrieved by the Judgment and Order dated 16.09.2022, the respondent no. 2 to respondent no. 11 approached the Hon'ble Supreme Court by way of a special leave to appeal, Special Leave to Appeal [Crl.] No[s]. 11480/2022. But, the Hon'ble Supreme Court dismissed the special leave petition, by an Order dated 12.12.2022, by declining to interfere with the Judgment and Order dated 16.09.2022 passed by this Court. The Hon'ble Supreme Court observed that the Trial Court shall decide the case on its own merits without being influenced by any observations made in the Judgment and Order dated 16.09.2022.

8. Thereafter, the Special Court considered the matter afresh. In its Order dated 04.02.2023, the Special Court observed that there were sufficient materials to issue process against the respondent nos. 3 – 11 to stand in the trial. Accordingly, the Special Court issued process against the newly impleaded accused persons for their appearance before the Special Court. On receipt of

process, the respondent nos. 3-11 entered their appearance.

9. On 21.06.2023, the Special Court framed charges under Section 6, POCSO Act and Section 366, IPC against the respondent nos. 2 & 3. Against the other accused persons, charges under Section 6 and/or Section 8 and/or Section 17 of the POCSO Act was/were framed. Thereafter, the trial proceeded to the stage of evidence.

10. When four witnesses from the prosecution side were examined, the petitioner-informant-victim submitted a petition before the Special Court with a prayer to the Special Court not to call ten nos. of witnesses, who were listed as witnesses for the prosecution in the Charge-Sheet dated 31.05.2018. The reasons for which those witnesses were not to be called by the prosecution were mentioned in the petition. The said petition was registered and numbered as Petition no. 173/2025.

11. The learned counsel for the parties were heard on Petition no. 173/2025. The Special Court noted that the petition was not filed by the Special Public Prosecutor who was conducting the prosecution on behalf of the State and who was in charge of the case. In the impugned Order dated 22.04.2025, the Special Court has observed that the prosecution is to run by the Special Public Prosecutor and it is his prerogative to produce or not to produce any of the witnesses cited in the Charge-Sheet to bring home the charges framed against the accused persons. The Special Court has further observed that it cannot pass any order directing the Special Public Prosecutor in any manner regarding production of the witnesses. Observing so, the Special Court by the impugned

Order dated 22.04.2025, dismissed Petition no. 173/2025.

12. As per sub-section [1] of Section 32 of the POCSO Act, it is a Special Public Prosecutor who is to conduct cases under the provisions of the POCSO Act before the designated Special Court. From the provisions of Section 32 of the POCSO Act and Section 338 of the BNSS, 2023 [earlier, Section 301, CrPC], it is evident that it is the Special Public Prosecutor who can only conduct the case for the prosecution for the offence under the POCSO Act before the designated Court. It is within the domain of the Special Public Prosecutor to call the witnesses either from the list of witnesses cited in the Charge-Sheet or any other witnesses whom he finds relevant for the purpose of the prosecution case, subject to the permission of the Court, wherever necessary. A Court does not exercise any power to give direction to a Special Public Prosecutor defined under Section 2[m] of the POCSO Act or for that matter, a Public Prosecutor defined under Section 2[1][v], BNSS [earlier, Section 2[u], CrPC] not to call any witness from the list of witnesses cited in the Charge-Sheet.

13. It is a settled proposition that it is the discretion of the Public Prosecutor to tender the witnesses to prove the case of the prosecution. The Public Prosecutor is under obligation to produce in evidence in support of the prosecution and not in derogation of the prosecution case. A Public Prosecutor is in the best position to take a decision as to which among the persons cited are to be examined. If there are too many witnesses on the same point the Public Prosecutor has the discretion to choose some of them so that the time of the Court can be saved from the repetitious depositions on the said factual aspects. It has been held in *Abdul Gani vs. State of Madhya Pradesh*, AIR 1954

SC 31, that as a general rule, all witnesses must be called upon to testify in the course of the hearing of the prosecution, but that there is no obligation compelling the Public Prosecutor to call upon all the witnesses available who can depose regarding the facts the prosecution desires to prove. Ultimately, it is a matter left to the discretion of the Public Prosecutor. In *Shardul Singh vs. State of Bombay*, AIR 1957 SC 747, it has been observed that a Court cannot normally compelled the prosecution to examine a witness which the prosecution does not choose to examine, and that the duty of a fair prosecutor extends only to the extent of examination of such witnesses, who are necessary for the purpose of disclosing the story of the prosecution with all its essentials. In *Rohtash Kumar vs. State of Haryana*, [2013] 14 SCC 434, it has been observed that the Court will not interfere with the exercise of the discretion of the Public Prosecutor to tender the witnesses unless, perhaps, it can be shown that the prosecution has been influenced by some oblique motive.

14. When the impugned Order dated 22.04.2025 is examined from the afore-stated perspectives, this Court does not find any incorrectness, illegality or impropriety in the impugned order.

15. Consequently, this criminal revision petition is found to be bereft of any merit and the same is accordingly dismissed.

JUDGE

Comparing Assistant

Digitally signed by Pallabi Das

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