

GAHC010129612025



2026:GAU-AS:795

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

Case No. : Crl.Pet./714/2025

MD. SHAHAJAHAN SHEIKH
S/O- SATTAR ALI.
R/O- VILL.- TELIPARA, P.O.- PURANDIARA.
P.S.- MANKACHAR, DIST.- SOUTH SALMARA MANKACHAR, ASSAM.
PIN-783131

VERSUS

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

2:SUMINA KHATUN
W/O- SHAHAJAHAN SHEIKH
VILL.- TELIPARA
P.O.- PURANDIARA.
P.S.- MANKACHAR
DIST.- SOUTH SALMARA MANKACHAR
ASSAM PIN-78313

Advocate for the Petitioner : MR. M ISLAM, MS A KHATUN

Advocate for the Respondent : PP, ASSAM, MR. A.K. HAJONG (R-2),MS. D GHOSH(R-2)

BEFORE
HONOURABLE MR. JUSTICE RAJESH MAZUMDAR
O R D E R

22.01.2026

Heard Mr. M. Islam, learned counsel for the petitioner. Also heard Mr. K. K. Parasar, learned Additional Public Prosecutor for the respondent State.

2. This application has been filed by the petitioner under the provisions of Section 528 of the BNSS, 2023 for setting aside and quashing the entire proceedings of Special (P) Case No. 104/2024 preferred under section 9 of the Prohibition of Child Marriage (PCM) Act, 2006 read with section 6 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 against the petitioner pending in the Court of the Special Judge, South Salmara Mankachar arising out of Mankachar PS Case No. 77/2023 (GR No. 126/2023).

3. This case was charge-sheeted on 30.04.2023. The case of the petitioner is that he had been married to the respondent No.2 on 19.04.2022 as per their customary rights. At the time of their marriage, the alleged victim was 15 years 8 months and 16 days old and at present, the alleged victim is aged about 19 years 5 months 14 days.

4. The learned counsel for the petitioner has submitted that the case was initiated against the petitioner on the complaint of the Secretary of the Village Defence Party who had lodged the FIR before the Officer-in-charge of Sukchar Police Station. On initiation of the present criminal petition, notices were issued to the respondent No.2. As Ms. Ghosh appears for the respondent No. 2 and has submitted that she has personally interacted with the alleged victim and is under instructions that the alleged victim/respondent No.2 does not want to pursue with the case and she is living a happy marital life now.

5. The learned counsel for the petitioner has drawn our attention to the affidavit cum declaration annexed to this petition where the respondent No.2 i.e., the alleged victim has made statements that she has eloped with the petitioner and entered into a marriage with him of her own will and that she would have no objection If the proceedings initiated against the present petitioner is set aside and quashed.

6. The learned counsel for the petitioner has drawn our attention to the Judgment of a Hon'ble Supreme Court in the ***State of Haryana Vs. Bhajan Lal*** reported in **AIR 1992 SC 604**, wherein at Paragraph-102, the Judgment has laid down as follows:-

“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."

7. Having heard the learned counsel for the parties and the learned A.P.P., this Court is of the opinion that the ratio laid down in Bhajan Lal's case is applicable to the present case. Since this so called victim girl has come forward to state that she is living happily with the petitioner herein and even after attaining majority, she does not have any wish to nullify the marriage at this stage, there is little or no possibility of conviction of the accused petitioner in the pending criminal proceeding. Allowing the criminal proceeding to continue would only result in prolongation of the judicial process.

8. In the view of this Court, this is a fit case for exercising the powers under Section 528 of the BNSS, 2023. The criminal petition is accordingly allowed.

9. The proceedings of Special (P) Case No. 104/2024 arising out of Mankachar PS Case No. 77/2023 (GR No. 126/2023) against the petitioner is hereby set aside and quashed.

10. The criminal petition is disposed of.

JUDGE

Comparing Assistant