

State of Assam

Vs

Abdul Noor and Others

Criminal Appeal No. 20 of 1968

(CJI M. Hidayatullah, A. N. Ray, I. D. Dua JJ)

13.03.1970

JUDGMENT

RAY, J. -

1. This is an appeal by certificate under Article 134(1)(c) of the Constitution against the judgment, dated 22nd December, 1966 of the High Court of Assam and Nagaland quashing proceedings in G.R. case No. 683 of 1964 and G.R. case No. 701 of 1964.
2. The respondents made an application to the High Court for quashing G.R. case No. 701 of 1964 pending in the Court of the Additional District Magistrate, Silchar and G.R. case No. 683 of 1964 pending in the Court of the Magistrate, Tezpur.
3. G.R. case No. 701 of 1964 related to a complaint alleging that the respondent Jamurddin Ahmed, in collusion with a doctor and a nurse caused forcible abortion on a minor girl.
4. The other case G.R. No. 683 of 1964 related to a complaint filed by one Sabitri Das alleging that her minor daughter was employed as a maidservant in the house of the respondent Jamurddin Ahmed and was forcibly given in marriage to a Muslim.
5. The High Court quashed both the proceedings on the ground that the Magistrate sent the complaint petitions to be officer-in-charge of the police station for investigation without examining the complainant.
6. In the application for leave to appeal to this Court the State Submitted, inter alia, in the grounds of appeal that the High court erred in law by quashing the proceedings on the ground that the complainant was not examined. The High Court passed an order stating that the certificate applied for is granted in the circumstance of the case.
7. The right to appeal to this Court in Criminal matters is regulated by Article 134. In the present case, we are concerned with sub-clause (c) and not sub-clause (a) and (b) of clause (1) of Article 134. The scope of sub-clause (c) Court and we shall refer only to the last one. In Babu and Other v. State of Uttar Pradesh ((1965) 2 SCR 771) this Court said that the power under sub-clause (c) conferred on the High Court discretion which is to be exercised on judicial principles. The jurisdiction under Article 134(1)(C) is not that of an ordinary court of criminal appeal. It is manifest that before granting a certificate under sub-clause (c) the High Court must be satisfied that it involves some substantial question of law or principle. The certificate itself should give an indication what substantial question of law or principle is involved in the appeal to bring it within

the scope of Article 134(1)(c). Where this Court has found that the certificate is not in compliance with the requirements of Article 134(1)(c), it has declined to accept the certificate. There are instances where however this Court after declining to accept the certificate has allowed the appellant to apply under Article 136 in proper cases.

8. In the present case the certificate does not indicate any reason as to why the High Court granted the Certificate. The jurisdiction of this court is attracted by reason of this certificate. We decline to accept the certificate in the present case.

9. The complainants Satindra Mohan Dab and T. P. Bhattacharjee both Members of the Legislative Assembly in G.R. Case No. 701 of 1964 complained to the Additional Deputy Commissioner, Cachar, Silchar on 10th July, 1964 that a Hindu girl brought from Tezpur and living in the family of Jamurddin, Executive Engineer, conceived and while in an advanced stage of pregnancy was stealthily removed to the Civil Hospital in collusion with Dr. Moshaid Ali and a nurse and they caused a forcible abortion on the girl and thereafter removed the girl to an unknown destination. On 11th July, 1964 Amina Khatoon the girl in question made a statement that she was a maid-servant of Jamurddin Ahmed. Her mother married some one after the death of her father. She was brought up by Asmat Ali. She was recruited as maid-servant by Ahmed. In the winter of 1963 she married one Noor and she lived with her husband and conceived a child by her marriage. She was taken to the hospital after profuse bleeding. She was no longer in a stage of pregnancy. She wanted to go back and live at the house of her master.

10. It is also in evidence that when Amina was working at the house of Jamurddin Ahmed, Engineer, Asmat Ali wrote letters both to Ahmed and his wife that they were taking good care of Amina. Amina was the adopted daughter of Asmat Ali. Asmat Ali married the elder sister of Married the elder sister of Amina's mother Sabitri. Asmat Ali affirmed an affidavit on 12th September, 1964 that Amina's mother Sabitri had married Gopesh Nath and Amina who was called Lakhi was born to Gopesh Nath in or about the year 1943. After the death of Gopesh Nath, Sabitri lived with Cheniram son of her father Nilkanta's brother. Lakhi and his wife Swadeshi. Lakhi was then given the name of Amina. In 1962 Amina was employed in the service of Ahmed. Amina was married to Abdul Noor. This affidavit was affirmed by Asmat Ali on 12th September, 1964 in answer to the complaint filed by Amina's mother Sabitri that Jamurddin Ahmed, Executive Engineer had married her daughter by changing her name.

11. The complaint as to forcible abortion is completely repelled by the affidavit of Amina herself that she married Noor and conceived by him and thereafter there was a miscarriage.

12. The complaint of Amina's mother Sabitri that Amina had been given in marriage to a Muslim by conversion is utterly baseless by reason of the affidavit of Asmat Ali that Amina had been taken in adoption by Asmat Ali and then given in marriage to Noor.

13. In the present case, it is not necessary to go into the question as to whether cognizance was taken without examination of the complainant. The Magistrate can under Section 190 of the Criminal Procedure Code before taking cognizance ask for investigation by the police under Section 156(3) of the Criminal Procedure Code. The Magistrate can also issue warrant for production before taking cognizance. If after cognizance has been taken, the Magistrate wants any investigation, it will be under Section 202 of the Criminal Procedure Code. The investigation which was ordered in the present case elucidated facts as to the marriage of Amina Khatoon whereupon it is clear the complaints do not disclose any offence.

14. No useful purpose can be served by allowing these cases to be proceeded with. Both the cases appear to typify the tale of a woman who is lawfully married and the complaints are baseless and do not disclose any offence.

15. The appeal, therefore, fails and is dismissed.

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