GAHC010080822021

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

Case No. : Crl.Pet./326/2021

1. RAJIB GHOSH AND 2 ORS.
S/O. SRI HARADHAN GHOSH, R/O. SRIPURIA, TINGRAI HABI, P.O. AND P.S. TINSUKIA, DIST. TINSUKIA, ASSAM.

2: LAXMAN SWAMI
S/O. SURYA PRAKASH SWAMI
R/O. JALAJI MARBLE
EYE HOSPITAL BUILDING
MAKUM ROAD TINSUKIA
P.O. AND P.S. TINSUKIA
DIST. TINSUKIA
ASSAM.

3: RAKESH SHARMA
S/O. LT. BISHESHWAR DAYAL SHARMA
R/O. MAKUM ROAD
NEAR OVERBRIDGE
P.O. AND P.S. TINSUKIA
DIST. TINSUKIA
ASSAM

VERSUS

1. THE STATE OF ASSAM AND ANR.
REP. BY PP, ASSAM.

2:RAM NATH SINGH
S/O. SRI KAILASH SINGH
R/O. MAKUM ROAD
NEAR UCO BANK
P.O. AND P.S. TINSUKIA
DIST. TINSUKIA
ASSAM
PIN-786125

Advocate for the Petitioner : MR Z KAMAR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

JUDGMENT

Date : 22-05-2023

Heard Mr. Z. Kamar, learned Senior Counsel, being assisted by Mr. S. Islam, learned counsel for the petitioners. Also heard Mr. P.S. Lahkar, learned Addl. P.P., Assam, appearing for the State/ respondent No.1 and Mr. A.K. Gupta, learned counsel for the respondent No.2.

2. In this petition, under Section 482 of the Code of Criminal Procedure, 1973, three petitioners, namely, (1) Rajib Ghosh, (2) Laxman Swami and (3) Rakesh Sharma have challenged the legality, propriety and correctness of the order, dated 19.12.2018, passed by the learned Special Judge, Tinsukia, in POCSO Case No. 52(T)/2018 and prayed for setting aside and quashing of the said order dated 19.12.2018. The petitioners also prayed for quashing of the entire proceeding in connection with the POCSO Case No. 52(T)/2018, under Section 22 of the POCSO Act, read with Section 323/324/34 of the IPC, pending in the Court of learned Special Judge, Tinsukia.

3. It may be mentioned here that although three petitioners, namely, (1) Rajib Ghosh, (2) Laxman Swami and (3) Rakesh Sharma, have preferred the present Criminal Petition, yet, during the pendency of the petition, petitioner No. 3, namely Rakesh Sharma suffered demise and no step has been taken to implead his legal heirs.

4 The factual background, leading to filing of the present petition, is adumbrated herein below:-

"On 19.09.2018, one Ram Nath Singh (respondent No.2 of the present case) lodged an FIR with the Officer-in-Charge of the Tinsukia Police Station alleging inter-alia amongst others that one Shabina Begum and all other conspirators, with oblique motive, hatched a conspiracy and brought false allegation of molesting the nice of Sahera Begum, namely Smti. 'X' (name withheld), on 17.09.2018, at about 1:00 am, against him, with a view to evict him from his workshop.

It is further alleged that on 17.09.2018, at about 9:00 P.M., he had visited the chamber of his lawyer and when he boarded his car along with his employee, then three/four persons restrained his car and one of them physically assaulted his employee and tried to kill him and he could identify two attackers, namely, Sadab Mansoor @ Ranu and Bapan and Bapan had tried to kill him by strangulation.

Then on enquiry he learnt that his landlord, Smti. Fahmida Begum, Sadab Mansur, Sham and their associates, namely, Raju, Rakesh @ Bilal, Laxman and others hatched a conspiracy and concocted a false story, and thereafter, lodged an FIR and the allegations in the FIR are false."

5. Upon the said FIR, the Officer-in-Charge, Tinsukia P.S. has registered a case, being Tinsukia P.S. Case No.1210/2018, under Sections 120(B)/341/323/307 of the IPC, read with Section 22(3) of the POCSO Act, corresponding to POCSO Case No. 52(T)/20 and carried out the investigation and on completion of the same, the I.O. laid negative Final Report, dated 07.11.2018, before the learned Trial Court. Against the submission of Final Report, the engaged counsel for the respondent No.2 submitted verbal objection stating that there are materials in the case and prayed before the learned Court below to take cognizance against the accused persons, including the two present petitioners.

6. The learned Court below, after hearing the learned counsel for the respondent No.2/informant, vide order dated 19.12.2018, had taken cognizance of the offence under Section 22 of the POCSO Act, read with Section 323/324/34 of the IPC, against the present

petitioners and four others and issued summons to them.

7. It may be mentioned here that on the FIR lodged by informant Shabina Begum on 18.09.2018, the Officer-in-Charge of the Tinsukia Police Station registered a case, being Tinsukia P.S. Case No.1202/2018, under Section 8 of the POCSO Act against Ram Nath Singh, the present petitioner. It is also to be noted here that in the said FIR it has been alleged inter alia that on 17.09.2018, at about 1:00 A.M., while her niece Smti. 'X' (name withheld), aged about 14 years was returning back to her room after attending call of the nature, the respondent No.2 forcefully caught hold of her, hugged her forcefully and tried to touch her private part. When the victim raised hue and cry, the informant came out of her house and saw the respondent No.2 who was forcefully holding the victim girl. Then on completion of investigation, the I.O. laid charge sheet against the present petitioner, to stand trial in the court under Section 12 of the POCSO Act. The learned Special Judge, Tinsukia, then registered a case, being POCSO Case No. 51(T)/2018, and after hearing both sides, framed charge under Section 12 of the POCSO Act against the present petitioners and now the case is pending at the evidence stage.

8. Being highly aggrieved, the petitioners approached this Court, challenging the correctness or otherwise of the impugned order dated 19.12.2018, on the following grounds:-

(i) That, the impugned order suffers from material irregularity and passed it without legal basis;

(ii) That, the learned Special Judge, Tinsukia passed the impugned order dated 19.12.2018, without assigning proper grounds and reason;

(iii) That, the learned Special Judge, Tinsukia passed the impugned order, dated 19.12.2018, without considering the fact that the trial of POCSO Case No. 51(T)/2018 is still going on against the respondent No.2, Shri Ram Nath Singh, and the present petitioners are not the informant of POCSO Case No.52(T)/2018; and therefore, the same is liable to be set aside.

(iv) That, the learned Special Judge, Tinsukia did not accept the Final Report submitted by the Investigating Officer and without examining any witness or further investigation of the case, as per the provision under Section 173(8) of the Cr.P.C., the learned court below had taken cognizance against the present petitioners, on the mere objection and prayer of the learned counsel for the respondent No.2;

(v) That, the learned Special Judge, Tinsukia had failed to appreciate that Section 22 of the POCSO Act is not attracted in the present case in as much as there is no materials to show that the case initiated by informant Shabina Begum against the respondent No.2 is a false and fabricated. Moreover, the present petitioners are not the complainant/informant of the said case i.e. POCSO Case No.51(T)/2018, and Section 22 of the POCSO Act makes the offence punishable only to the informant and not the concerned victim and witnesses of the case and as such, the criminal proceeding against the petitioners pertaining to POCSO Case No.52(T)/2018, is not maintainable;

(vi) That, the learned Special Judge, Tinsukia, has passed the impugned order, dated 19.12.2018, without applying his judicious mind and without complying the provisions of the Code of Criminal Procedure, 1973;

9. Respondent No.2 has filed affidavit-in-opposition, denying the assertion made in the petition by the petitioners and to bring on record certain facts, which are relevant for disposal of the present petition. It is also stated that the impugned order was passed on 19.12.2018, and the present petition, under Section 482 of the Cr.P.C. was filed on 26.04.2021, after two years and four months, and though no limitation is prescribed in the Criminal Procedure Code for filing such a petition, yet, it is settled position of law that the petition should have been filed within a reasonable time. Moreover, there is no explanation as regards the delay of two years four months in lodging the present Criminal Petition. Furthermore, the informant of the Tinsukia P.S. Case No.1202/2018, corresponding to POCSO Case No. 51(T)/2018, namely, Shabina Begum is declared as absconder by the learned trial Court vide order dated 17.08.2021, in POCSO Case No.52(T)/2018. The learned trial Court also observed that informant Shabina Begum is avoiding the process of the Court, and accordingly, directed that

the case against her be kept filed till execution of the warrant, which clearly shows that the conspiracy, so hatched against the respondent No.2, do not comes out. It is also submitted that the case filed against him is totally false and baseless and the same is filled with ill and oblique motive and as such, the learned trial Court has rightly taken cognizance of the offence against the present petitioners, vide impugned order, dated 19.12.2018 and therefore, it is contended to dismiss the petition.

10. Mr. Z. Kamar, the learned Senior Counsel, appearing for the petitioners, submits that the FIR lodged by the respondent No.2, on 19.09.2018, resulting registration of Tinsukia P.S. Case No.1210/ 2018, under Sections 120(B)/341/323/307 of the IPC, read with Section 22(3) of the POCSO Act, against the petitioners is the counter blast of the FIR lodged against him by one Shabina Begum on 18.09.2018, which resulted in registration of Tinsukia P.S. Case No.1202/2018, under Section 8 of the POCSO Act. Mr. Kamar further submits that after investigation of the Tinsukia P.S. Case No.1210/2018, the I.O. had submitted negative Final Report, and thereafter, the counsel for the respondent No.2 appeared before the learned Court below and stated that in spite of collecting sufficient materials against the accused, the investigating officer had incorrectly filed the Final Report, and therefore, contended to take cognizance against the present petitioners and thereafter, the learned Court below, without receiving any protest petition or Naraji petition from the complainant, had taken cognizance vide impugned order, dated 19.12.2018, against the petitioners, under section 22 of the POCSO Act and also under section 323/324/34 of the IPC. Mr. Kamar further pointed out that the learned court below had taken cognizance of the offence against the petitioners, without the trial of the case of Tinsukia P.S. Case No.1202/2018, under Section 8 of the POCSO Act, being completed and without arriving at a finding that the complaint of the aforesaid case is false and as such, taking cognizance against the petitioners, under Section 22 of the POCSO Act, is not legally tenable. Further, Mr. Kamar, having taken this court through the FIR, lodged by the respondent No.2, submits that perusal of the same fails to disclose even a prima-facie case under sections 323/324/34 IPC, against the present petitioners and as such the case of the petitioners are squarely covered by Point No.1 and Point No.3, of Para 108 of the case of **State of Haryana and others vs. Ch. Bhajan Lal and others**, reported in **AIR 1992 SC**

604. And therefore, Mr. Kamar contended to allow this petition by setting aside the impugned order, dated 19.12.2018, and also the criminal proceeding, pending against the present petitioners.

11. On the other hand, Mr. A.K. Gupta, learned counsel appearing for the respondent No.2 submits that Section 22 of the POCSO Act is not applicable here, yet the statement of witnesses examined by the prosecution side, as it appears from the record of the learned Court below, discloses a prima facie case under Section 323/324 of the IPC, against the petitioners and as such, it cannot be said that no prima facie case is made out against the petitioners and the learned Court below, therefore committed no illegality or infirmity in taking cognizance of the aforesaid offence against the petitioners and therefore, it is contended to dismiss the petition. Mr. Gupta further submits that by the impugned order, dated 19.12.2018, the learned Court below has taken cognizance of the offence under Section 22 of the POCSO Act and Section 323/324/34 of the IPC and though no offence under the POCSO Act is made out, yet the order of taking cognizance under the Indian Penal Code offences, cannot be segregated.

12. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the affidavit filed by the respondent No.2 and the documents placed on record. I have also gone through the impugned order, dated 19.12.2018, and the case law, **Ch. Bhajan Lal and others (Supra)**, referred by Mr. Kamar, learned Senior Counsel for the petitioners.

13. In view of the points, so raised in the pleadings of the parties, as well the points, so canvassed by learned Advocates of both the parties during hearing, the points that have arisen for consideration of this court are identified as under:-

(i) When the court can take cognizance of the offence under section 22 of the POCSO Act ?

(ii) Whether court can take cognizance of the offence, upon the final report, without there being any protest or narazi petition ?

(iii) Whether the impugned order, dated 19.12.2018, suffers from any infirmity or illegality requiring interference of this court ?

14. In order to appreciate the submissions of learned Advocates of both sides and to decide the issue in question with greater precession, I deem it appropriate to reproduce here the impugned order, dated 19.12.2018, passed by the learned Court below in POCSO Case No.52(T)/2018, which reads as under:

"19.12.2018.

In this case, the I.O. has filed the Final Report and therefore, the complainant has stated that in spite of having sufficient materials against the accuseds, the I.O. has incorrectly filed the final report and accordingly prayed that cognizance may be taken against the accused. I have heard both sides.

The present case is connected to another case, which is numbered as POCSO Case No.51 (T) of 2018. In that case, one woman had lodged an ejahar before police stating that her niece was sexually assaulted by the present complainant. Accordingly, on conclusion of investigation of the case, the said case was charge-sheeted against the present complainant. Now, after filing of the ejahar by the said woman, the present complainant has also filed another ejahar before police alleging that he was falsely implicated in an accusation of sexual assault. I have gone through the materials available with the present case.

The ld. Spl. P.P. has submitted that if the case filed by the said woman ends in acquittal, then only such complaint can be taken into consideration. The ld. Counsel for the complainant has submitted that the contention of ld. Spl. P.P. is incorrect. He has stated that the complainant simply wants that the court should taken cognizance against the accuseds of this case after going through all the materials available with the record.

I have given my anxious consideration to the matter. Accordingly, cognizance is taken u/s.22 of the POCSO Act and also u/s.323 and 324 of the I.P.C., read with Section 34 of the said Code against the accused Shabina Begum, Sadab Mansur, Rakesh Sharma,

Laxman Swami, Shyam Mansur, Rajiv Ghosh and Fahmida Begum. Issue summons to the accused accordingly.

Fixing 10.01.2019 for appearance.

Sd/-
Special Judge,
Tinsukia."

15. It appears that the learned court below has taken cognizance of the offence under Section 22 of the POCSO Act and under Section 323 and 324 of the I.P.C., read with Section 34 of the said Code against the present petitioners and four others. It is to be noted here that the trial of the case, so lodged by Shabina Begum on 19.08.2018, which resulted in registration of Tinsukia P.S. Case No. 1202/2018, under Section 8 of the POCSO Act, is still going on in the learned Court below. And without the trial being completed, and without the adjudicatory process for determination of the veracity of the allegations/charges, is taken to a logical conclusion, to the considered opinion of this court, filing of FIR and investigation thereof and submission of final report, and taking of cognizance by the learned court below, is not only pre-mature, but also anterior in point of time. That being so, it cannot be said that at that stage, a case for taking cognizance of the offence u/s 22 of the POCSO Act, is made out against the petitioners.

16. A cursory reading of the section 22 of the POCSO Act reveals that it provides for punishment for false complaint or false information, which reads as under:

"**22. Punishment for false complaint or false information**. –

(1) Any person, who makes false complaint or provides false information against any person, in respect of an offence committed under sections 3, 5, 7 and section 9, solely with the intention to humiliate, extort or threaten or defame him, shall be punished with imprisonment for a term which may extend to six months or with fine or with both.

(2) Where a false complaint has been made or false information has been provided by a child, no

punishment shall be imposed on such child.

(3) Whoever, not being a child, makes a false complaint or provides false information against a child, knowing it to be false, thereby victimising such child in any of the offences under this Act, shall be punished with imprisonment which may extend to one year or with fine or with both."

17. Admittedly, in the case in hand, the complaint in Tinsukia P.S. Case No. 1202/2018, was filed by one Shabina Begum not by the 'child'. Admittedly also, the information was not in connection with an offence under section 3, 5, 7 and 9 of the said Act. That being, though not indicated in the impugned order, the offence under sub-section 3 of the section 22 is attracted herein this case. Besides, it is not in dispute that the complaint, which resulted in registration of Tinsukia P.S. Case No. 1202/2018, under Section 8 of the POCSO Act, was lodged by one Shabina Begum. Section 22(3) of the POCSO Act contemplates only the person who, not being a 'child' makes a false complaint or provides false information. It is no body's case that the present petitioners have made a false complaint or provide false information.

18. Mention also to be made here that after investigation of the case, lodged by the respondent No.2, the investigating officer has submitted negative Final Report on the ground of mistake of facts. A cursory perusal of the Final Report and the statement of the witnesses so examined by the investigating officer, and the medical report of the respondent No.2 indicated that the injury, allegedly sustained by him, is simple in nature and there is no material to indicate that the present petitioners have caused the same. Nor there is any material to suggest use of any dangerous weapon in causing the same. A cursory perusal of the FIR, lodged by the respondent No.2 and taking the allegations made therein at their face value, and accepting the same in their entirety, also failed to disclose/make out even a prima-facie case against present petitioners, under Sections 323/324/34 of the IPC.

19. Thus, to the considered opinion of this court, taking cognizance of the offence u/s 22 of the POCSO Act, against the present petitioners, which has already been held to be anterior in

point of time, as the trial has not yet been completed, and also taking cognizance under section 323/324/34 IPC against them, without there being made out even a prima-facie case, vide impugned order, dated 19.12.2018, cannot be said to be correct. Thus, I find substance in the submission of Mr. Kamar, the learned senior counsel for the petitioners.

20. However, this court is unable record concurrence with the submission Mr. Kamar that the court cannot take cognizance of the offence, upon the final report, without there being any protest or narazi petition. Such a proposition of law is never contemplated in law. As because when a Magistrate proceeds to take action by way of cognizance by disagreeing with the conclusions arrived at in the police report, he would be taking cognizance on the basis of the police report, and that being so no protest petition or narazi petition is required for taking cognizance. In holding so, this court derived authority from following decisions of the Hon'ble Supreme Court.

20.1. In **H.S. Bains, vs. State (Union Territory of Chandigarh)** reported in **(1980) 4 SCC 631,** Hon'ble Supreme Court has held that :-

> "……**.Thus, a Magistrate who on receipt of a complaint, orders an investigation under Section 156(3) and receives a police report under Section 173(1), may, thereafter, do one of three things:**
>
> > **(1) he may decide that there is no sufficient ground for proceeding further and drop action;**
> > **(2) he may take cognizance of the offence under Section 190 (1)(b) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report;**
> > **(3) he may take cognizance of the offence under Section 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200. If he adopts the third alternative, he may hold or direct an inquiry under Section 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process, as the case may be."**

20.2. In **Vishnu Kumar Tiwari vs The State Of Uttar Pradesh** reported in **(2019) 8 SCC 27,** Hon'ble Supreme Court has held that:-

> "**--- When the Magistrate proceeds to take action by way of cognizance by disagreeing with the conclusions arrived at in the police report, he would be taking cognizance on the basis of the police report and not on the complaint. And, therefore, the question of examining the complainant or his witnesses under Section 200 of the Code would not arise. This was the view clearly enunciated."**

21. I have considered the submissions of learned Advocates of both sides, in the light of facts and circumstances on the record and discussed herein above. And I find substance in the submissions of Mr. Kamar, the learned Senior Counsel for the petitioners, and the ratio, laid down by the Hon'ble Supreme Court, in the case of **Ch. Bhajan Lal and others (Supra)**, so referred by him, also fortified the same. It is to be noted here that in the said case the Hon'ble Supreme Court, in para 108 and 109 held as under:-

> "**108.** 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 F. I. R. 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 F.I.R. 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 F.I.R. 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.

109. 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 F.I.R. 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".

22. Another aspect of the matter, that need to be considered by this court is that similar provision, like section 22 of the POCSO Act, is found in IPC also. Section 211 IPC provides for false charge of offence made with intent to injure, which read as under:-

> "Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either

> description for a term which may extend to two years, or with fine, or with both; and if such criminal proceeding be instituted on a false charge of an offence punishable with death, 1[imprisonment for life], or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

And section 22 POCSO provides punishment for false complaint or false information, which has already been reproduced in paragraph No.16. A conjoint reading of both the provisions would reveals that the object, the language used in both the sections are almost same, except however, the quantum of punishment, and thus, they appears to be in *pari materia.* Mention to be made here that *pari materia* is a recognized rule of interpretation. It provides that where statutes are *pari materia* that is to say, are so far related as to form a system or code of legislation, such Acts are to be taken together as forming one system and as interpreting and enforcing each other. It is permissible to read the provisions of the two Acts together when the same are complementary to each other. The principle of *pari-materia* is based on the idea that there is continuity of legislative approach in such acts and common terminology is used.

23. Section 31 of the POCSO Act provides that save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure 1973, (including the provisions as to bail and bonds) shall apply to the proceeding before the Special Court. And section 195(1)(b)(i) of the Cr.P.C. provides that any offence, punishable under any of the following Sections of the Indian Penal Code, mainly, Section 193 - 196 (both inclusive), Section 199, Section 200, Section 205 - 211 (both inclusive) and Section 228, when such offence is alleged to have been committed in relation to any proceeding in any Court, no Court shall take cognizance, except on the complaint in writing of (both inclusive) and section 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any court, except on the complaint in writing of that Court or by such officer of the Court, as the Court may authorize in writing in this behalf

or of some other Courts to which that Court is subordinate. The procedure, in cases mentioned in section 195 Cr.P.C. is prescribed in section 340 of the Cr.P.C. Be it noted here that application of the provisions of the Cr.P.C. to the proceeding before the Special Court is also not disputed by learned Advocates of both the parties.

24. Indisputably, the offences alleged to have been committed by the present petitioners, are in relation to a proceeding pending before the court of learned Special Judge, Tinsukia, being POCSO Case No.51(T)/2018, under Section 12 of the POCSO Act. Indisputably also, the complaint in question, resulting registration of Tinsukia P.S. Case No.1210/2018, under Sections 120(B)/341/323/307 of the IPC, read with Section 22(3) of the POCSO Act, was not lodged by that Court or by such Officer of the Court, as the Court may authorize in writing in this behalf or of some other Courts to which that Court is subordinate. That being so, taking cognizance by the learned Court below under Section 22 of the POCSO Act is barred by Section 195(1)(b)(i) of the Cr.P.C, and non compliance of the same vitiates the prosecutions. Reference in this context can be made to a decision of Hon'ble Supreme Court in **C. Muniappan vs. State of Tamil Nadu,** reported in **AIR 2010 SC 3718.** Mr. Z. Kamar, the learned Senior Counsel for the petitioners also clearly supported this proposition. And Mr. Kamar further submits that the present case is, thus, also covered by Point No.6 of Para No.108 of the case of **Ch. Bhajan Lal and others (Supra),** apart from those, already pointed out by him. It is to be noted here that in Point No.6 of Para No.108 of the said case, it has been held that - "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." Having considered the submissions of learned Advocates of both sides, in the light of facts and circumstances discussed herein above, this court is inclined to record concurrence to the submission of Mr. Kamar, the learned Senior Counsel for the petitioners. It is to be noted here that this aspect had eschewed consideration of learned court below at the time of taking cognizance. Thus, on this count also the impugned order has failed to withstand the test of legality.

25. Accordingly, this court is inclined to answer the points, so referred in paragraph No.13 as under:-

(i) The court can take cognizance of the offence u/s 22 of the POCSO Act at the end of the trial of the proceeding pending before it after arriving at a finding that said proceeding was instituted on false complaint or false information with intention to humiliate, extort or threaten or defame him, only on the complaint in writing of that Court or by such officer of the Court, as the Court may authorize in writing in this behalf or of some other Courts to which that Court is subordinate.

(ii) Court can take cognizance of the offence, upon the final report, without there being any protest or narazi petition.

(iii) The impugned order, dated 19.12.2018, suffers from manifest infirmity or illegality and the same requires interference of this court.

26. In umpteen decisions Hon'ble Supreme Court has held that inherent jurisdiction under Section 482 Cr.P.C. is designed to achieve salutary purpose that criminal proceedings ought not to be permitted to degenerate into weapon of harassment. When the Court is satisfied that criminal proceedings amount to an abuse of process of law or that it amounts to bringing pressure upon accused, in exercise of inherent powers, such proceedings can be quashed. In the case of **Parbatbhai Aahir v. State of Gujarat (2017) 9 SCC 641,** Hon'ble Supreme Court has held that section 482 Cr.P.C. is prefaced with an overriding provision. The statute

saves the inherent power of the High Court, as a superior court, to make such orders as are necessary (i) to prevent an abuse of the process of any Court; or (ii) otherwise to secure the ends of justice. Same are the powers with the High Court, when it exercises the powers under Article 226 of the Constitution.

27. Under the facts and circumstances discussed here-in-above, and applying the law, so laid down by the Hon'ble Supreme Court in the case of **Ch. Bhajan Lal and others (supra)**, in point No.1, 3 and 6 of Para No. 108, and also in case of **Parbatbhai Aahir (supra)** and also considering the submissions of learned Advocates of both sides, this Court is of the view that the impugned order, dated 19.12.2018, failed to withstand the test of legality, propriety and correctness and accordingly, the impugned order, so far it relates to the present petitioners, stands set aside and quashed.

28. In terms of the above, this petition stands allowed. The parties have to bear their own cost.

JUDGE

Comparing Assistant