

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

ITANAGAR PERMANENT BENCH NAHARLAGUN

Cri.M.Application.01(AP)2018

Shri Dinathso Chaitom
S/o. Shri Atotso Chaitom
Occupation: Development Officer,
Textiles and Handicrafts, Anjaw,
Distirct-Anjaw, Arunachal Pradesh.

..... Petitioner/Accused

-Versus-

The State of Arunachal Pradesh.

..... Respondent

Advocates:

For the petitioners: Mr. C.W. Mantaw
Mr. M. Nibo
Mr. O. Manglong
Mr. E. Wangpan

For the respondents: Mr. K. Tado, P.P. A.P

:::BEFORE:::

HON'BLE MR. JUSTICE AJIT BORTHAKUR

Date of hearing : 28.02.2018

Date of Judgment : 28.02.2018

JUDGMENT & ORDER (ORAL)

Heard Mr. C. W. Mantaw, learned counsel for the petitioner and Mr. K. Tado, learned Public Prosecutor for the state/respondent.

2. By this petition filed under Section 483 Cr. PC, the petitioner has prayed for a direction to the learned Judicial Magistrate, 1st class, at Tezu to monitor the investigation in a fair and impartial manner in Tezu P.S. Case No. 94/2017 under Sections 376/511/324 IPC, following the laws and judicial pronouncements and to allow the petitioner to surrender in the Court of learned Sessions Judge at Tezu and further, to make an application for his release on bail.

3. The petitioner's case, precisely, is that an F.I.R was lodged by a victim girl with Tezu P.S, on 02.12.2017, wherein Tezu P.S. Case No. 94/2017 under Sections 376/511/324 IPC has been registered alleging falsely that the petitioner, on 01.12.2017 at about 8 p.m, had assaulted her by kick and fist on her refusal to his offer of sex. The petitioner has now sought for the above directions referring to the ration of the judgment delivered by the Supreme Court in **Tarkeshwar Sahu -Versus- State of Bihar, (2006) 8, SCC 560** and the judgment of this Court in **Joynal Uddin -Versus- State of Assam (Criminal Appeal No. 117/2012)**, inasmuch as the learned Magistrate has failed to monitor and control the investigation of the case, which stands in violation and opposed to the mandatory provisions of Sections 156(3) and 157 Cr. P.C. The petitioner has further contended that his S/B A/C No. 30429230071 maintained at State Bank of India, Tezu Branch has been freezed by the investigating officer, illegally, despite having no connection to the alleged offences in the said case. Hence, the instant petition praying for the directions, stated above.

4. Mr. C.W. Mantaw, learned counsel for the petitioner submits that the investigating Officer has been investigating the case in most illegal and bias manner by freezing the petitioner's bank account and the learned Magistrate also has been failing in duty to supervise the police investigation in the said case, in

accordance with the procedural laws. Mr. Mantaw submits to dispose of the instant petition with a simple direction to properly apply the provisions of law and the various judicial pronouncements thereon.

5. Mr. K. Tado, learned Public Prosecutor submits that no specific direction to the learned Magistrate to act in accordance with law is necessary as it is his legal obligation and duty to act as per provisions of law.

6. It is well settled that it is the duty of every Court to see that the right of individual is kept fundamental and that the fullest scope is given to the guarantee and to ensure that the right and the guarantee are not illusory and meaningless. At the same time, it needs to be kept in mind that a statutory right has been conferred on the police under Sections 154 and 156 Cr. P. C to investigate into cognizable offences and the Court's function commences when a charge sheet is filed and not before that . The Court is not supposed to usurp the authority on the statutory powers of the investigating officer and as such, the Magistrate has no power to interfere with the same during the period of investigation.

With the above observation, the petition stands **disposed of**.

JUDGE

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