

Serial No. 05
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Petn. No. 33 of 2023

Date of Decision: 12.06.2023

Shri Khrir Lyngkhoi

Vs.

State of Meghalaya & 3 Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. P. Yobin, Adv.

For the Respondent(s) : Mr. N.D. Chullai, AAG with
Mr. A.H. Kharwanlang, Addl. Sr. GA. (R. 1-2)
Mr. F.L. Iawbor, Adv. (R. 3-4)

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

ORDER

1. Sometime the quirks in life can be unpredictable and the outcome sometime even incredible. In a case where animal lovers would side with the petitioner herein, the consequential result however, has to stand the test of law.

2. Heard Mr. P. Yobin, learned counsel for the petitioner who has submitted that on 06.08.2016 when the petitioner was on his way to chop wood from the nearby jungle, he stopped by his father-in-law's residence

to collect his pet cat. However, in the house, both of them had a drink after which the petitioner stepped out to pick his cat. It appears that the cat was in the hands of his father-in-law who unceremoniously threw the cat into the bushes which apparently enraged the petitioner and a scuffle ensued. In the said scuffle, the petitioner stated that by pure chance and accident, his father-in-law was hurt by the dao (Khukri) held by the petitioner as a result of which he has to be treated for the injuries sustained.

3. The respondent No.3 who is the son of the alleged victim and who is also the brother-in-law of the petitioner, lodged an FIR dated 07.08.2016 before the Officer-in-Charge, Mawkyrwat Police Station and the same was registered as Mawkyrwat PS Case No. 21(8)2016 under Section 307 and 326 IPC.

4. The matter was investigated into and in due course the Investigating Officer then filed the charge sheet finding that a prima facie case is well founded against the petitioner under Section 307/326 IPC and the matter was taken cognizance of by the Sessions Judge, South West Khasi Hills, Mawkyrwat in Sessions Case No. 77 of 2020.

5. At this point of time, it appears that the respondent No.3/complainant along with the respondent No. 4/victim and the petitioner realizing that the incident had occurred only due to misunderstanding and provocation which caused reaction in the heat of the moment and that the same centered among family members but with no intention to cause any harm, much less attempt to murder, has amicably settled the matter amongst themselves and to this extent, a Deed of Compromise was executed between all the parties involved that is, the

complainant, the victim and the accused.

6. The learned counsel has also submitted that being aware that the case involved Section 307 IPC which is non-compoundable in nature therefore, all the parties involved realizing that pursuing with the criminal proceedings would be a futile exercise, therefore, this Court have been approached with this application under Section 482 Cr.PC with a prayer for exercise of the inherent powers to quash the said proceedings against the petitioner/accused.

7. The learned counsel has submitted that looking into the background of what has happened between the parties, emphasizing that there is no mens rea involved, even considering the fact that Section 307 IPC is one of the offences charged against the petitioner, which obviously is serious in nature, yet courts have allowed such an offence to be compounded under the particular facts and circumstances of the case, taking recourse to the provision of Section 482 Cr.PC.

8. In support of his contention, the learned counsel has referred to the case of *Dimpey Gujral w/o Vivek Gujral & Ors. v. Union Territory through Administrator, UT. Chandigarh & Ors.* (2013) 11 SCC 497, para 6 & 7 to say that in the said case the Hon'ble Supreme Court relying upon the ratio in the case of *Gian Singh v. State of Punjab* has held that the Court in view of the settlement arrived at by the parties, had quashed the FIRs, though some of the offences are non-compoundable.

9. The case of *Gian Singh v. State of Punjab*, (2012) 10 SCC 303, para 61 as was quoted in the case of *Dimpey Gujral* (supra) was also cited by the learned counsel for the petitioner to further solidify his contention

in this regard.

10. Finally, the learned counsel has cited the case of *Narinder Singh v. State of Punjab*, (2014) 6 SCC 466, para 29.2 and 29.6, 29.7 & 33, wherein, the Hon'ble Supreme Court has laid down certain principles by which High Courts would be guided in giving adequate treatment to the settlement between the parties and as to how power under Section 482 of the Code can be exercised while accepting such settlement or rejecting the same.

11. Per contra, Mr. N.D. Chullai, learned AAG has submitted that there are number of cases, particularly of the Hon'ble Supreme Court wherein it was clearly indicated that in heinous cases of such kind, including one under Section 307 IPC, no compromise can be entertained as the same is non-compoundable.

12. Infact, a look at the nature of the injuries sustained by the victim, the medical report would show that he has sustained stabbed injuries and perforation on left side of abdomen and bleeding which are very serious in nature. The submission of the petitioner that both he and the victim were drunk when the incident happened is also belied by the medical report of the examination of the petitioner, which indicates that there was no alcohol breath.

13. The learned AAG has also submitted that the weapon used is a very dangerous and sharp weapon which is a 'dao' (Khukri) made of iron, length about 20 inches including 6 inches of wooden handle and 2 inches wide. The said 'dao' is therefore capable of causing death, hence the implication under Section 307 IPC.

14. It is again submitted that the offence involved is to be regarded as a crime against society and not against an individual and though there is no quarrel with the inherent power under Section 482 Cr.PC which can be exercised by this Court, however, in the instant case, being a case involving Section 307 IPC, the Court would be pleased to act circumspectly before any relief is granted to the petitioner.

15. In support of his case, the learned AAG has relied upon the following cases: -

i) *Mukhtiyar Ali & Ors. v. State NCT Delhi & Ors*; 2021 SCC Online Del 4428, para 9,10,11,13 & 14.

ii) *State of Madhya Pradesh v. Kalyan Singh & Ors.* (2019) 4 SCC 268, para 5 & 6.

iii) *State of Madhya Pradesh v. Manish & Ors*; (2015) 8 SCC 307, para, 4&6.

iv) *State of Madhya Pradesh v. Dhruv Gurjar & Anr.*; (2019) 5 SCC 570, para, 16.2, 16.3, 16.4 & 16.6.

16. Submitting that the proposition and ratio laid down in the abovementioned authorities would support the case of the State respondent, the learned AAG has also submitted that the case before the Trial Court, charges have been framed and the petitioner has also pleaded guilty and as such, this is not a fit case for this Court to allow this petition.

17. Mr. F.L. Iawbor, learned counsel for the respondent No. 4 and 5 respectively in his submission before this Court, has concurred with the

submission of the learned counsel for the petitioner and has also submitted that the respondent No. 4 and 5 would stand by the Compromise Deed executed between the parties and would desire that the proceedings before the Trial Court be brought to a formal closure.

18. This Court has carefully considered the stand taken by the parties on the facts and circumstances brought out on the basis of the said FIR dated 07.08.2016. The factual aspect of the matter need not be repeated as the same has been made amply clear from the narration found in the preceding paragraphs. What is now required is for this Court to consider the contention of the parties, more particularly on the legal aspect of the matter as to whether in a case involving an offence under Section 307 IPC on a compromise reached between the parties and on the indication not to pursue further with the criminal proceedings before the Trial Court, necessary and effective order can be passed resorting to exercise of inherent power under Section 482 Cr.PC.

19. The authority cited by the learned counsel for the petitioner in the case of Dimpey Gujral (supra) speaks of the power of the Court to quash FIR though some of the offences were non-compoundable. This refers to the provision of Section 320 Cr.PC which speaks of offences punishable under the Sections of the Indian Penal Code which may be compounded by the persons involved, even the complainant therein. Para 61 of the case of Gian Singh (supra) was also reproduced in this case.

20. Again, at para 61 of the Gian Singh case, the Hon'ble Supreme Court speaking about the power of the High Court to quash criminal proceeding or complaint or exercise have emphasized the fact that the High Courts must have due regard to the nature and gravity of the crime,

heinous and serious offences to be duly considered in their proper prospective whereas where the wrong is basically private or personal in nature, and the parties have resolved their entire dispute, the High Court may quash the criminal proceedings thereto.

21. In the case of Mukhtiyar Ali (supra) cited by the State respondent in the paragraph referred to, what is seen is that the Hon'ble Delhi High Court has discussed the case therein in the context of quashing of criminal proceedings for offences under Section 307 IPC and have referred to a number of cases of the Hon'ble Supreme Court on the subject. The reference to the case of *State of MP v. Laxmi Narayan*; (2019) 5 SCC 688, at para 15.4 therein, is only a reiteration of what has been propounded at para 29.6 and 29.7 in the case of Narinder Singh (supra) and taking into account the manner in which the offence was committed and the extent of injuries sustained, the Court has declined to exercise power under Section 482 Cr.PC even after the parties thereto have come to a compromise.

22. All the other cases cited by the State respondent on being scrutinized by this Court are found to be reiteration of the settled principle of law as regard the issue of compounding of non-compoundable offences and also the serious nature of offence under Section 307 IPC and how the courts have dealt with the subject taking into account the facts and circumstances of particular cases and having found elements of seriousness, applications under Section 482 Cr.PC have been dealt with accordingly.

23. As to the case in hand, this Court would give particular attention to paragraph 29.6 of the Narinder Singh case, which may be reproduced

herein under as:-

“29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the latter case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.”

24. In view of the authorities on the subject, particularly those cited above, at this juncture it would be prudent to go over some of the pertinent facts of the case before the Trial Court. As to the nature of injuries as has been indicated by the learned AAG, an injury involving perforation of the abdomen with bleeding cannot be discounted as it being a superficial injury. The weapon used is also to be considered, the same being a ‘dao’ which has the potential to inflict serious injuries as in the present case or even death.

25. As is expected, an offence under Section 307 IPC is indeed a

serious offence. However, from the narration of the petitioner as to how the incident occurred, there was an element of provocation on the part of the victim who had thrown the cat of the petitioner to the bushes, the existence of frayed tempers cannot be ruled out and in the heat of the moment, the alleged altercation must have taken place. Therefore, prima facie, it would appear that the act of the petitioner was not premeditated or with intention and knowledge that the same would cause death.

26. The fact that the whole episode revolves around family members who have thought it prudent to settle the matter by way of the Compromise Deed, would also have an impact in the proceedings before the Trial Court, where in all probability, the complainant and the victim may not support the prosecution's version of the case.

27. Taking a leaf out of what was propounded by the Hon'ble Supreme Court in the case of Narinder Singh (supra), at para 29.6, reproduced above, in the last portion of the same the Hon'ble Supreme Court has observed that - *"...At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship."*

28. In the final analysis, this Court is of the view that under the peculiar facts and circumstances of the case, the prayer for exercise of power under Section 482 Cr.PC can be acceded to. This petition is accordingly allowed.

29. The FIR dated 07.08.2016 and the subsequent proceedings in Sessions Case No. 77 of 2020 are hereby set aside and quashed. The petitioner is discharged from any liability against him in the said case.

30. Petition disposed of. No costs.

Judge

Meghalaya
12.06.2023
"N.Swer, Stenographer"

