

Serial No. 12
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Petn. No. 74 of 2022

Date of Decision: 28.03.2023

Shri. Pynshailang Nongspung Vs. State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. R.S. Malngiang, Adv.

For the Respondent(s) : Ms. Z.E. Nongkynrih, GA (For R 1)
Mr. F. Shangpliang, Adv. (For R 2)

JUDGMENT AND ORDER (ORAL)

1. An FIR dated 15.04.2016 was filed by the respondent No. 2 herein with specific allegation of assault perpetrated by the petitioner herein which assault has resulted in burnt injuries being inflicted on her left arm. The informant/respondent No. 2 and the petitioner at the relevant point of time were husband and wife.

2. On receipt of the said information the Officer In-Charge Rynjah Police Station, Shillong got the same registered as Rynjah P.S. Case No.

53(4) 2016 under Sections 498-A/326/506 IPC. The petitioner was accordingly arrested and later enlarged on bail.

3. The case was investigated into and the I/O after completing the investigation which includes recording of statement of the relevant witnesses has filed his report under Section 173 Cr.P.C and the chargesheet No. 52/2016 on 25.04.2016 finding a well established *prima facie* case against the petitioner herein for which he is directed to stand trial before the competent court.

4. The matter was then taken cognizance of by the court of the learned Magistrate First Class, District Council Court, Shillong in GR case No. 183 of 2016 and is now at the stage of consideration of charges.

5. The petitioner has now approached this Court with an application under Section 482 Cr.P.C praying that the said FIR as well as the corresponding proceedings in GR Case No. 183 of 2016 be set aside and quashed.

6. Mr. R.S. Malngiang, learned counsel for the petitioner has submitted that the incident as alleged has indeed taken place, however, the situation and the circumstances which prevails on the said date of occurrence, that is, 14.04.2016 is a typical scenario of a tiff between husband and wife which unfortunately and unintentionally resulted in the

wife/respondent No. 2 to sustain minor burnt injuries.

7. It is also submitted that owing to differences in temperament and likes and dislikes, the petitioner and the respondent No. 2 have since lived separately and they have now established separate families and are no longer husband and wife.

8. In course of time, the respondent No. 2 on being approached by the petitioner came to realise that the whole episode was a result of misunderstanding and frayed temper and the respondent No. 2 does not wish to further prosecute the petitioner and that the pendency of the proceedings would only harm the harmonious relationship they are now sharing.

9. Accordingly, the parties have executed a Deed of Compromise dated 14.12.2022 wherein the parties have agreed that the incident arose out of a matrimonial dispute which is private in nature and that this misunderstanding has now been resolved and the decision of the parties to go their separate ways was because of the incompatibility factor having nothing to do with the incident in question. As brought out in the said compromise deed, the respondent No. 2 has no objection if the petitioner/Second Party thereto approached a competent court for quashing of the said FIR and criminal proceedings.

10. The learned counsel has therefore submitted that this Court in

exercise of its inherent power under Section 482 Cr.P.C, for ends of justice, may be pleased to allow this petition and to pass necessary orders to set aside and quash the said FIR dated 15.04.2016 and the proceedings in GR Case No. 183 of 2016.

11. In support of his submission, the learned counsel has referred to the case of **Parbathbhai Aahir @ Parbathbhai Bhimsinhbhai Karmur v. State of Gujarat and Anr.: (2017) 9 SCC 641** wherein at para 15(ii) and (iii), the Hon'ble Supreme Court has laid down the guidelines for quashing of FIR/criminal proceedings by High Court.

12. Mr. F. Shangpliang, learned counsel for the respondent No. 2 has submitted that it is a fact that the respondent No. 2 has reconciled her differences with the petitioner and even though they are now living separately, there is no more animosity between them. The compromise deed dated 14.12.2022 has also been confirmed by this respondent to have been executed voluntarily without any undue influence or coercion. Therefore, there is no objection to the prayer of the petitioner in this petition.

13. Ms. Z.E. Nongkynrih, learned GA, speaking on behalf of the State respondent has submitted that since the dispute between the parties relates to matrimonial issues and hence are private in nature and since the parties have arrived at a compromise, therefore there is no strong objection by the State

to the prayer of the petitioner.

14. This Court upon hearing the parties and on perusal of the petition as well as the Deed of Compromise, would agree with the parties that the incident which took place on 14.04.2016 arose out of a matrimonial dispute between husband and wife and that no intentional or premeditation motive can be attributed to the outcome of the said incident. That the parties have now resolved their differences and does not wish to proceed with the complaint and even if the matter proceed in court, in all probability the result may be one of acquittal.

15. Section 482 Cr.P.C provides for exercise of the inherent power of a High Court primarily on three premises, that is, to give effect to any order under the Code, to prevent abuse of the process of any court and lastly, to secure the ends of justice. More often than not, the High Court is called upon to exercise this power on being convinced that any criminal proceedings if allowed to continue and if in the final analysis would result in an eventual acquittal of the accused, presumably on the ground that the complainant chooses not to prosecute the matter and more so on a compromise having been reached between the parties, an abuse of the process of the court would ensue. For ends of justice, the court would consider the prayer made and necessary orders to quash the proceedings would be made.

16. Another issue which usually arise is the question of existence of sections which are non-compoundable. Even then, the Hon'ble Supreme Court has answered this question in a number of cases. In the case of ***Narinder Singh & Ors. v. State of Punjab & Anr.: (2014) 6 SCC 466*** at para 8, 9, 10, 11 and 12 the Apex Court has observed as follows:

*“8. We find that there are cases where the power of the High Court under Section 482 of the Code to quash the proceedings in those offences which are uncompoundable has been recognised. The only difference is that under Section 320(1) of the Code, no permission is required from the Court in those cases which are compoundable though the Court has discretionary power to refuse to compound the offence. However, compounding under Section 320(1) of the Code is permissible only in minor offences or in non-serious offences. Likewise, when the parties reach settlement in respect of offences enumerated in Section 320(2) of the Code, compounding is permissible but it requires the approval of the Court. In so far as serious offences are concerned, quashing of criminal proceedings upon compromise is within the discretionary powers of the High Court. In such cases, the power is exercised under Section 482 of the Code and proceedings are quashed. Contours of these powers were described by this Court in *B.S. Joshi v. State of Haryana [(2003) 4 SCC 675]* which has been followed and further explained/elaborated in so many cases thereafter, which are taken note of in the discussion that follows hereinafter.*

9. At the same time, one has to keep in mind the subtle distinction between the power of compounding of offences given to the Court under Section 320 of the Code and quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction conferred upon it under Section 482 of the Code. Once it is found that compounding is permissible only if a particular offence is covered by the provisions of Section 320 of the Code and the Court in such cases is guided solitarily and squarely by

the compromise between the parties, in so far as power of quashing under Section 482 of the Code is concerned, it is guided by the material on record as to whether the ends of justice would justify such exercise of power, although the ultimate consequence may be acquittal or dismissal of indictment. Such a distinction is lucidly explained by a three-Judge Bench of this Court in Gian Singh vs. State of Punjab & Anr. [(2012) 10 SCC 303]. Justice Lodha, J. speaking for the Court, explained the difference between the two provisions in the following manner:

“57. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.

59. B.S. Joshi, Nikhil Merchant, Manoj Sharma and Shiji do illustrate the principle that the High Court may quash criminal proceedings or FIR or complaint in exercise of its inherent power under Section 482 of the Code and Section 320 does not limit or affect the powers of the High Court under Section 482. Can it be said that by quashing criminal proceedings in B.S. Joshi, Nikhil Merchant, Manoj Sharma and Shiji this Court has compounded the non-compoundable offences indirectly? We do not think so. There does exist the distinction between compounding of an offence under Section 320 and quashing of a criminal case by the High Court in exercise of inherent power under Section 482. The two

powers are distinct and different although the ultimate consequence may be the same viz. acquittal of the accused or dismissal of indictment.”

10. Apart from narrating the interplay of Section 320 and Section 482 of the Code in the manner aforesaid, the Court in Gian Singh case also described the extent of power under Section 482 of the Code in quashing the criminal proceedings in those cases where the parties had settled the matter although the offences are not compoundable. In the first instance it was emphasised that the power under Section 482 of the Code is not to be resorted to, if there is specific provision in the Code for redressal of the grievance of an aggrieved party. It should be exercised very sparingly and should not be exercised as against the express bar of law engrafted in any other provision of the Code. The Court also highlighted that in different situations, the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power under Section 482 on either of the twin objectives, (i) to prevent abuse of the process of any court, or (ii) to secure the ends of justice, is a sine qua non.

11. As to under what circumstances the criminal proceedings in a non-compoundable case be quashed when there is a settlement between the parties, the Court provided the following guidelines:

“58. Where the High Court quashes a criminal proceeding having regard to the facts that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid

compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc. or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed.”

12. Thereafter, the Court summed up the legal position in the following words [Gian Singh v. State of Punjab, (2012) 10 SCC 303]

“61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or an FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plentitude with no statutory limitation but it has to be exercised in accord with the guidelines engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent

abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute, would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act, or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominately civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is

appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

The Court in Gian Singh v. State of Punjab, (2012) 10 SCC 303 was categorical that in respect of serious offences or other offences of mental depravity or offence of merely dacoity under special statute, like the Prevention of Corruption Act or the offences committed by public servant while working in that capacity. The mere settlement between the parties would not be a ground to quash the proceedings by the High Court and inasmuch as settlement of such heinous crime cannot have imprimatur of the Court.”

17. Consequently, this Court having concluded that the compromise reached at between the parties is genuine, following the dictum of the Apex Court in the case of Narinder Singh (supra) at para 29, 29.2 and 29.4 (reproduced herein below), hereby allows this petition.

“29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any Court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.4. On the other, those criminal cases having overwhelmingly

and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.”

18. Resultantly, on this petition being allowed, the said FIR dated 15.04.2016 and the corresponding proceedings in GR Case No. 183 of 2016 pending before the court of the learned Magistrate First Class, District Council Court, Shillong is hereby set aside and quashed.

19. Petition disposed of. No costs.

Meghalaya
28.03.2023
“Tiprilynti-PS”



Judge