

GAHC040000312023



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

Case No. : Crl.Petn./5/2023

Takpo Riamuk and Anr.
S/o Shri Tatok Riamuk,
Permanent Resident of Village Riamuk, PO and PS Taliha, Upper Subansiri District,
Arunachal Pradesh, presently residing at Division IV, PO R.K Mission, PS Itanagar,
Papum Pare District, Arunachal Pradesh. Mobile No. 8837215969 2: Jerot Mara
Age:
Occupation

VERSUS

THE STATE OF AP and Anr.
Represented by Public Prosecutor. 2:Yombom Yinyo
Age: 0
Occupation

Advocate for the Petitioner : Chorpok Modi

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MRS. JUSTICE MITALI THAKURIA
JUDGMENT& ORDER(ORAL)

Date : 08.08.2023

Heard Mr. C. Modi, learned counsel for the petitioners. Also heard Mr. T. Ete, learned Additional Public Prosecutor for the State respondent as well as for the respondent No. 2.

2. This is an application, under Section 482 of the Cr.P.C,praying for quashing of the FIR dated 16.12.2022, registered as Itanagar P.S. Case No. 301/2022, under Section 336 IPC read with Section 27(1)/30 of Arms Act and the subsequent proceeding of the case.

3. It is stated that the present petition has been filed jointly by the accused/petitioner No. 2 and the complainant/petitioner No. 1 in connection with above referred case, on the account of mutual amicable settlement between the parties vide Deed of Mutual Settlement, dated 26.12.2022.

4. It is stated that on 16.12.2022 the information was received from the control room Itanagar that both the petitioner Nos. 1 & 2 was arguing and quarreling in the resident of father of the petitioner No. 2 and on arrival of the police personnel it has come to know that there was a tussle between the

petitioner Nos. 1 and 2 and during the tussle the petitioner No. 2 took out his registered pistol and fired in the air. In fact, both the petitioners were close friends since their childhood and on the day of the incident they went to Hollongi Festival at Hollongi and then both of them took alcohol and they reached at the house of the petitioner No. 2 and on the request made by the petitioner No. 1, the petitioner No. 2 showed his license pistol to his friend i.e., the petitioner No. 1. Thereafter, as insisted by the petitioner No. 1, the petitioner No. 2 fired in the air from his license pistol and thereby the petitioner No. 2 refused to give him the pistol due to which hot argument started between them and followed by tussle between the petitioners and then out of anger the petitioner No. 1 informed about the quarrel to the police control room and accordingly Itanagar police personnel came and took the accused/petitioner No. 2 to the police station and arrested him.

5. Accordingly, Itanagar police station case No. 301/2022 under Section 336 IPC read with Section 27(1)/30 of Arms Act was registered against the petitioner No. 2 and also seized the license pistol from the petitioner No. 2. The arm which was used by the petitioner No. 2 is a country made 32 Bore Pistol and valid arm license issued by the Itanagar Magistrate, Upper Subansiri District, Daporijo, Arunachal Pradesh. The arm was accordingly seized by the police personnel from the petitioner No. 2 during the investigation. The petitioner No. 2 was arrested by the police only on the basis of wrong information given by the petitioner No. 1 who was at the intoxicated state and when the petitioner No. 1 came to know that his friend i.e., the petitioner No. 2 is in custody only for his wrong information he regretted and went to Itanagar police station and also

tried to withdraw the FIR which was refused by the police personnel as the case was already been registered under non-compoundable Sections.

6. Both the petitioners have mutually settled the matter in presence of the witnesses vide Mutual Agreement dated 26.12.2022, executed before the Execution Magistrate, Itanagar Capital Complex, Papum Pare District, Arunachal Pradesh. In pursuant to the said mutual agreement both the petitioners jointly filed the present petition praying for quashing of the FIR which is registered as Itanagar P.S. Case No. 301/2022 under Sections 336 IPC read with Sections 27(1)/30 of Arms Act and the subsequent proceeding thereto.

7. It is submitted by the learned counsel for the petitioners that it is a license gun of the petitioner and thus, the Section 27(1) of Arms Act is not attracted nor the Section 30 of the said Act is attracted against the petitioner No. 2. As the matter has already been settled amicably, the chance of conviction of the petitioner No. 2 is remote and bleak even if the proceeding is allowed to be continued. Rather, it will be an abuse of the process of law and accordingly, it is submitted that it is a fit case where the FIR as well as the criminal Proceeding can be quashed invoking the power under Section 482 Cr.P.C.

8. The learned counsel for the petitioners also relied on the decision of Coordinate Bench passed in criminal petition No.109(AP)/2018 wherein, the criminal proceeding was quashed relying on the judgment of **Narinder Singh v. State of Punjab** reported in (2014) 6 SCC 466. Further he relied on another

decision of Hon'ble Apex Court passed in Criminal Appeal No. 2373/2010 in the case of ***Surinder Singh v. State (Union Territory of Chandigarh)***.

9. But the said judgment is passed in a criminal appeal wherein, the conviction under Section 27 of the Arms Act is set aside by upholding the conviction 307 IPC. Thus, the said judgment was passed by the Hon'ble Apex Court after the end of the trial at the appellate stage.

10. In this context, the learned Additional Public Prosecutor has submitted that from the FIR as well as the deed of amicable settlement itself is evident that the pistol was used during the time of incident, though it is stated that it was fired in the air but the petitioner No. 2 used the arm which was in his possession during the scuffle between the petitioner Nos. 1 & 2.

11. So, from the statement made in the FIR the prima facie case is well established against the petitioner No. 2. More so, a person is liable to be punished if he contravenes any condition of the license or provision of this act or rule made thereunder. Herein in the instant case, it is alleged that the accused/petitioner No. 2 used the gun and fired in the air when there was a scuffle between the parties on the day of the incident. He further stressed on para 15.4 of ***Laxmi Naraya's Case*** reported in (2019) 5 SCC 688, wherein, Hon'ble Apex Court has held as under:

"15.4 offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society

and not against the individual alone, and therefore, the criminal proceedings for the offence under [Section 307](#) IPC and/or the [Arms Act](#) etc. which have a serious impact on the society cannot be quashed in exercise of powers under [Section 482](#) of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. 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 framing 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. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

12. However, after considering the entire materials on the record, the case under Arms Act can be quashed only after the investigation and on collection of the evidence by the I.O. He further submitted that in 2(two) Coordinate

Benches in criminal petition No. 112/2019 dated 05.03.2020 and criminal petition No. 35/2020 dated 20.11.2020 had quashed the criminal proceeding only considering the fact that there is no evidence of using the arm and also considering the fact that there was no seizure from the person of the accused to fulfill the ingredients of Section 27 of NDPS Act (Crl.Petn./No.112(AP)/2019).

13. Further, in the instant case from the Case Diary, it reveals that arm has already been seized by the police and the charge-sheet is yet to be filed in the present case where the prosecutions sanction is still awaited from the Executive Magistrate and the investigation is still under progress and hence, at this stage it is not at all a fit case to quash the criminal proceeding as well as the FIR by exercising the power under Section 482 Cr.P.C only on the basis of the compromise between the parties. It is further submitted by the learned counsel that the offences under Arms Act have a serious impact on a society and hence, it cannot be quashed by exercising the power under Section 482 Cr.P.C only on the ground of compromise between the parties. Accordingly, it is not a fit case to quash the FIR as well as the connected criminal proceeding by invoking Section 482 Cr.P.C.

14. After hearing the submission made by the learned counsel for both sides, it is seen that as per the contents of the FIR the accused/petitioner No. 2 used his pistol while both the petitioners were engaged in quarrel. The police personnel arrived at the place of occurrence getting the information about the quarrels between the parties and later on the police came to know that the

petitioner No. 2 used his gun/pistol during quarrel. Further, it is seen that the case is still under investigation and the prosecution sanction is still awaited. But the fact that pistol was used by the petitioner No. 2 in contravention of license or rule which prima facie attracts Section 30 of the Arms Act.

15. More so, as per the guideline of the Hon'ble Apex Court in ***Laxmi Naryan's Case*** the Arms Act would fall in the category of heinous and serious offences and therefore these offences are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under the Arms Act which have a serious impact on society cannot be quashed in exercising the power under Section 482 Cr.P.C, however, in para-15.4, it is also observed by the Hon'ble Apex Court that such exercise would be permissible only after evidences is collected after investigation and charge-sheet is filed/charge is framed and/or during the trial and as per the said guideline, such exercise is not permissible if it is still under investigation.

16. Herein, in the instant case it is seen that there is a case found against the petitioner No. 2 under the Arms Act and it is seen that the matter is still under investigation and hence, the exercise of power under Section 482 Cr.P.C cannot be invoked only on the ground that parties have amicably settled their disputes between the parties.

17. In view of above and also considering the entire aspects of this case, I am

of the view that this is not a fit case where the inherent power under Section 482 Cr.P.C can be invoked to quash the criminal proceeding as well as the F.I.R. Resultantly, I find no merit in this petition and accordingly, the same stands dismissed.

18. In terms of above, this criminal petition stands disposed of.

JUDGE

Comparing Assistant