

GAHC040000342023



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

Case No. : Crl.Petn. 6/2023

1: Toram Jopir and 2 Ors.
S/o Late Boken Jopir,
Village Karko, PO/PS Jengging, Upper Siang, District Upper Siang, Arunachal Pradesh.

2: Nin Boli
S/o Shri Aloti Boli

Village Simong
PO/PS Yingkiong
Upper Siang District
Arunachal Pradesh.

3: Apaying Tayeng
S/o Shri Bedang Tayeng

R/o Padu
PO/PS Maryiang
District Upper Siang District
Arunachal Pradesh

VERSUS

1: THE STATE OF AP
Through the Public Prosecutor, Arunachal Pradesh.

Advocate for the Petitioner : Lissing Perme

Advocate for the Respondent : P P of AP

**BEFORE
HONBLE MRS. JUSTICE MITALI THAKURIA
ORDER**

Date : 03-03-2023

Heard Mr. L. Perme, learned counsel for the petitioners. Also heard Mr. T. Ete, learned Additional Public Prosecutor representing the State respondent.

This application is filed under Section 482 of the Code of Criminal Procedure, 1973, praying for quashing and setting aside the GR.No.27/2018, registered under Sections 448 /342 /326/ 384/506/34 of the Indian Penal Code, which is pending against the present petitioner Nos. 1 & 2 before the JMFC, Yingkong, Upper Siang arose out of the YKG PS Case No.24/2018 and subsequent P.S. Charge Sheet No.19/2018 dated 30.07.2018.

It is submitted by the by the learned counsel for the petitioners, Mr. L. Perme, that the instant Criminal Petition is filed jointly by the accused petitioners and the victim for quashing, after their amicable settlement between the parties. He also submitted that the case has been settled mutually as per Adi Bae Kebang immediately after the incident. Subsequently, also formalized vides Mutual Settlement Deed dated 05.12.2022 by the parties but the sections 326 & 384 of the IPC being not compoundable, offence, the matter could not be settled before the learned Trial Court complying section 320 of the Cr.P.C.

The learned counsel for the petitioners also submitted that the petitioner No. 3 had lodged the FIR on 09.06.2018 against the present accused/petitioner Nos. 1 & 2 alleging that at around 1630 hrs, while the present

accused/petitioner Nos. 1 & 2 entered into his house and asked for chicken to buy, but on refusal both the petitioners assaulted him with sharp weapon and extorted Rs.6000/-(Rupees Six thousand) from him.

After lodging of the said FIR the IO investigated the case and also the case was charge-sheeted against the present accused/petitioner Nos. 1 & 2 under Sections 342/326/384/506/34 of the IPC and thereafter, the case was preceded against the petitioner Nos. 1 & 2 and accordingly, the charge-sheet was framed against them. But, during the pendency of this case the petitioner No. 3 as a prosecution witness/victim of this case depend that the matter has already been settled between the parties and he is not at all willing to proceed with this case further.

The learned counsel for the petitioners has further relied on the decision of the Criminal Appeal No.1489 of 2012 with Criminal Appeal No.1488 of 2012, wherein, it has been expressed the view that the matter can be compromise even at the appellate stage, if, there is amicable settlement between the parties. He also submitted a deed of settlement as annex at Annexure-4 in the petition

So considering the compromise/deed of settlement between the parties and also considering the fact that the petitioners No. 1 & 2, and the petitioner No. 3 has jointly prayed for quashing and setting aside of this case, the petition may be considered.

In this context, Mr. T. Ete, learned Additional Public Prosecutor has submitted that it is the duty of this Court to see as to whether the further

proceeding of this case will be abuse of the process law or there is any chance of conviction of the present accused/petitioners. The victim is also not at all willing to proceed with this case and thus, it is an admitted fact that both the parties have entered into amicable settlement with some terms and conditions and thus there is remote chance of conviction even if the proceeding is continued.

After hearing the submission made by the learned Advocated of both sides and also after perusing the case diary as well as the case records which has already been received, it is seen that both the parties have entered into mutual settlement with some terms and conditions and in pursuant to the settlement the victim/petitioner No. 3 deposed before the Court that he is not willing to proceed with this case further. At the same time the petitioner Nos. 1 & 2 are of young age and the incident had happened only after altercation between the parties.

Further, the learned Trial Court cannot compound the case under provisions 320 Cr.P.C. as Sections 326 and 384 of the IPC are non compoundable offence. The following are the terms and conditions as mentioned in the settlement deed;-

- (i) That the second party has no any intention to hurt the first party, during the course of time/event the second party was intoxicated.
- (ii) That the parties have agreed to settle their disputes and

differences amicably between themselves without recourse to litigation and for that purpose are willing to abandon their claims in manner hereinafter appearing.

- (iii) That the parties were mutually came to settle the matter outside the Court in presence of their families, relatives and before the elder members of the clans.
- (iv) That pendency of the above mentioned criminal case is someway acts as hurdle unwontedly for the parties and their families, relatives and societies to maintain social harmony and cordial relation.

Thus it is seen, that both the parties have settled their matter amicably with the above mentioned terms and conditions and also in presence of the elders. In this context, the learned Additional Public Prosecutor also relied on the decision of the Hon'ble Supreme Court in the case of **State of Madhya Pradesh vs. Laxmi Narayan**, reported in **(2019) 5 SCC 688**, wherein, in para 13 thereof, it has been held as under:

“13. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

i) that the power conferred under [Section 482](#) of the Code to quash the criminal proceedings for the non-compoundable offences under [Section 320](#) of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

ii) such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

iii) similarly, such power is not to be exercised for the offences under the special statutes like [Prevention of Corruption Act](#) or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

iv) 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;

v) while exercising the power under [Section 482](#) of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc.

So considering the view of the decision made by the Hon'ble Apex Court in the case of Laxmi Narayan (*Supra*) as well as the view that the

matter was settled amicably between the parties, I am of the view that is a fit case where the provision under Section 482 Cr.P.C. can be invoke.

Accordingly, the GR.No.27/2018, registered under Sections 448 /342 /326/ 384/506/34 of the Indian Penal Code, arising out of the YKG PS Case No.24/2018 and subsequent P.S. Charge Sheet No.19/2018 dated 30.07.2018, pending before the Court of the learned JMFC, Yingkong, Upper Siang, stands set aside and quashed.

Accordingly, this Criminal petition stands allowed and dispose of.

JUDGE

Comparing Assistant