

GAHC040001262023



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

Case No. : Crl.Petn. 18/2023

1:Techi Sonam and Anr.
S/o Techi Tara,
Presently residing at P Sector, PO/PS Itanagar, District Papumpare, Arunachal Pradesh.

2: D. Dohu Robin
S/o Late Dohu Tania

Presently residing at Quarter SPT IV No. 29
Forest Corporation Chimpu
PO R. K. Mission
PS Chimpu
District Papumpare
Arunachal Pradesh.
Phone No. 873096187

VERSUS

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

Advocate for the Petitioner : G Riba

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 02.03.2023

Heard Mr. G. Riba, learned counsel appearing on behalf of the petitioners. Also heard Mr. T. Ete, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 482 of the Code of Criminal Procedure, 1973, praying for quashing and setting aside the F.I.R. dated 07.11.2022, which has been registered as Itanagar P.S. Case No. 274/2022, under Sections 380/34 of the Indian Penal Code and numbered as G.R. Case No. 906/2022 against the petitioner No. 1.

3. The brief facts of the case is that on 07.11.2022, petitioner No. 2 lodged one F.I.R. before the Officer-In-Charge, Itanagar Police Station, alleging *inter alia* that his personal amount of Rs. 2,50,000/- was stolen from his office by breaking his almirah. Upon receipt of the said F.I.R., Officer-In-Charge, Itanagar Police Station, registered a case, being Itanagar P.S. Case No. 274/2022, under Sections 380/34 of the Indian Penal Code, and started investigation. The petitioner No. 1 stated further that on the day of incident, he found a bag containing some amount, which was laying on the floor outside the office chamber of the petitioner No. 2/informant, and since there was no one else to enquire about the owner of the bag, on good faith, he kept the said bag with him with a hope to return the bag to the actual owner. But, since the subsequent days were holidays, he could not return the bag and on Monday,

when he reached office, he came to know that a complaint was already been lodged which was registered as Itanagar P.S. Case No. 274/2022, under Sections 380/34 of the Indian Penal Code. But, after 2 (two) days, i.e. on 10.11.2022, the accused/petitioner No. 1 approached the petitioner No. 2/informant and disclosed everything and also returned the money and accordingly, the informant also consented to compound the instant case in due process of time.

4. In the meantime, a peaceful mediation was commenced for settlement of the case, which was lodged by the petitioner No. 2, and accordingly, a meeting was convened on 26.12.2022 amongst the relatives of both the petitioners and since the petitioner No. 2 is a closed maternal uncle of petitioner No. 1 and also considering the future of the petitioner No. 1, who is of young age having no criminal antecedent, they settled the matter amicably and also executed one deed of settlement, dated 26.12.2022 and the same was also registered before the Executive Magistrate, Itanagar Capital Complex, on the same day. Thereafter, the present petition has been jointly filed by both the accused and the informant as petitioner No. 1 and petitioner No. 2, respectively, praying for quashing of the aforesaid Itanagar P.S. Case No. 274/2022, under Sections 380/34 of the Indian Penal Code and numbered as G.R. Case No. 906/2022 against the petitioner No. 1.

5. It is submitted by the learned counsel for the petitioner, Mr. G. Riba, that as the case has already been compromised and the money, which is alleged to have been stolen, has also been recovered, there is no chance of conviction of the present accused/petitioner No. 1 and the petitioner No. 2 is also not willing to proceed with the case further. The learned counsel further submitted that the

alleged offence also not involved any heinous offence like mental depravity, murder, rape, dacoity, etc. nor it involved any public interest at large. Accordingly, it is submitted that the present petition be allowed by quashing and setting aside the F.I.R. dated 07.11.2022, which has been registered as Itanagar P.S. Case No. 274/2022, under Sections 380/34 of the Indian Penal Code and numbered as G.R. Case No. 906/2022.

6. In support of his submission, the learned counsel for the petitioner also relied on a decision of the Hon'ble Supreme Court in **Gian Singh Vs. State of Punjab & Anr.**, reported in **(2012) 10 SCC 303**, wherein, some observations were made by the Hon'ble Apex Court in paragraph No. 61, which reads as under:

"61. 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 would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

7. In this context, the learned Additional Public Prosecutor, Mr. T. Ete, producing the Case Diary before this Court, submits that the case has been registered under Section 380/34 of the Indian Penal Code. But, till date, there found no involvement of any other co-accused in this case. Rather, the accused/petitioner No. 1 has already confessed before the I.O. that he committed the theft and after realizing that he committed the mistake, he told his father the entire episode and accordingly he approached the I.O. and thereafter also, he handed over the entire amount, which he stolen from the

almirah of the petitioner No. 2. He further submitted that as the matter has already been settled amicably between the parties, there is remote chance of conviction of the present petitioner No. 1 and also considering his confession before the I.O., the State has no objection in the event of allowing the petition by exercising the inherent power of the High Court under Section 482 of the Code of Criminal Procedure.

8. After hearing the submissions of learned counsels for the parties, I have perused the case record as well as the Case Diary, which has been received in connection with this case, and on perusal of the same, it is seen that the I.O. has achieved substantial progress in the investigation and till date, there found no involvement of any other co-accused, though the case has been registered under Sections 380/34 of the Indian Penal Code. In the same time, it is seen that the accused/petitioner No. 1 had already confessed before the I.O. and he also returned the entire amount, which was stated to be stolen from the petitioner. Further it is seen that after committing the said offence, the accused/petitioner No. 1 had realized that he committed mistake and accordingly, approached the informant and amicably settled the matter amongst themselves with the intervention of their family members. Thus, it is seen that there is remote chance of conviction of the present accused/petitioner No. 1.

9. The Hon'ble Supreme Court in the case of **State of Haryana & Ors. -vs- Bhajan Lal & Ors.**, reported in **1992 Supp (1) SCC 335**, has also given some guideline for quashing any proceeding under Section 482 of the Code of Criminal Procedure. The relevant paragraph of the said judgment reads as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a magistrate within the purview of Section 155(2) of the Code.*
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against*

the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge”.

10. In view of the discussions made above and also considering the entire aspects of the case, this Court is of the view that this is a fit case where the power under Section 482 of the Code of Criminal Procedure can be invoked to quash the criminal proceeding.

11. Accordingly, the impugned the F.I.R. dated 07.11.2022, which has been registered as Itanagar P.S. Case No. 274/2022, under Sections 380/34 of the Indian Penal Code and numbered as G.R. Case No. 906/2022, is hereby set aside and quashed.

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

The Case Diary be returned.

JUDGE

Comparing Assistant