

GAHC040001442023



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

Case No. : Crl.Petn. 19/2023

1:Md. Fardeen Omar @ Prince
Son of Md. Omar,
Resident of Vill. 155/h6 Keshab Chandra Sen Street, Kolkata 700009

VERSUS

1:THE STATE OF AP and Anr.
Represented by Public Prosecutor, Arunachal Pradesh.

2:Rinyam Bengia
W/o Shri Sanju Boruah

Resident of Vill. P Sector
Near Palo Water Factory
PO and PS Nirjuli
District Papum Pare (Arunachal Pradesh) and Permanent Resident is of Harmuty
near Govt. H.S. School
PO Harmuty
PS Laluk
District Lakhimpur
Assam

Advocate for the Petitioner : Bomchi Taipodia

Advocate for the Respondent : P P of AP

**BEFORE
HONBLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

Date : 07.02.2023

Heard Mr. LR Mazumdar, learned counsel for the petitioner. Also heard Mr. T Ete, learned Additional Public Prosecutor, Arunachal Pradesh.

2. The present application is filed by one Md. Fardeen Omar @ Prince under Section 482 Cr.P.C. for quashing of the criminal proceeding on the basis of a compromise deed entered into between the petitioner and the respondent No. 2. The respondent No. 2 lodged an FIR on 01.10.2018 alleging that her minor sister (name withheld) was missing and was last seen in the restaurant of respondent No. 2.

3. Thereafter, the investigation was initiated and a case being Nirjuli PS case No. 67/2018 under Section 363 IPC was registered. During the course of investigation and after collecting material the Investigating Officer filed a charge-sheet in the Court of Special Judge (POCSO), Upia under Section 363 IPC read with Section 4 of POCSO Act. On the basis of such charge-sheet, trial commenced and as the accused was released on bail after arrest during the investigation, summons were issued.

4. After receipt of summons, the present petitioner entered into a Deed of Settlement with the informant, who happens to be the elder sister of the minor victim and also with the minor victim, which reflects that the informant was no more interested to continue with the case in question as the matter has already been settled by both the parties including the victim. Accordingly, the present application is filed.

5. In the aforesaid backdrop, this Court is now to decide whether this is a fit case where this Court can exercise its inherent power under Section 482 of Cr.P.C. to quash the criminal proceeding of Nirjuli PS Case No. 67/2018 under Section 363 IPC corresponding to GR case No. 678/2018.
6. It is by now settled that a High Court in exercise of its power under Section 482 of Cr.P.C. can very well quash a criminal proceeding or a criminal complaint under Section 482 of Cr.P.C., but while doing so, the Court is to follow certain principles as enunciated by the Hon'ble Apex Court in ***Gian Singh –Vs- State of Punjab and Another*** reported in ***2012 10 SCC 303***, and in ***State of Madhya Pradesh –Vs- Laxmi Narayan and Others*** reported in ***2019 5 SCC 688***.
7. In the case of State ***of Madhya Pradesh & Laxmi Narayan***, reported in ***AIR 2019 SC 1296***, the Hon'ble Supreme Court has laid down certain guidelines for exercise of powers under Section 482 Cr.P.C., it is submitted that instant case falls within the guidelines laid down by the Hon'ble Supreme Court.
8. For ready reference, paragraph-13 of ***State of Madhya Pradesh & Laxmi Narayan*** (Supra) is extracted herein below:

“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) *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) *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."

9. This court is of the considered opinion that when the alleged offence is under Special Act (POCSO) and the informant, who is the elder sister of the minor shall have no right to enter into any agreement with the accused for settlement of such offence inasmuch as a minor shall not also have any right to settle such issue through an agreement. Further, the offences under Section 363 IPC and under Section 4 of POCSO Act are heinous and serious in nature inasmuch as the statement of the victim

minor girl itself reveals that she was lured to go to Kolkata with a promise that she will be provided job and be married by the accused.

10. Therefore, in the aforesaid factual backdrop and settled proposition of law, this court is not inclined to exercise its power under Section 482 Cr.P.C. to quash the proceeding under challenge on being settled by the victim, informant and the accused. Accordingly, this petition stands dismissed.

11. While parting with the record, it is clarified that the observation made in the order is only for the purpose of consideration of the prayer for quashment of the proceeding and the learned trial court should not be influenced by such observation during the trial.

JUDGE

Comparing Assistant