

GAHC040002582023



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

Case No. : Crl.Petn. 27/2023

1: Songhang Kanglom and 2 Ors.
S/o Lt. N. Kanglom,
Resident of DC Office, Peon, Changlang, PO and PS Changlang, District Changlang,
Arunachal Pradesh.
Mobile No. 7005407085

2: Joysam Kanglom
S/o Songhang Kanglom

Resident of Forest Colony
Changlang
PO and PS Changlang
District Changlang
Arunachal Pradesh.

3: Achong Kanglom
S/o Kanghang Kanglom

Resident of Forest Colony
PO and PS Changlang
District Changlang
Arunachal Pradesh

VERSUS

1: THE STATE OF AP
Through Public Prosecutor.

Advocate for the Petitioner : Tapi Omo

Advocate for the Respondent : P P of AP

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

ORDER

Date : 15.03.2023

Heard Mr. T Omo, learned counsel for the petitioners. Also heard Mr. T Ete, learned Additional PP, Arunachal Pradesh.

02. This is an application filed under Section 482 of the Code of Criminal Procedure, 1973 praying for setting aside and quashing the GR No. 206/2020 arisen out of the Changlang P.S. Case No. 01/2011 under Section 380/34 of the IPC.
03. This present petition is filed by the accused in the aforesaid charge-sheet and they are the petitioner Nos. 2, and 3 in the present application. This petition is also joined by the petitioner No. 1, who is the complainant/victim of the alleged offence. Petitioner No. 1 lodged the impugned F.I.R. Further, this present petition is filed in a background that the complainant/victim and the accused had settled the matter amicably between them and therefore, this court in exercise of power under Section 482 of Cr.P.C. should quash the criminal prosecution as the offences charged are not compoundable under Section 320 of Cr.P.C.
04. The contents of the F.I.R. discloses that the petitioner No. 1 had lost his ATM Card of his saving Account on 03.01.2011, while he was going to withdraw his monthly pay. On updating his account book, he came to know that somebody had already withdrawn/stolen an amount of Rs. 200/- (Rupees Two hundred) through his lost ATM card on 30.12.2010 and

amounts of Rs. 1300/- (Rupees one thousand three hundred), Rs. 12,000/- (Rupees Twelve thousand) and Rs. 300/- (Rupees three hundred) were also withdrawn on 03.02.2011 consecutively. In this regard, he lodged an FIR before the Changlang Police Station and thereafter Changlang Police Station Case No. 01/2011 was registered under Section 380/34 of IPC.

05. After the registration of the FIR, the case was investigated by the Investigating Officer and Charge Sheet was laid against the petitioner Nos. 2 and 3 vide Charge Sheet No. 06/2011 dated 21.02.2011 corresponding to Changlang Police Station Case No. 01/2011 under Section 380/34 of IPC.
06. Subsequently, the petitioners have mutually settled the matter and to that effect, an affidavit has been sworn by the complainant/victim/petitioner No.1, which is annexed in this petition as Annexure No. 4.
07. 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 being GR No. 206/2020 arisen out of the Changlang P.S. Case No. 01/2011 under Section 380/34 of the IPC.
08. 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**.

09. 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.
10. 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) 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."

11. Perused the material including the 161 Cr.P.C. statement. From the materials, it is revealed that the petitioner No. 1 / informant is the father of the petitioner No. 2 and uncle of the petitioner No. 3. Petitioner Nos. 2 and 3 are charged as accused in the present case. At the time of commission of offence they just became major in age. It was informed in the FIR that some unknown persons had withdrawn money through ATM Card belonging to the petitioner No. 1. Subsequently, it was found that the petitioner No. 2 and petitioner No. 3 used the ATM Card of their father/uncle without his knowledge.

12. In that view of the matter, considering the fact that the dispute is amongst the family members and predominantly civil in nature and that petitioners are not named in the FIR and also considering the age of the two accused boy at the time of commission of offence, this court is of the view that this is a fit case where the power under Section 482 Cr.P.C. can be exercised as held in **Laxmi Narayan** (Supra).

13. Accordingly, this petition is allowed by setting aside and quashing the criminal proceeding being GR No. 206/2020 arisen out of the Changlang

P.S. Case No. 01/2011 under Section 380/34 of the IPC.

JUDGE

Comparing Assistant