

GAHC040003162023



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

Case No. : Crl.Petn. 34/2023

1: Yeshi Dorjee Wangja and 2 Ors.
S/o Lt. Rinchin Tsering Wangja,
a Resident of Village Rupa, PO/PS Rupa, District West Kameng, Arunachal Pradesh.

2: Nabam Sonia
S/o Shri Nabam Talling

Resident of Village Kokoi
PO/PS Kimin
District Papum Pare
Arunachal Pradesh
Mobile No. 7085160358

3: P.N. Khirme
S/o Lt. R.D. Khirme

A Resident of Village Rupa
PO/PS Rupa
District West Kameng
Arunachal Pradesh

VERSUS

1: THE STATE OF AP
Represented by the Public Prosecutor.

Advocate for the Petitioner : Chorpok Modi

Advocate for the Respondent : P P of AP

**BEFORE
HONBLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 21-04-2023

Heard Mr. N. Kanu, learned counsel for the petitioners. Also heard Mr. J. Tsering, learned Public Prosecutor for the State respondent.

2. This is an application filed under Section 482 of Code of Criminal Procedure Code, 1973, praying for quashing of FIR dated 18.05.2018, registered as Bomdila P.S. Case No.19/2018, under Section 326 of the Indian Penal Code and the subsequent proceeding of the case.

3. It is submitted by the learned counsel for the petitioners, Mr. N. Kanu, that the all the petitioners are law abiding persons and have no any criminal antecedents. He also submitted that the petitioner No.3 lodged an FIR against the petitioner No.2 before the Bomdila Police Station on dated 18.05.2018 with the allegation of physical assault on the petitioner No.1. The Petitioner No.2 has already obtained the anticipatory bail from the learned Additional District & Session Court, Bomdila on dated 21.05.2018. The alleged incident took place in the night of 17.05.2018, when all the petitioners along with their friends were celebrating party for shifting in the rented house of one Shri Sangey Tsering Wangja. At the party all the petitioners and their friends were drunk and there was hot argument between one Shri Pema Dorjee Thongdok and the petitioner No.2. Thereafter, there was pushing and pulling between them, in the meantime, the victim/petitioner No.1 had intervened between them and all in

sudden or unfortunately the petitioner No.1 got head injury as being mistakenly assaulted by the petitioner No.2, which was done out of intoxication state.

4. But, immediately after the incident the victim/petitioner No.1 was taken to the hospital at Bomdila for treatment. On 18.05.2018, the elder brother of the victim/petitioner No.1 lodged the FIR against the petitioner No.2, which was registered as Bomdila P.S. Case No.19/2018, U/s 326 of the IPC. After filing of the charge-sheet the learned Trial Court issued summons to the petitioner No. 2, but, due to his duty, he could not appear before the Trial Court on 18.11.2022. Accordingly, the matter was re-fixed on 05.01.2023 and the petitioner No.2 entered appearance and the next date was fixed for 28.03.2023.

5. After filing of the FIR both the parties entered into amicable settlement and accordingly filed this joint petition by executing the deed of settlement dated 20.08.2018. In pursuant to their settlement, both the parties appeared before the Trial Court to drop them from further proceeding of the case, but the said Court had not permitted, as the Section involved in the case are non-compoundable in nature. Thus, the present petition is instituted for quashing of the criminal proceeding as well as FIR and the charge-sheet.

6. The learned counsel for the petitioners also submitted that, the petitioners have settled their disputes amicably with condition that the alleged accused/petitioner No.2 shall bear the medical expenditure of the victim/petitioner No.1. At present they are living peacefully without any grudge on each other. As the petitioners have settled their matter amicably and no longer wants to proceed with the same, thus, the petitioner Nos. 1 & 3

authorized the present petitioner No.2 to file the petition under Section 482 Cr.P.C. for quashing of the criminal proceeding.

7. It is further submitted by the learned counsel for the petitioners that as the matter has been settled between the petitioners, there is remote chance of conviction of the petitioner No.2, even if the criminal proceeding is allowed to continue. Rather, it will amount to abuse of the process of the Court.

8. In this regard, Mr. J. Tsering, learned Public Prosecutor has submitted that, it is a admitted fact that in the medical report the victim/petitioner No.1 has sustained injury, which is grievous in nature. But, the matter has been settled amicably between the parties and further, they are not willing to proceed with the same and the petitioners are living together without having any grudge amongst them. Thus, the prosecution has not raised any objection in this regard.

9. The learned counsel for the petitioners has submitted that the entire dispute aroused only at the state of intoxication after consumption of alcohol. He further submitted that both the parties have settled their dispute on the following conditions:-

“That Shri Nabam Sonia shall not ask back the medical expenses he had paid to the victim in future. That both the parties shall maintain tranquility and good rapport between them.”

10. In the said settlement, the petitioner No.2 has agreed to bore the

expenditure of the victim/petitioner No.1 and agreed to compromise the matter and to maintained tranquility/peace and harmony among themselves. Thus, with above observation, he prayed to set aside the criminal proceeding in order to prevent the abuse of the process of Court.

11. After hearing the submissions made by both the parties and upon perusal of the case record, it is seen that parties have settled their dispute amicably with certain conditions by executing a Deed of Settlement dated 20.08.2018, and prayed for quashing of the criminal Proceeding against the petitioner No.2 stating that both the petitioner Nos. 1 & 3 have no objections, if the criminal proceeding is quashed.

12. Further, in view of the criminal justice system as well as the various Hon'ble High Court expressed the view that, if any alleged issues are not survive due to change of situation, in that case, the law implementing authority need not required continuing the proceedings.

13. Thus it is seen, that the parties have settled their matter amicably. In this context, 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**, can be relied on 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.

14. So considering the view of the decision made by the Hon'ble Apex Court in the case of Laxmi Narayan (*Supra*) and also considering the fact that the matter is settled amicably between the parties, I am of the view that it is a fit case where the provision under Section 482 Cr.P.C. can be invoked.

15. Accordingly, the FIR dated 09.01.2018 in connection with quashing of FIR dated 18.05.2018, registered as Bomdila P.S. Case No.19/2018, under Section 326 of the Indian Penal Code and the subsequent proceeding of the case, stands set aside and quashed.

16. With above observations, this Criminal petition stands dispose of.

17. Send down the LCR to the learned Trial Court.

JUDGE

Comparing Assistant