

GAHC040003282023



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

Case No. : Crl.Petn. 36/2023

1:Dorjee Degio and Anr.
S/o Shri Nariya Degio,
Residence of Yangsey Village, Bana, PO Bana, PS Seppa, District East Kameng, (AP)

Mobile No. 919612197838

2: Domblai Degio
S/o Shri Lowang Degio

Residence of Yangsey Village. Bana
PO Bana
PS Seppa
District East Kameng
Arunachal Pradesh.
Phone No. 811991897

VERSUS

1:THE STATE OF AP
Represented through its Public Prosecutor.

Advocate for the Petitioner : T Torum

Advocate for the Respondent : P P of AP

**BEFORE
HONBLE MR. JUSTICE KARDAK ETE**

ORDER

Date : 21.06.2023

Heard Mr. A. Bodo, learned counsel for the petitioner and also heard Ms. L. Hage, learned Additional Public Prosecutor for the State of Arunachal Pradesh.

2. This is an application jointly filed by the petitioners under Section 482 of the Code of Criminal Procedure, 1973, praying for quashing of the criminal proceedings in G. R. Case No. 77/2022 under Section 304 (A) IPC read with Section 27 (1) of Arms Act, corresponding to Seppa P.S. Case No. 49/2022 on the basis of the settlement between the parties.

3. The fact of the case in a nutshell is that on 22.09.2022 a written complaint was received from petitioner No. 2 stating that on 21.09.2022 his brother Shri Chambu Degio at around 6.00 am, along with his four other brothers went to Pitchang village in search of their Mithuns, as they got information that some wild animals were killing their domestic Mithuns. At around 1:30 pm, the team reached a particular spot of Serongjang area where one wild bear attacked his team and in retaliation when petitioner No.1 fired on wild animal in self defence, then one bullet hit his brother Lt. Chambu Degio who succumbed to injury on the spot. Accordingly, an FIR was registered against the Petitioner Nos. 1 being Seppa P.S Case No. 49/2022 under Section 304 (A) IPC read with 27(1) Arms Act.

4. After completion of the investigation charge-sheet was filed on 31.12.2022, against the petitioner No. 1 which is pending for consideration of charges before the Chief Judicial Magistrate, Seppa.

5. In the meantime, the parties have entered into deed of settlement dated 01.02.2023 in the presence of family members including the wife of the deceased person.

6. Mr. A. Bodo, learned counsel for the petitioner submits that unfortunate incident had happened due to accidental gun shot that led to the death of the deceased. He further submits that the parties have decided to maintain peace and harmony amongst the family members as they are closely related as cousins who are the descendents of the same grand-father. The family members have decided to compensate the wife of the deceased person and the children for their future. While referring to the statements under Section 161 Cr.P.C of all the three eye witnesses submits that the statements clearly show that the incident had happened accidentally without any rash and negligence. Therefore, he prays for quashing of the charge-sheet No. 30/2022 dated 31.12.2022 and the consequential proceedings in G.R. Case No. 77/2022 of the Court of Chief Judicial Magistrate, Seppa.

7. Ms. L. Hage, learned Additional Public Prosecutor for the State submits that since the offences under Section 304(A) read with Section 27 (1) of Arms Act are serious in nature, this may not be a fit case for quashing and setting aside the proceeding rather the accused should face the trial in the facts and circumstances of this case.

8. I have considered the submission advanced by the learned counsel for the parties and also scrutinized the materials available on the record.

9. The principle of law regarding the quashing of criminal proceedings by exercising power under section 482 of Cr.PC, 1973 has been enunciated by the Hon'ble Supreme Court in the case of the ***State of Madhya Pradesh Vs. Lakshmi Narayan and Ors.***, reported in (2019) 5 SCC 688 which is reproduced herein below:

"15. 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:

15.1) 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;

15.2) 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;

15.3) 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;

15.4) 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;

15.5) 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. "

10. On the scrutiny of the materials available on record, this Court finds that, though offences are serious in nature, however, the parties have amicably settled the matter with a determination to live peacefully and harmoniously among the family members. The petitioner No. 1 has been charge-sheeted under Section 304(A) and Section 27(1) of Arms Act, however, in view of the incident being accidental in nature and considering that no brother would imagine that same would happened which lead to loss of life of his brother. Therefore, this may be one of the cases where this Court may consider that

inherent power under Section 482 of Cr.P.C can be invoked.

11. On the perusal of the clause 4 of the settlement deed, it transpires that for the family stable and educational and financial aids of children of deceased person, the second party has compensated a sum of Rs. 28,00,000/- (Rupees twenty-eight lakhs) only to deceased family members, though the loss of life cannot be compensated in monetary terms since the parties are close relatives as cousins, and the future of the family members including the wife and the children of the deceased seems to have been taken care of by voluntary contribution by members of the family and coupled with the statements of the eye witnesses, which prima facie support the accidental nature of the incident, this court is of the considered view that there exist grounds for invoking the inherent power under Section 482 Cr.P.C.

12. In view of the above, the criminal proceeding in G. R. Case No. 77/2022 corresponding to Seppa P.S. Case No. 49/2022 pending before the Chief Judicial Magistrate, Seppa is hereby set aside and quashed.

13. Accordingly, this criminal petition is allowed and stands disposed of.

JUDGE

Comparing Assistant