

GAHC040003532023



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

Case No. : Crl.Petn. 41/2023

1: Michael Tajo and 14 Ors.
Son of Late Harku Tajo,
Resident of Chayangtajo Village, PO and PS Chayangtajo, East Kameng District,
Arunachal Pradesh.

2: Joy Flago
Son of Sri T. Flago

Resident of Zero Point Tinali
Itanagar
PO/PS Itanagar
Papum Pare District
Arunachal Pradesh.

3: Monu Ruddin Ali
S/o Sri Abdul Jalil

Resident of North Lakhimpur
PO/PS Nabusha
North Lakhimpur District
Assam.

4: Samsul Ali
Son of Sri L Ali

Resident of Magori Village
PO/PS Gohpur
Biswanath District
Assam.

5: Cicilia Takam
Wife of Sri Michael Tajo

Resident of G Extensiion
Itanagar
PO/PS Itanagar
Papum Pare District
Arunachal Pradesh.

6: Bitem Darang
Son of Late T. Darang

Resident of Pasighat
PO/PS Pasighat
East Siang District
Arunachal Pradesh.

7: Norbu Thongdok
Son of Late Tsering Dorjee Thongdok
C/o DFO Office
Rupa
West Kameng District
Arunachal Pradesh.

8: Dorjee Pema
Son of Late Tenzing Wangchu

C/o DFO Office
Rupa
West Kameng District
Arunachal Pradesh.

9: Joram Messum
C/o DFO Office
Rupa
West Kameng District
Arunachal Pradesh.

10: Rinchin Tamang
Son of Late B. B. Tamang

C/o DFO Office
Rupa

West Kameng District
Arunachal Pradesh.

11: Lobsang Dorjee Mosobi
S/o Sri Dorjee Chewang

C/o DFO Office
Rupa
West Kameng District
Arunachal Pradesh.

12: Tanium Muri
Son of Late Taku Muri

C/o DFO Office
Rupa
West Kameng District
Arunachal Pradesh.

13: Rita Rai
Wife of Sri Karan Rai

C/o DFO Office
Rupa
West Kameng District
Arunachal Pradesh.

14: Tallo Kanya
Daughter of Smti Takhe Yassing

C/o DFO Office
Rupa
West Kameng District
Arunachal Pradesh.

15: Ganga
Wife of Smti Takhe Yassing

C/o DFO Office
Rupa
West Kameng District
Arunachal Pradesh

VERSUS

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

Advocate for the Petitioner : G Taloh

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 24.05.2023

Heard Mr. G. Taloh, the learned counsel for the petitioners, namely, 1) Shri Michael Tajo, 2) Shri Joy Flago, 3) Monu Ruddin Ali, 4) Shri Samsul Ali, 5) Smti Cicilia Takam, 6) Shri Bitem Darang, 7) Shri Norbu Thongdok, 8) Shri Dorjee Pema, 9) Miss Joram Messum, 10) Shri Rinchin Tamang, 11) Shri Lobsang Dorjee Mosobi, 12) Shri Tanium Muri, 13) Smti Rita Rai, 14) Miss Tallo Kanya, 15) Smti Ganga. Also heard Mr. J. Tsering, the learned Public Prosecutor for the State of Arunachal Pradesh.

2. The petitioners have filed this application under Section 482 of the Cr.P.C with a prayer for quashing the criminal proceeding of Rupa P. S. Case No. 21/222, pending in the Court of learned Sessions Judge, Bomdila and connected Charge-Sheet No. 01/2023, registered under Sections 364(A)/186/353/170/120(B)/34 IPC, read with Sections 15(C)/16(B)/18 UAP Act.

3. The petitioner No.6, namely, Shri Bitem Darang is the victim,

who has jointly filed this petition along with the other persons who are the accused of the offence under which they are booked in connection with Rupa P.S Case No.21/22.

4. The FIR unfolds that on 05.12.22 at around 11 am four persons came to DFO's Office at Shergaon Division, Rupa to meet the DFO, namely, Shri Bitem Darang for a discussion regarding some work. After a short while, the four persons along with the DFO came out of the office chamber of the DFO and they all went to another room and had discussion for about 40 minutes. Then one of the persons went down and punctured the tyre of the DFO's office vehicle 'scorpio' which was parked in front of the DFO's Office. At around 12.10 pm, they all came down along with the DFO and went towards his vehicle but the DFO was enraged when he found the tire of his vehicle being punctured. Then one of the petitioners, namely, Shri Norbu Thongdok along with the DFO left towards the DFO's residence by an official vehicle and 4 miscreants boarded two separate vehicles and followed the DFO to his residence. They again had some discussions regarding some construction work and the petitioner, namely, Shri Michael Tajo expressed his dissatisfaction for construction work not being allotted to him. The DFO was also taken to the Circuit House at Rupa. Thereafter, the petitioner, namely Shri Norbu Thongdok went out searching for the DFO and finally, this FIR was lodged by the petitioner, Shri Norbu Thongdok.

5. It is submitted on behalf of the petitioners that the DFO who is alleged to be the victim has not lodged the FIR. Some other person has lodged the FIR. While charge was framed, the petitioners

were not charged under Sections 15(C)/16(B)/18 of the UAP Act as the charges under aforesaid Sections were withdrawn and the charges were framed under Sections 364(A)/186/353/170/120(B)/34 of the IPC.

6. It is also submitted at the bar that as the statements of the DFO, namely, Shri Bitem Darang u/s 161 Cr.P.C mainly reveals that accused as well as the petitioners are known to him no question of kidnapping arise and no offences under Section 364(A) IPC is made out against the petitioners who are accused in connection with Rupa P.S. Case No.21/2022, corresponding Sessions Case No. 02/2023. It is also submitted there is no instance of obstruction to the DFO or other officials while discharging their official duties and no case under Sections 356/186 IPC is made out. I have perused the evidence recorded by the trial Court.

7. I have considered the submissions of both the parties at bar. I have also scrutinized the statements of the DFO under Section 161 Cr.P.C and Deed of Agreement executed between the petitioners which includes the informant, the victim as well as the accused marked as Annexure-3. I have also relied on the decision of the Hon'ble Supreme Court in State **of Madhya Pradesh & Laxmi Narayan**, reported in **AIR 2019 SC 1296**, wherein, 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) 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."

9. Reverting back to this case, it is held that this is not a dispute between the accused and the public servant. It appears to be predominantly private in nature. It is regarding an incident of scuffle between the DFO and the petitioner, namely, Shri Michael Tajo. The other petitioners were not even named or specifically incriminating by the victim as well as by the informant. Both the parties have amicably settled their dispute and have buried their hatchet. The possibility of conviction appears to be remote and bleak. Further proceeding will indeed be abuse of the process of Court.

10. In view of the foregoing discussions, I deem it proper to invoke the inherent jurisdiction under Section 482 Cr.P.C. I have also taken into consideration that the case is pending at the early stage of trial. Therefore, the proceeding of Sessions Case No.02/2023 arising out of Rupa P.S. Case No. 21/2022, is hereby quashed and set aside.

In terms of the above the criminal petition is disposed of.

JUDGE

Comparing Assistant