

GAHC040004322023



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

Case No. : Crl.Petn. 54/2023

1: Soyir Yomggam and 9 Ors.
D/o Mr. Gesso Yomggam,
Permanent Resident of Vill Yomcha, PO/PS Aalo, Dist. West Siang, Arunachal Pradesh and presently residing at F Sector, Itanagar, PO/PS Itanagar, Dist. Papumpare, Arunachal Pradesh.

2: Songgam Yonggam
D/o Mr. Gesso Yomggam

Permanent Resident of Vill Yomcha

PO/PS Aalo
Dist. West Siang
Arunachal Pradesh and presently residing at F Sector
Itanagar
PO/PS Itanagar
Dist. Papumpare. AP.

3: Karling Tallang
S/o Mr. Taluk Tallang

Presently residing at Gohpur
PO/PS Naharalgun
Dist. Papumpare
Arunachal Pradesh.

4: Raling Tallang
S/o Mr. Taluk Tallang

Presently residing at Gohpur
Itanagar

PO RK Mission
PS Chimpu
Dist. Papumpare
Arunachal Pradesh.

5: Jami Dolo
W/o Sampa Dolo

Presently residing at D Sector
Itanagar
PO/PS Itanagar
Dist. Papumpare
Arunachal Pradesh.

6: Nyami Tallang
D/o Shri Taluk Tallang

Presently residing at D Sector
Itanagar
PO/PS Itanagar
Dist. Papumpare
Arunachal Pradesh.

7: Bamang Meena Tallang
W/o Shri Karling Tallang

Presently residing at Gohpur
Itanagar
PO R K Mission
PS Chimpu
Dist. Papumpare
Arunachal Pradesh.

8: Matam Mangam Tallang
W/o Ralling Tallang

Presently residing at Gohpur
Itanagar
PO RK Mission PS Chimpu
Dist. Papumpare
Arunachal Pradesh.

9: Yanam Rosy Gongo Tallang

W/o Prem @ Rockey Tallang

Presently residing at Hayuliang
Anjaw
PO/PS Hayuliang
Dist. Anjaw
Arunachal Pradesh.

10: Prem @ Rockey Tallang
S/o Mr. Taluk Tallang

Presently residing at Hayuliang
Anjaw
PO/PS Hayuliang
Dist. Anjaw
Arunachal Pradesh.
Permanent Resident of Type II Colony
PO/PS Seppa
Dist. East Kameng
Arunachal Pradesh

VERSUS

1:THE STATE OF AP
Represented by Public Prosecutor.

Advocate for the Petitioner : Vijay Jamoh

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MR. JUSTICE KARDAK ETE

ORDER

Date : 13-06-2023

Heard Mr. V. Jamoh, learned counsel for the petitioners and Ms. T. Jini, learned Additional PP for the State of Arunachal Pradesh.

2. This application under Section 482 of Cr.PC, 1973 has been jointly filed by the petitioners for quashing of criminal proceeding pending before the Chief

Judicial Magistrate, Yupia arising out of FIR dated 08.11.2018 being Itanagar Women PS case No. 98/2018 corresponding to GR case No. 77/2018 under sections 290/323/325/354B/365/509/511/34 of IPC, 1860 on the basis of settlement amongst the petitioners.

3. The facts of the case in short is that, on 08.11.2018 a written FIR was lodged by the petitioner No. 2 alleging that on 07.11.2018 at around 15:30 hrs while her younger sister, i.e, petitioner No. 1 was with her colleague Mr. Raju Taku were inside the Dominos Pizza Restaurant, Itanagar, some group of men and women barged into the restaurant and petitioner no. 1 was beaten up by the group of men and women inside the Dominos Pizza Restaurant. It was further alleged that all those persons robbed off all the jewelleries i.e., gold chain, gold bracelet, earring, money, mobile and also tore her clothes and thereafter the petitioner No. 1 was forcefully abducted from the restaurant along with her colleague in a Chevrolet car and drove to Ganga Village, Itanagar where petitioner No. 1 and one Mr. Raju Taku were kept captive by them. It was also alleged that the petitioner No. 1 was beaten up for almost five hours continuously, one of the male even tried to rape/molest the petitioner No. 1 by tearing her clothes and at the same time also made video/MMS of her, in which the petitioner No. 1 was forced to admit unparliamentarily statement but somehow the petitioner No. 1 and her friend managed to escape from the clutches and got admitted in Heema Hospital, Itanagar, Arunachal Pradesh. On the basis of the said complaint, the case was registered being Itanagar Women PS case no. 98/ 2018 under sections 290/323/325/354B/ 365/509/511/34 of IPC, 1980 against the petitioner Nos. 3 to 10. On 05.02.2019, the petitioner Nos. 3, 5 and 6 were arrested but subsequently released on bail on 08.02.2019.

4. Thereafter, the petitioner No. 2 submitted an application before the Itanagar Women PS praying for withdrawal of the complaint stating that the complainant/petitioner no. 2 had lodged the FIR out of anger and misunderstanding and merely on the basis of telephonic information and since the matter has arisen out of family dispute, under the intervention of both the family members, the matter has been amicably settled. Thereafter, an affidavit was sworn by the petitioner No. 1 and petitioner No. 2, i.e., the victim and the complainant, before the Executive Magistrate, Itanagar, Arunachal Pradesh on 06.02.2019 declaring that the FIR dated 08.11.2018 was lodged out of mistake of facts and circumstance and the matter has been amicably settled.

5. The petitioner Nos. 1 and 2 were of the bonafide belief that the case would not proceed further as they have amicably settled the issue amongst themselves but, they received a summon from the Court of Chief Judicial Magistrate, Yupia for appearance in the said matter. On enquiry, it revealed that the police has submitted a charge sheet after completion of investigation being charge sheet No. 185/2021 and the petitioner Nos. 3 to 10 had been charge-sheeted under sections 290/323/325/354B/365/509/511/34 of IPC, 1980 and on 22.12.2022, the learned Chief Judicial Magistrate has framed the charges against the petitioner nos. 3 to 10 under the aforementioned sections of IPC, 1860 and the case of the petitioners is fixed for prosecution witness on 31.12.2023.

6. Mr. V. Jamoh, learned counsel for the petitioners submits that the parties have amicably settled the matter way back in 2019 which is a few months after the FIR was lodged and registered. However, there are some penal sections which are not compoundable in nature. Accordingly, the petitioner nos.

1 and 2 and petitioner nos. 3 to 10 have executed a deed of mutual agreement on 06.03.2023 reiterating the amicable settlement which was entered into in the year 2019. He further submits that since the FIR was lodged on the misconceived information and the mistake of the facts coupled with the fact that the parties have amicably settled the matter amicably by entering into a settlement agreement, the criminal proceedings being GR No. 77/2018 corresponding to Itanagar Women PS case No. 98/2018 pending before the learned Chief Judicial Magistrate, Yupia may be quashed.

7. Mr. V. Jamoh, learned counsel for the petitioners submits that the case is more of a private or personal in flavor and have no serious impact upon the society as a whole and the parties have settled the matter way back in 2019 and also entered into a deed of mutual agreement on 06.03.2023 and the possibility of conviction is remote and bleak and it may be tantamount to abuse of the process of law and continuance of the proceeding may be futile and therefore deserves quashment of the proceeding pending before the learned Chief Judicial Magistrate, Yupia.

8. Ms. T. Jini, learned Additional PP fairly submits that though the petitioner Nos. 3 to 10 have been charge-sheeted and consequently the charges have been framed, it reveals that the case relates to matrimonial disputes and the FIR was lodged on the basis of telephonic information by mistake of facts and the parties thereafter have settled the matter amicably amongst themselves, therefore, this Court may pass an appropriate order based on the facts and circumstances of the present case.

9. I have considered the submissions advanced by the learned counsel

for the parties and also perused the materials available on record.

10. 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. "

11. In the case of ***Kapil Gupta V. State of NCT of Delhi***, (2022) SCC Online SC 1030, the Hon'ble Supreme Court held that the Court while exercising its power under section 482 Cr.PC, the Court should be slow in quashing the proceedings wherein heinous and serious offences are involved, but is not foreclosed from examining as to whether there exists material for incorporation of such an offence or as to whether there is sufficient evidence which if proved would lead to proving the charge for the offence charged with. The Court has also to take into consideration as to whether the settlement between the parties is going to result into harmony between them which may improve their mutual relationship.

12. On consideration of the submissions of the learned counsel for the parties and also the materials available on record, including the scanned copy of the LCR, this Court finds that though the written FIR was filed on 08.11.2018 on the basis of telephonic information by the informant, it in fact relates to matrimonial disputes and was on the basis of misunderstanding. After the registration of the FIR, on the intervention of the family members, the matter has been settled amicably between the parties at its immediate opportune time, even the informant had filed an application for withdrawal of the said FIR, of course, which may not be permissible to withdraw the FIR under the law.

Thereafter, the parties have entered into a mutual agreement on 06.03.2023 reiterating the settlement agreement made in the year 2019.

13. On consideration and examination of the submissions and the materials, in my considered view, the chances of conviction is remote and bleak, therefore, continuance of the proceeding of Itanagar Women PS case no. 98/2018 corresponding to GR case no. 77/2018 pending before the learned Chief Judicial Magistrate, Yupia may be futile and tantamount to abuse of the process of law.

14. In view of the discussion made herein above, and the law laid down by the Hon'ble Apex Court, this Court is of the opinion that it is a fit case for exercising the power under section 482 Cr.PC., 1973 for quashing the aforesaid criminal proceeding pending before the learned Chief Judicial Magistrate, Yupia.

15. Accordingly, the criminal proceeding being Itanagar Women PS case No. 98/2018 corresponding to GR case No. 77/2018 under sections 290/323/325/354B/365/509/511/34 of IPC, 1860 is hereby set aside and quashed.

16. In the result, the criminal petition is allowed and disposed of.

JUDGE

Comparing Assistant