

GAHC040004382023



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

Case No. : Crl.Petn./55/2023

Tsewang Norbu and Anr.
S/o Late Tashi Norbu,
R/o Dirang Town, PO/PS Dirang, West Kameng District, Arunachal Pradesh. 2:
Tajong Talom
Age:
Occupation

VERSUS

THE STATE OF AP
Represented by the Public Prosecutor, Arunachal Pradesh.

Advocate for the Petitioner : Adam Tatak

Advocate for the Respondent : P P of AP

:::BEFORE:::
HON'BLE MRS. JUSTICE MITALI THAKURIA

ORDER (ORAL)

07.08.2023

Heard Mr. A. Tatak, learned counsel for the petitioners. Also heard Ms. T. Jini, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 482 of the Code of Criminal Procedure, 1973, praying for quashing and setting aside the Charge-Sheet No. 09/2022, dated 03.05.2022, under Section 506 (b) of the Indian Penal Code *read with* Sections 25(1B) (a)/27 (1) of the Arms Act, 1959, corresponding to Boleng P.S. Case/F.I.R. No. 04/2022, dated 03.05.2022, pending trial before the Court of learned Judicial Magistrate First Class, Pangin.

3. This is a joint petition and the petitioner No. 1 and the petitioner No. 2 are the victim and the accused respectively. The petitioners have jointly approached this Court for invoking the extra-ordinary, discretionary and inherent power under Section 482 Cr.P.C. for setting aside and quashing the F.I.R., Charge-Sheet as well as the criminal proceeding pending before the Court of learned Judicial Magistrate First Class, Pangin.

4. It is stated that the F.I.R. was lodged on 03.05.2022 against the petitioner No. 2 by the petitioner No. 1 owing to some minor misunderstanding in their

business. The petitioner No. 1 is the Manager-cum-Operator of the stone crusher under M/S Tenzing Construction, which is represented by the Attorney holder- Shri Tarh Nyakum and the petitioner No. 2 has executed a lease deed in favour of the said stone crusher. But the petitioner No. 1 was not aware about the terms and conditions of the said lease deed and for the business transaction, there was a verbal altercation between the petitioners and as a result, there was a scuffle between the parties. Accordingly, as F.I.R. was lodged by the petitioner No. 1 and the same was registered under Section 506 (b) of the Indian Penal Code *read with* Sections 25(1B) (a)/27 (1) of the Arms Act, 1959, against the petitioner No. 2. But both the petitioners are neighbors and working together at the stone crusher and accordingly they amicably settled the matter between them, which was only because of some misunderstanding in their business transaction, and hence, both the petitioners approached this Court for quashing the above referred Charge-Sheet, F.I.R. as well as the criminal proceeding pending before the Court of learned Judicial Magistrate First Class, Pangin. However, the allegation made in the F.I.R. is that on the day of incident, the petitioner No. 2 came to the stone crusher site and from his vehicle, he took out a 12 Bore SBBL gun, loaded it and pointed the gun towards him to shoot and threatened him to kill and he also stated that even Chief Minister cannot touch him and he have a gun and hence, he can shoot anyone if he wants. But, the actual fact between the parties, as stated above, is that the F.I.R. was lodged by the petitioner No. 1 only after scuffle between the parties which was only due to misunderstanding in their business transaction.

5. The learned counsel for the petitioners, Mr. Tatak, has submitted that as the petitioner No. 1 is intending and willing to withdraw his complaint and he has no further intention to pursue the case and hence, in that situation, the chance of conviction is very remote and bleak and if the proceeding is allowed to be continued, it will be an abuse of the process of law. As both the parties have amicably settled their dispute, there is no chance of adducing any evidence against the petitioner No. 2 even if the proceeding is allowed to be continued. More so, the present incident had happened only after an altercation on the basis of the commercial transaction or financial transaction and there are catena of judgments of Hon'ble Apex Court wherein if the nature of offence is civil or private in nature and if the parties resolved their dispute, the matter can be quashed by exercising the power under Section 482 Cr.P.C. Further it is submitted that there is no ingredients in the F.I.R. or evidences collected by the I.O. to attract Sections 25(1B) (a)/27 (1) of the Arms Act. More so, the gun, which is stated to be kept in the vehicle of the petitioner No. 2, was also a licensed gun and there is no allegation of any firing nor there is any allegation to attract Sections 25(1B) (a)/27 (1) of the Arms Act, and hence, it is a fit case where the F.I.R. and the connected Charge-Sheet as well as the criminal proceeding pending before the learned Judicial Magistrate First Class, Pangin, can be quashed by exercising the power under Section 482 Cr.P.C.

6. In this context, the learned Additional Public Prosecutor, Ms. T. Jini, has submitted that the prosecution sanction has already been obtained to prosecute the case under the Arms Act and the prosecution sanction was also accorded

considering all the relevant materials in the record. Further, the possession of Arms with the petitioner No. 2 is an admitted fact and even in the Deed of Settlement between the parties, it is mentioned that he was carrying the gun for repairing. However, the plea was taken that it was a licensed gun and the license was issued in the name of the father of the petitioner No. 2. Thus, it is seen that without any authorization or without the presence of the license holder, the accused petitioner No. 2 was holding the loaded gun which is prohibited under Section 25(1B) (a) of the Arms Act and as per Section 25(1B) (e) also, it prohibits a person to carry any gun in contravention with Section 3 of the Act even for repairing. Further it is submitted that from the Charge-Sheet, it reveals that the accused did not produce the live cartridge of 12 Bore SBBL gun, rather he produced one empty fired cartridge of 12 Bore gun and in the same time, it also reveals from the investigation that he could not produce any arm license of the said 12 Bore SBBL gun and without any license or authority in his name, he was carrying the gun. Thus, the learned Additional Public Prosecutor submitted that the case is also *prima facie* established under Section 27(1) of the Arms Act and hence, it is not at all a fit case to quash the criminal proceeding as well as the F.I.R. and the Charge-Sheet by invoking power under Section 482 Cr.P.C. The learned Additional Public Prosecutor further submitted that as per the guideline of the Hon'ble Apex Court in **State of Madhya Pradesh Vs. Laxmi Narayan & Ors.**, reported in **(2019) 5 SCC 688**, also, the present case is not a fit case to invoke power under Section 482 Cr.P.C.

7. After hearing the submissions made by the learned counsels for both sides

and also perusing the case record, it is seen that though the petition is filed jointly by both the victim and the accused person, but the case is registered under Section 506 (b) of the Indian Penal Code *read with* Sections 25(1B) (a)/27 (1) of the Arms Act, 1959. There may be a compromise of amicable settlement between the parties, but the accused was alleged to have carried the 12 Bore SBBL gun without having any license in his name or without any authorization which is stated to be the gun of his father and he was carrying the gun for repairing without any authorization. In the same time, during investigation also, it is seen that he threatened or tried to kill the victim by showing the gun point and thus, he was not only using or carrying the gun without any license or authorization, but also he tried to threatened the victim on the gun point. There may be a settlement between the parties or they may entered into an amicable settlement, but the nature of case, wherein the accused was allegedly carrying the gun with him and was also alleged to have used to threaten the victim by showing the gun point, is in my opinion not a fit case where the criminal proceeding along with the F.I.R. and the Charge-Sheet can be quashed by invoking Section 482 Cr.P.C.

8. The Hon'ble Supreme Court in ***State of Madhya Pradesh Vs. Laxmi Narayan and Ors, (supra)***, considering the law on the point and also considering the other decisions on the point, 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. Thus, from the guideline of the Hon’ble Apex Court also, it is seen that a case registered under Arms Act is considered to be serious and heinous in nature and cannot be quashed by exercising the power under Section 482 Cr.P.C. as such crime are considered as crime against society and not against the individual alone.

10. In view above and also considering the view of the Hon’ble Apex Court, I am of the view that this is not a fit case where the inherent power under Section 482 Cr.P.C can be invoked to quash the criminal proceeding as well as the F.I.R. and the Charge-Sheet. Resultantly, I find no merit in this petition and accordingly, the same stands dismissed.

11. In terms of above, this criminal petition stands disposed of.

JUDGE

Comparing Assistant