

GAHC040004992023



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

Case No. : Crl.Petn. 62/2023

1:Doimalu Goyari and 2 Ors.
Son of Late Katish Chandra Goyari,
Resident of Jargaon Village, PO/PS Udalguri, Udalguri District, Assam.

2: Tama Tekhi
Son of Sri Tama Hotu

Resident of Mani
Doimyk
PO/PS Doimukh
Papum Pare District
Arunachal Pradesh.

3: Taba Tanya
Daughter of Sri Taba Tilon

Resident of Nirjuli
PO/PS Nirjuli
Papum Pare District
Arunachal Pradesh

VERSUS

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

Advocate for the Petitioner : G Taloh

Advocate for the Respondent : P P of AP

**BEFORE
HONBLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 19.04.2023

Heard Mr. G. Taloh, learned counsel appearing for the petitioner. Also heard Mr. J. Tsering, learned Public Prosecutor for the State of Arunachal Pradesh.

2. This is an application under Section 482 of the Code of Criminal Procedure, 1973 for quashing of criminal proceeding in Naharlagun P.S. Case No. 54/2014, under Section 279/338 of the Indian Penal Code, pending in the Court of learned Judicial Magistrate First Class, Yupia, and the connected Charge-Sheet No. 33/2014, under Section 279/338 of the Indian Penal Code.

3. The brief fact of the case is that on 18.05.2014, a written complaint was received from the petitioner No. 2 to the effect that on 18.05.2014, at about 1300 hrs, his elder brother's Tata Mobile, bearing Registration No. B/R AR-01F-1595, was hit by one black Scorpio near Taba Taring Car Wash, Nirjuli, and thereby one pedestrian got injured, who was travelling nearby the road side. Upon receipt of the FIR, the Officer-In-Charge, Naharlagun Police Station, registered a case, being Naharlagun P.S. Case No. 54/2014 under Section 279/338 IPC. On completion of the investigation, the I.O. laid Charge-Sheet, being C.S. No. 33/2014, under Section 279/338 IPC, against petitioner No. 1 before the Court of learned Judicial Magistrate First Class, Yupia, and the presently the case is at the stage of appearance. But, in the meantime, the parties have already amicably settled their differences and they have executed a deed of

amicable settlement dated 16.03.2023. It is further stated that in the said incident, the vehicle was damaged and the petitioner No. 3 sustained simple injury and after the unconditional apology made by the petitioner No. 1, both the petitioner Nos. 2 & 3 have forgiven the petitioner No. 1 and accordingly, he also repaired the vehicle and borne the medical expenses for treatment of the petitioner No. 3.

4. The dispute between the parties have already been settled amicably, but as Section 279 is non-compoundable offence, the case could not be compounded before the learned Judicial Magistrate First Class and hence, they have preferred the present petition for quashing the criminal proceeding along with the charge-sheet filed in the instant case. The case was registered in the year 2014, but trial has commenced only after 9 years and since, after the incident, the parties have amicably settled their dispute and the petitioner No. 1 also borne all the expenses of medical treatment for the victim and also repaired the vehicle which was damaged in the said incident.

5. The petition is also supported with the compromise deed between the parties and the same has been annexed as Annexure-3 to the petition. Further, both the petitioner Nos. 2 & 3 also gave their authority letter to the petitioner No. 1 to institute the present petition for quashing.

6. It is submitted by the learned counsel for the petitioners that as the matter has already been settled between the parties, there is remote chance of conviction of the petitioner No. 1 if the criminal case is proceeded further, rather it will be an abuse of the process of Court. After their amicable settlement, both the parties are living peacefully without any grievances against each other and hence both the petitioner Nos. 2 &

3 are also not willing to proceed with the case any further and accordingly, it is submitted that this is a fit case to invoke the power under Section 482 Cr.P.C for quashing the criminal case as well as the Charge-Sheet filed against the petitioner No. 1.

7. In this context, the learned Public Prosecutor, Mr. J. Tsering, has submitted that the present petition is filed jointly by the informant, the victim and the accused person in pursuant to amicable settlement between the parties and considering the nature and gravity of the offence, the prosecution has no objection if the criminal proceeding is quashed by this Court. Rather, it is submitted by the learned Public Prosecutor that the instant case is also covered by the guideline of the Hon'ble Supreme Court in **Laxmi Narayan's** case.

8. After considering the submissions made by the learned counsels of both sides and also on perusal of the case record, it reveals that the matter has already been settled between the parties amicably outside the Court and they have also entered into deed of amicable settlement with the following terms and conditions:

1. *That the parties above named have amicably settled their differences and misunderstanding.*
2. *That the 1st party & 2nd party does not have any grievance against the 3rd party in relation to **Naharlagun Police Station Case No. 54/2014** under Section 279/338 of the Indian penal Code'1860.*
3. *That the **1st party & 2nd Party** wants to put an end to the abovementioned case as the **3rd party** has exhibited his remorse*

*and tendered an unconditional apology, further, he explained the interfering circumstances at the relevant period as the accident had occurred due to the sudden brake failure of the vehicle he was driving. Additionally, the **3rd party** has repaired the damage caused to the Tata Mobile vehicle of the **1st party** and paid for the medical expenses of the **2nd party**, who had sustained simple injury in the accident.*

4. *That the **1st party** & **2nd party** undertakes and assures that they shall not pursue the **Naharlagun Police Station Case No. 54/2014** under Section 279/338 of the Indian Penal Code'1860 against the **3rd Party**.*

5. *That the **1st Party** & **2nd Party** above named has **NO OBJECTION** if any competent Court exonerates or discharges or acquits the **3rd Party** from his liabilities in the abovementioned case.*

6. *That the **1st Party** & **2nd Party** also undertakes and assures that they will help the **3rd Party** in any legal proceeding for getting dismissal or withdrawal of the above noted case before an appropriate Court.*

7. *That in view of the intervention of the family members and well-wishers the parties above named have decided and settled their dispute amicably now and forever to live peacefully with this DEED OF AMICABLE SETTLEMENT in connection with the above noted case and all the parties have further agreed to use this DEED OF AMICABLE SETTLEMENT as a piece of evidence for compounding or*

quashing or withdrawing or getting acquittal or dismissal of the aforesaid case pending against the 2nd party.

8. *That this agreement shall come into force from the date of execution of this deed.*

9. In this context, the decision of the Hon'ble Apex 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 paragraph 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.

- 10.** So, considering the view expressed 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.
- 11.** Accordingly, the FIR dated 18.05.2014 in connection with Naharlagun P.S. Case No. 54/2014, registered under Sections 279/338 of the IPC, and charge-sheet No. 33/2014, pending before the Court of learned Judicial Magistrate First Class, Yupia, stands set aside and quashed.
- 12.** With above observations, this Criminal Petition stands dispose of.

JUDGE

Comparing Assistant