

GAHC040005272023



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

Case No. : Crl.Petn. 67/2023

1:Kaling Mibang and Anr.

S/o Sri Taniyat Mibang

Presently residing at Dikrong Colony, Nirjuli, PO/PS Nirjuli, District Papum Pare,
Arunachal Pradesh and a Permanent Resident of Upper Colony, PO/PS Yingkiong,
District Upper Siang, Arunachal Pradesh.

2: Taniyat Mibang

S/o Late Taking Mibang

Presently residing at Dikrong Colony

Nirjuli

PO/PS Nirjuli

District Papum Pare

Arunachal Pradesh and a permanent resident of Upper Colony

PO/PS Yingkiong

District Upper Siang

Arunachal Pradesh.

Ph. No. 690978548

VERSUS

1:THE STATE OF AP

Represented by the learned Public Prosecutor.

Advocate for the Petitioner : Kamal Saxena

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MR. JUSTICE KARDAK ETE

ORDER

Date : 12-06-2023

Heard Mr. R. L. Thungon, learned counsel for the petitioners and Mr. G. Tado, learned Addl. PP for the State of Arunachal Pradesh.

2. This is an application under Section 482 of the Code of Criminal Procedure, 1973 praying for quashing of the Charge-Sheet No.10/2014 under Section 436 of the Indian Penal Code, 1860 arising out of Yingkiong P.S. Case No. 11/2014 and criminal proceedings in Pasighat Sessions Case No.59/2014 pending before the Sessions Judge, Pasighat on the basis of settlement entered between the petitioners.

3. The facts of the present case in brief is that the criminal law was set into motion on the basis of the written complaint, dated 11.02.2014, lodged before the Officer-in-Charge of Yingkiong Police Station by the petitioner No. 2 to the effect that the petitioner No. 1 i.e. his son, on the evening of 10.02.2014 had asked him to give Rs.100/- only but the petitioner No. 2 refused to give any money and went to the house of Shri Akkin Apang at Upper Market. Thereafter, when he left, the petitioner No. 1 demanded money from his mother but his mother also did not give him money and then the petitioner No. 1 beat up his mother and later attempted to burnt down the Katcha kitchen. But, when he failed, he put fire in the bedroom and burnt down the residence of petitioner No. 2, wherein, all the household items were burnt to ashes.

4. A case was registered by the Police on the strength of a written complaint being Yingkiong P.S. Case No. 11/2014 under Section 436 of the Indian Penal Code. On completion of the investigation, Charge-Sheet No. 10/2014 under Section 436 of the Indian Penal Code, dated 09.05.2014 was submitted. Stage and numbered as Pasighat Sessions Case No.59/2014. The stage of the case is for appearance.

5. Mr. R. L. Thungon, learned counsel for the petitioners submits that in the meantime, the petitioners being the father and son have entered into a settlement

deed on 03.04.2023 by amicably settling their disputes and misunderstandings. The petitioner No. 1 at the relevant point of time was inebriated condition and as such, they being the father and son have resolved to forgive and forget the matter and now they are living peacefully. Therefore, Mr. R. L. Thungon, learned counsel for the petitioners prays for quashing the proceeding being Pasighat Sessions Case No.59/2014 pending before the learned Sessions Judge, Pasighat.

6. Mr. G. Tado, learned Addl. PP for the State of Arunachal Pradesh while vehemently opposing the prayer of the petitioners, submits that the offence is of serious in nature and the punishment prescribed for the same may be extended to 10 years or up-to life imprisonment. He further submits that the trial be allowed to proceed and this petition may be dismissed.

7. I have considered the submissions advanced by the learned counsel for the parties and also perused the materials available on record.

8. Admittedly, the case has been instituted on the complain of the father against his son which was instituted way back in the year, 2014 on the alleged commission of offence under Section 436 IPC.

9. During pendency of this case, the parties have resolve to settle the matter by forgiving and forgetting the matter and they are reportedly living peacefully as father and son. To that effect, a settlement deed, have been entered into on 03.04.2023.

10. This Court is not oblivious of the principles of law in exercising the jurisdiction under Section 482 Cr.P.C., 1973 and would profitably refer to the law enunciated by the Hon'ble Supreme Court in the case of ***State of Madhya Pradesh-vs-Lakshmi Narayan.***, reported in ***(2019) 5 SCC 688*** and the relevant paragraphs is reproduced hereinbelow:-

“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. Having considered the submissions advanced by the learned counsel for the parties and the law laid down in the case of ***Laxmi Narayan (Supra)***, this Court is of the considered view that this is a fit case where the inherent power of this Court under Section 482 Cr.P.C., deserves to be exercised.

12. Accordingly, this Criminal Petition stands allowed by setting aside the Charge-Sheet No. 10/2014 under Section 436 IPC, 1860 arising out of the Yingkiong P.S. Case No. 11/2014 corresponding to Pasighat Sessions Case No. 59/2014.

13. In the result, this Criminal Petition stands disposed of.

JUDGE

Comparing Assistant