

GAHC040005502023



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

Case No. : Crl.Petn. 70/2023

1:Lama Jomoh and 2 Ors..

S/o Shri Sam Jomoh,

Residence of A Sector, Naharlagun, PO/PS Naharlagun, District Papum Pare, (AP)

Mobile No. 7085686514

2: Rani Jomoh

D/o Shri Sam Jomoh

Residence of Type I Colony

PO Seppa

PS Seppa

District East Kameng

Arunachal Pradesh.

Phone No. 7630811101

3: Meme Tajo

D/o Lokap Tajo

Presently residing at Jollang

PO Jollang

PS Itanagar

Papum Pare District

Arunachal Pradesh.

Mobile No. 943663776

VERSUS

1:THE STATE OF AP

Through Public Prosecutor.

Advocate for the Petitioner : Ninnong Ratan

Advocate for the Respondent : P P of AP

**BEFORE
HONBLE MR. JUSTICE KARDAK ETE**

ORDER

Date : 05-06-2023

Heard Mr. A. Bodo, learned counsel for the petitioners and also heard Ms. T. Jini, learned Additional PP for the State.

2. This is an application under Section 482 of CrPC, 1973 for quashing of the charge sheet No. 66 of 2007 arising out of Naharlagun PS Case No. 14 / 2007 under Section 498 A/34 of IPC, 1860 and also proceeding of the GR Case No. 14/2007 pending before the Chief Judicial Magistrate, Yupia, Arunachal Pradesh against the petitioner Nos. 1 and 2 on the basis of settlement amongst the parties.

3. The brief facts of the case is that the petitioner Nos. 1 and 3 are husband and wife. They were married in the year 2004 and were blessed with one son and their marriage was going peacefully for two years as husband and wife. However, due to non meeting of minds in some issues, there were misunderstandings between the husband and wife and they started to have scuffles. During such period, on the advice of someone, the complaint was filed before the Deputy Commissioner, East Kameng District, Seppa, for which their relationship got further strained. Since the petitioners were residing at Naharlagun, the complaint dated 19.01.2007 was referred to Naharlagun Police Station. Accordingly, the case was registered against the petitioner Nos. 1 and 2 and some of the family members being Naharlagun P.S. Case No. 14/2007 under

Section 498 A/34 IPC and they were arrested and later on released on bail.

4. After the completion of the investigation, the charge sheet was filed vide charge sheet No. 66/2007 dated 20.09.2007, before the learned Judicial Magistrate First Class, Naharlagun which was registered as GR Case No. 14/2007. Charges were framed under Section 498 A/34 IPC against the petitioner Nos. 1 and 2 which is pending before the learned Chief Judicial Magistrate, Yupia at the stage of evidence.

5. In the meantime, the petitioners have entered into a settlement by executing a deed of settlement before the Executive Magistrate, Itanagar, Capital Complex on 26.04.2023.

6. Mr. A. Bodo, learned counsel for the petitioners on referring to the deed of settlement submits that both the parties have been living peacefully since many years, after the case was registered, till date, and have decided to settle the matter to maintain peace and harmony in the family and have consented to the said settlement without there being any coercion, undue influence or inducement from any corner. Moreover, not a single witness had testified/deposed against the petitioner Nos. 1 and 2 till date. Therefore, prays for quashing of the charge sheet No. 66/2007 dated 20.09.2007, framing of charge and the proceeding of GR Case No. 14 of 2007 pending before the learned Chief Judicial Magistrate, Yupia by compounding the offences charged under Section 498 A/34 IPC.

7. Ms. T. Jini, learned Additional PP submits that since the parties have entered into a deed of settlement, this Court may decide the matter as deem fit.

8. I have considered the submissions advanced by the learned counsels for the parties.

9. Quashing of criminal proceeding under Section 482 of CrPC has been enunciated by the Hon'ble Apex Court after consideration of the earlier decisions in the case of the ***State of Madhya Pradesh Vs. Lakshmi Narayan and Ors.***, reported in (2019) 5SCC 688 and held 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:

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. "

10. On consideration of the materials available on record of the present case, this Court finds that both the complainant and the petitioner no 1 had entered into a settlement deed for the interest of family and they have been living peacefully after registration of the case, which culminated into filing of the charge sheet and framing of charge against the petitioner nos. 1 and 2 which is pending before the learned Chief Judicial Magistrate, Yupia being GR case No. 14/2007.

11. One of the points enunciated by the Hon'ble Supreme Court is that the power conferred under Section 482 of CrPC to quash criminal proceedings can be exercised having overwhelming and pre-dominant civil character particularly those arising out of matrimonial relationships or family disputes and when the parties have resolved the entire dispute amongst themselves.

12. Having regard to the facts and circumstances of the present case and considering the fact that both the parties have entered and executed a settlement deed and also in view of the decision of the Hon'ble Supreme Court, this Court is of the considered view that the present case is one amongst the cases where inherent power under Section 482 of Cr.PC can be invoked.

13. Consequently, the GR case no. 14/2007 corresponding to Naharlagun PS case No. 14 of 2007 under Section 489 A/34 IPC, 1860 pending before the learned Chief Judicial Magistrate, Yupia is hereby set aside and quashed.

14. Accordingly, the Crl.Petn./70/2023, is allowed and disposed of.

JUDGE

Comparing Assistant