

GAHC040005512023



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

Case No. : Crl.Petn. 71/2023

1:Tabu Guha and Anr.

S/o Taji Guha,

Permanent Resident of Village Guha, PO/PS Daporijo, District Upper Subansiri, and
Presently residing at Tigdo Village, PO/PS Doimukh, Papumpare District, Arunachal
Pradesh.

Ph. No. 873193551

2: Marken Kadu (informant)

Director Secondary Education

Govt. of Arunachal Pradesh

S/o Late Mimar Kadu

Village Nari Koyu

PO/PS Nari Koyu

District West Siang

Arunachal Pradesh and presently residing at Daying Erring Colony

PO/PS Itanagar

District Papumpare

Arunachal Pradesh.

Ph. No. 879481212

VERSUS

1:THE STATE OF AP

Through the Public Prosecutor.

Advocate for the Petitioner : T Bayor

Advocate for the Respondent : P P of AP

**BEFORE
HONBLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

ORDER

Date : 23-05-2023

- 1.** Heard Mr. P.K. Gour, learned counsel for the petitioners namely, [1] Shri Tabu Guha and [2] Shri Marken Kadu.
- 2.** The petitioner No. 1 is the accused and the petitioner No. 2 is the informant.
- 3.** Heard Mr. J. Tsering, learned P.P. for the respondent.
- 4.** I have considered the submissions at the bar.
- 5.** The FIR unfolds that on 23.10.2015 at around 11:40 AM the petitioner No. 1 had an altercation with the petitioner No. 2 and threatened him with dire-consequence.
- 6.** It is submitted on behalf of the petitioners that both the parties have settled their dispute amicably. The settlement agreement is marked as Annexure-D and appended to the petition. This case is pending at the stage of evidence.
- 7.** I have perused the scanned copies of the LCR. Evidence of two witnesses have been recorded so far. The petitioners have also annexed the depositions and statements of witnesses recorded u/s 161 Cr.PC marked as Annexure-B along with the charge-sheet. Both the parties have agreed to settle the dispute. As the offence is not compoundable, the petitioners have jointly approached this court and have filed this application u/s 482 Cr.PC for quashing and setting aside the FIR and criminal proceeding against the petitioner No. 1 pending in the court of learned Judicial Magistrate First Class, Yupia, district Papumpare in connection with Itanagar PS Case No. 260/2015 GR case No. 723/2015, u/s 332/341/323 IPC. As the parties have agreed to settle their dispute further proceeding will be indeed an abuse of the court. The informant is willing not to proceed with the case as they have buried their

hatchet. Although the informant is a government employee dispute appears to be predominantly private in nature. It has been observed by the Hon'ble Supreme Court in *State of Madhya Pradesh v. Laxmi Narayan* that -

“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 impart 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.”

8. Relying on the decision of the Hon’ble Supreme Court and in view of my foregoing discussions, I deem it proper to invoke the inherent power u/s 482 Cr.PC. The proceeding of Itanagar PS Case No. 260/2015 GR Case No. 723/2015, u/s 332/341/323 IPC is hereby set aside and quashed.

In terms of the above, the criminal petition is disposed of.

JUDGE

Comparing Assistant