

GAHC040005582023



IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

(ITANAGAR BENCH)

CRIMINAL PETITION NO. 72 OF 2023

1. Ashok Tayeng,
Age- 39 years,
S/o- Shri Kiran Tayeng,
C/o- CB PS, Phq, Itanagar,
District Papum Pare,
Arunachal Pradesh.

2. Suraj Ligu
Age: 32 years
S/o- Lt. Tayam Ligu
R/o-Liqu Village,
PO/PS-Daporijo,
Upper Subansiri District,
Arunachal Pradesh.

3. Sonal Sakrinsow,
Age: 26 years
S/o- Shri Soju Sakrinsow,
R/o- Sakrin Village,
P.O/P.S- Thrizino,
West Kameng District,
Arunachal Pradesh.

4. Amos Sangcho,
Age: 23 years
S/o- Shri Gombu Sangcho,
R/o-Sibu Village,
P.O/P.S- Thrizino,
West Kameng District,
Arunachal Pradesh.

5. Dola Sagro,
Age: 21 years
S/o- Shri Wanja Sagro,
R/o-Karangania Village,
P.O/P.S-Thrizino,
West Kameng District,
Arunachal Pradesh.

6. Anand Sagro,
Age: 21 years
S/o- Shri RanduSagro
R/o-Karangania Village,
P.O/P.S-Thrizino,
West Kameng District,
Arunachal Pradesh.

7. Rocky Gidusow,
Age: 27 years
S/o- Shri SidaGidusow,
R/o-Palatari Village,
P.O/P.S-Thrizino,
West Kameng District,
Arunachal Pradesh.

8. Randu Richisow
Age: 19 years,
S/o- Late Khatiram Richisow,
R/o-Yayong Village,

P.O/P.S-Thrizino,
West Kameng District,
Arunachal Pradesh.

9. Agio Desisow,
Age: 23 years,
S/o- Late Divo Desisow,
R/o-Prizin Village,
P.O/P.S-Thrizino,
West Kameng District,
Arunachal Pradesh.

10. Soni Sidasow,
Age: 21 years,
S/o- Shri Gida Sidasow,
R/o-Yayung Village,
P.O/P.S-Thrizino,
West Kameng District,
Arunachal Pradesh.

11. Miza Sidasow,
Age-21 years,
S/o- Shri Dibro Sidasow,
R/o-Yayung Village
P.O/P.S-Thrizino
West Kameng District
Arunachal Pradesh.

12. Alah Nikhinsow,
Age: 22 years,
S/o- Late Jhope Nikhinsow,
R/o-Kararamu Village,
P.O/P.S-Thrizino,
West Kameng District,
Arunachal Pradesh.

13. Kampu Lochang,

Age: 28 years,
S/o- Late Kafi Lochang,
R/o-Lochang Village,
P.O- Pipu
P.S-Chayangtajo,
East Kameng District,
Arunachal Pradesh.

14. Akja Flago,
Age: 25 years,
S/o- Late Logo Flago,
R/o-Flago Village,
P.O/P.S-Chayangtajo,
East Kameng District,
Arunachal Pradesh.

15. Raju Maying,
Age: 30 years,
S/o- Late Diksa Maying,
R/o-Maying Village,
P.O/P.S-Taliha,
Upper Subansiri District,
Arunachal Pradesh.

16. Sangmai Jaboju,
Age: 25 years,
S/o- Shri Engine Jaboju,
R/o-Challang Village,
P.O/P.S-Nafra,
West Kameng District,
Arunachal Pradesh.

17. Hari Kiokam,
Age: 34 years,
S/o- Shri Hari Tapak,
R/o-Mithun Gate near Nyokum Lapang,
P.O/P.S-Itanagar

Papum Pare District,
Arunachal Pradesh.

18. Bada Dada,
Age: 22 years,
S/o- Kopu Dada Village,
P.O- Pipu,
P.S-Chayangtajo,
East Kameng District,
Arunachal Pradesh

.....Petitioners

- VERSUS -

The State of Arunachal Pradesh,
Through the Public Prosecutor,
Arunachal Pradesh.

.....Respondent

:: BEFORE ::

HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

For the Petitioners : Mr. T. Gyatso, Advocate

For the Respondent : Mr. T. Ete, Additional Public Prosecutor

Date of Hearing : 05.09.2023

Date of Judgment : 07.09.2023

JUDGMENT & ORDER

(Mridul Kumar Kalita, J)

1. Heard Mr. T. Gyatso, learned counsel for the petitioners. Also heard Mr. T. Ete, learned Additional Public Prosecutor for the State.

2. This application under Section 482 of the Code of Criminal Procedure, 1973 has been filed jointly by eighteen numbers of petitioners praying for quashing of charge-sheet No. 6/2020 dated 18.01.2020 which was laid in Bomdila Police Station Case No. 28/2018 which was registered under Sections 120B/186/353/447 on the basis of an FIR lodged by the petitioner No. 1, namely, Shri Ashok Tayeng. The other seventeen petitioners, in this case, are the accused persons against whom the above noted charge-sheet has been laid.

3. On 14.07.2018, one Shri Ashok Tayeng (*petitioner No. 1*) lodged an FIR before the Officer-in-Charge of Bomdila Police Station, *inter alia*, alleging that on that day at about 1600 hrs., while the first informant was inside the Bomdila Police Station along with other staff, suddenly 15-20 vehicles belonging to Students United Movement of All Arunachal (SUMAA) came into the Police Station compound and raised slogans. Thereafter, the mob consisting about 30-40 persons, including the present petitioners, entered into compound of Police Station and started enquiring about the complaint

lodged by them regarding damage of one of their banner by suspected Tibetans or the West Kameng District Students' Union Members. It is also stated in the FIR that gestures and mannerism of the intruders were intimidating and they used unparliamentary language against the informant who was the Inspector of Police and also against the other Police Staff including the Women staff present at that time. It is alleged in the FIR that the intruders remained in the Police Station premises for about 10-15 minutes and, thereafter left there from shouting slogans.

4. On receipt of the said FIR, Bomdila Police Station Case No. 28/2018 was registered and investigation was initiated. Ultimately, on completion of the investigation, charge-sheet No. 06/2020 dated 18.01.2020 was laid against the petitioner Nos. 2 to 18 and the same is impugned in the instant criminal petition.

5. The GR Case No. 114/2018, in which the charge-sheet has been laid, is pending before the Court of learned Chief Judicial Magistrate, Bomdila which has taken cognizance of offence under Sections 120B/353/447 of the Indian Penal Code against the petitioner Nos. 2 to 18 and issued processes against them. However, cognizance of offence under Section 186 of the Indian Penal Code was not taken as it is provided under Section 195 of the Code of Criminal Procedure, 1973

that the Court cannot cognizance of an offence punishable under Section 186 of the Indian Penal Code except upon a complainant. The GR Case No. 114/2018 pending before the learned Chief Judicial Magistrate, Bomdila is at the stage of appearance of the accused persons. Now, all the seventeen accused persons along with the complainant i.e. the first informant and petitioner No. 1 of this case filed this instant petitioner under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the charge-sheet. It is pertinent to mention herein that earlier by order dated 02.05.2023, further proceeding of GR Case No. 114/2018 was stayed by this Court during the pendency of the instant criminal petition.

6. Mr. T. Gyatso, learned counsel for the petitioners has submitted that the petitioner No. 1 who is the informant of the FIR lodged against the accused persons, namely, petitioner Nos. 2 to 18 have realized that the instant case was a result of minor skirmishes and misunderstandings due to heat of moment and have amicably settled their differences with the help of their family members and well-wishers and accordingly entered into a deed of mutual agreement dated 26th March, 2023.

7. It is also stated by the learned counsel for the petitioners that the petitioners No. 1 is intending and willing

to withdraw the complaint and does not intend to further pursue with the criminal case, however, as Section 120B/353/186 of the Indian Penal Code are non-compoundable offence, learned Trial Court is not in a position to consider the settlement reached between the parties and pass an order under Section 320 of the Code of Criminal Procedure, 1973, hence, the instant petition for quashing the charge-sheet has been filed jointly by the above named petitioners.

8. Learned counsel for the petitioners has also submitted that as the petitioners including the first informant of this case have mutually settled their disputes and have decided to live peacefully and maintain cordial relationship, there is a bleak chance of any conviction in the proceeding which is pending before the court of learned Chief Judicial Magistrate, Bomdila, is proceeded with, and, hence it is submitted that it would be sheer wastage of judicial time to continue the said proceeding and, hence, it is prayed that the prayer for quashing of the Charge-sheet No. 6/2020 dated 18.01.2020 filed in Bomdila Police Station Case No. 28/2018, corresponding to GR Case No. 114/2018 may be quashed and set aside.

9. The learned counsel for the petitioners has also cited ruling of Hon'ble Supreme Court of India in "**Kapil Gupta –Vs-**

State of NCT of Delhi and Anr.” reported in “**2022 0 Supreme (SC) 1108**”, wherein it was observed by Hon’ble Supreme Court of India that though the Court should be slow in quashing the proceedings wherein heinous and serious offense are involved, however, the High Court is not foreclosed from examining as to whether there exists material for incorporation of such an offence or as to whether there is sufficient evidence which if proved would lead to prove the charge for the offence charged with. The Court has also to take into consideration as to whether the settlement between the parties is going to result into harmony between them which may improve their mutual relationship.

10. Learned counsel for the petitioners has also submitted that the alleged offence has involved in this case may not be regarded as either heinous or serious in nature considering the circumstances and the nature of allegations leveled against the petitioner Nos. 2 to 18 in the FIR as well as in the charge-sheet. He has further submitted that in the circumstances of this case, the settlement which has arrived into between the petitioner No. 1 and other petitioners is going to result into harmony in the locality and likely to improve their mutual relationship and will bring peace in the locality where the petitioners reside.

11. On the other hand, Mr. T. Ete, learned Additional Public Prosecutor for the State has submitted that the allegations levelled against the petitioner Nos. 2 to 18 in the instant case, under the circumstances of the case in hand, may not be regarded as heinous. He has fairly submitted that considering the fact that a mutual settlement agreement has already been arrived into between the informant of the case (petitioner No. 1) and the accused persons (petitioner Nos. 2 to 18), there is unlikelihood of the case resulting into any conviction. It is also submitted that though "***State of Madhya Pradesh –Vs- Laxmi Narayan and Ors.***" reported in "***(2019) 5 SCC 688***", the Hon'ble Supreme Court of India has observed that the powers under Section 482 of the Code of Criminal Procedure, 1973 is not to be exercised in those prosecutions which involves heinous and serious offences of mental depravity or offence like murder, rape, dacoity etc., however, such power may be exercised for quashing of criminal proceeding in which non-compoundable offences are involved.

12. Learned Additional Public Prosecutor has cited a ruling of Hon'ble Supreme Court of India in "***Shilpa Mittal –Vs- State (NCT of Delhi) and Anr.***" reported in "***(2020) 2 SCC 787***" wherein Hon'ble Supreme Court while dealing with provision of Juvenile Justice (Care and Protection of Children) Act,

2015, has observed that only those offences which prescribes minimum imprisonment of seven years or more can be regarded as heinous and those offences which prescribes sentences of imprisonment of more than seven years but not provide a minimum sentence or provide minimum sentence of less than seven years imprisonment may not be treated as heinous offence.

13. I have considered the submissions made by learned counsel for the petitioners as well as learned Additional Public Prosecutor. I have also perused the scanned copy of the case record of GR Case No. 114/2018 and other materials on record.

14. It appears that the allegations against the present petitioners is mainly regarding raising of slogans after entering into Police Station compound and enquiring about a complaint lodged by them in the Police Station as regards damage of one of the banners of the Students Union to which the present petitioner Nos. 2 to 18 belong to. There is no allegation of any attempt to damage any property or to assault any Public Servant. Though, the conduct of the petitioner Nos. 2 to 18 may not be given any indulgence to, however, considering the submissions made by learned counsel for both side and considering the fact that the petitioner Nos. 2 to 18 have realized their mistake and have

peacefully settled/resolved their differences with petitioner No. 1 and have decided to live peacefully and maintain cordial relationship, this Court is of the considered opinion that under such circumstances allowing the continuance of a criminal proceeding against the petitioner Nos. 2 to 18 would be wastage of judicial time and would not be in the interest of maintain peace and harmony amongst the member of the society to which the present petitioners belong to. As the parties have amicably settled their disputes and as the case in hand does not involve any heinous offence and further there is a bleak chance of this case resulting into conviction, compelling the petitioner Nos. 2 to 18 to undergo the rigors of a criminal prosecution would not be justified under the facts and circumstances of this present case. As such, the Charge-sheet No. 6/2020 dated 18.01.2020 filed in Bomdila Police Station Case No. 28/2018 corresponding to GR Case No. 114/2018 and consequent criminal proceedings pending in the Court of learned Chief Judicial Magistrate, Bomdila, West Kameng District, Arunachal Pradesh are hereby quashed and set aside.

15. This instant criminal petition is accordingly disposed of.

JUDGE

Comparing Assistant