

GAHC040006572023



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

Case No. : Crl.Petn./85/2023

Gede Nguri and Anr.
D/o Lt. Tage Nguri,
Permanent Resident of Ossumpuri Village, PO Gensi and PS Likabali, District Lower
Siang, Arunachal Pradesh.
Mobile No. 8729855486
2: Puto Lombi
Age: Occupation : Permanent Resident of Pira Village
PO Pipu and PS Tirbin District Leparada Arunachal Pradesh.
Mobile No. 690966469

VERSUS

THE STATE OF AP
Through the Public Prosecutor, Arunachal Pradesh.

Advocate for the Petitioner : L Lombi

Advocate for the Respondent : P P of AP

**BEFORE
HONBLE MR. JUSTICE KARDAK ETE**

ORDER

Date : 29-08-2023

Heard Ms. L. Lombi, learned counsel for the petitioners and also heard Mr. T. Ete, learned Additional Public Prosecutor for the State of Arunachal Pradesh.

2. By filing this application under section 482 of Cr.PC, 1973, the petitioners i.e., the petitioner No. 1/informant/victim and petitioner no. 2/accused have jointly prayed for quashing of the criminal proceedings arising out of Itanagar Women PS case no. 63/2019 corresponding to GR case no. 631/2019 in Sessions case no. 41/2022 under section 376/417 IPC pending before the Court of Sessions Judge, Yupia on the basis of the compromise entered into between the petitioner no. 1 and petitioner no. 2 dated 06.03.2023.

3. The genesis of the matter emanates from the FIR lodged by the petitioner no. 1 on 02.09.2019 against the petitioner no. 2 alleging that she was deceitfully induced to belief of marriage for more than one and half years by the petitioner no. 2 wherein he has deceitfully used the informant as a sex toy for more than two years. She alleged that from 14.02.2019, the petitioner no. 2 started to ignore her wherein the life of the informant is alleged to have turned into worse and miserable. The informant had stated that she personally tried to get the petitioner no. 2 back but all in vain and the petitioner no. 2 was absconding from their relationship and the informant had tried to talk to the petitioner no. 2, however, the petitioner no. 2 and his relatives in turn had abused her as prostitute which according to the informant is intolerable.

Thereafter, she alleged that in such a situation, she could not afford to live and therefore prayed for arrest of the petitioner no. 2 and take action as per the law.

4. Thereafter on the basis of the FIR lodged by the petitioner no. 1, a case was registered being Itanagar Women PS case no. 63/2019 under section 376/417 IPC and the petitioner no. 2 was arrested on 11.11.2019 and subsequently release on bail. After completion of the investigation on 28.03.2021, charge-sheet was filed and the matter was committed to the Sessions Court, Yupa which is registered as Sessions Case no. 41/2022 under sections 376/417 IPC and the charges were framed against the petitioner No. 2.

5. The contention of the the learned counsel for the petitioner is that both the petitioners met through social media platform (facebook) in the year 2017 and the petitioner No. 1 was working as sales girl at Itanagar and the petitioner no. 2 was pursuing his Diploma in Civil Engineering at Basar, Leparadra District. They became friends and after some time, they developed romantic interest towards each other and had intimate relationship in the year 2018. After one year of their relationship, the petitioner no. 1 started pressuring the petitioner no. 2 for social recognition of their relationship by performing marriage ceremony on which, the petitioner no. 2 requested the petitioner no. 1 to let him complete his study first and find a job to start a family. On such request, a doubt developed in the mind of the petitioner no. 1 that the petitioner no. 2 has no intention to marry her and out of such doubt and misunderstanding of their relationship and due to anger the petitioner no. 1 has lodged the FIR.

6. Ms. L. Lombi, learned counsel for the petitioners submits that the petitioner no. 2 has old parents and are residing in the remote village where there is no electricity and mobile connection. When the petitioner no. 2 went to

his village, the petitioner no. 1 on being not able to contact the petitioner no. 2 for two weeks has lodged the FIR out of doubt and anger.

7. She submits that after the registration of the FIR and arrest of the Petitioner no. 2, a meeting was conducted on 30.09.2019 wherein both the parties have resolved the dispute amicably on the intervention of the family members and relatives, as they are distant relatives. The petitioner no. 1 had admitted that she lodged the FIR in the fit of anger and petitioner No. 2 never intended to cheat her and their love for each other was genuine. In fact, they wanted to marry each other.

8. Ms. L. Lombi, learned counsel for the petitioners submits that the FIR was lodged as a result of misunderstanding/ differences that cropped out between the petitioners and now all the differences between the parties have been amicably settled for the betterment of their future. The love affairs between the petitioners was consensual between the two adult members which does not attract the offences under section 376 IPC as the love for petitioner no. 1 by the petitioner no. 2 was genuine. The unfavorable circumstances that the petitioner no. 2 could not marry the petitioner no. 1 as per her desire and the inability to fulfill the promise to marry her does not amount to committing of offence under section 417 of IPC.

9. She further submits that since the matter has been resolved amicably between the petitioners and now they are maintaining cordial relationship, though they could not enter into a marriage, the love affair between the petitioners were consensual relationship and the same has already been settled and the chance of conviction is also bleak and it will put hardship to both the parties and their family members and relatives if the trial is allowed to go on. Therefore, she prays that in the fact and circumstances of the case, the

proceedings of Sessions Case no. 41/2022 under section 376/417 IPC, 1860 may be quashed.

10. On the other hand Mr. T. Ete, learned Additional PP submits that the allegations against the petitioner no. 2 of the offence of rape is a serious offence and the charges have been accordingly framed against the petitioner no. 2. Considering the nature of allegation brought against the petitioner no. 2, even though there was a settlement between the parties, it is not a fit case to quash the proceedings. The learned PP while relying on the various judgments of the High Court and the Hon'ble Apex Court submits that the power under Section 482 Cr.PC is not to be exercised in those cases which involves heinous and serious offence or mental depravities or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society and accordingly submitted that this is not a fit case to exercise the power under section 482 of Cr.PC to quash the criminal proceedings.

11. I have considered the rival submissions made by the learned counsel for the parties and also perused the materials available on record.

12. On consideration of the materials, it is noted that the FIR was lodged on 02.09.2019 by the petitioner no. 1 on the ground that the petitioner no. 2 started to ignore the petitioner no. 1 and despite her full effort to talk to the petitioner No. 2 he was found to be running away from their relationship with the allegation that the petitioner No. 2 has deceitfully induced the petitioner no. 1 to belief of marriage and the relatives of the petitioner No. 2 were badly abusing her which is claimed to be intolerable. It is also not disputed that both the petitioners are adult and had consensual relationship out of their love for each other. Though the charges of offences under section 376 IPC is heinous and serious in nature, the allegations on the face of it does not attract the

offences under section 376 IPC. This Court takes note of the fact that the parties have settled the matter for their better future and are having a cordial relationship between them.

13. On the perusal of the materials, in my considered view, there is no evidence to show that the petitioner no. 2 had any intention to deceive the petitioner no. 1 after promise to marry her as there may be circumstances when the person having the best of intention is unable to marry the victim owing to various unavoidable circumstances. It transpires that the petitioner no. 2 wanted to complete his Diploma course and to try for a job before marriage when the petitioner No. 1 insisted for recognition of their relationship by performing marriage ceremony. It is also the contention on behalf of the petitioner no. 2 that he has old parents living in remote village where there is no electricity and mobile connection and he went to look after his old parents for two weeks. In the considered view of this Court, when two adults involved in consensual relationship out of their love affairs and if it could not culminate into a marriage owing to various unavoidable circumstances, such act would not attracts offence under section 376 and 417 of IPC.

14. The Hon'ble Supreme Court in the case of the ***State of Madhya Pradesh Vs. Lakshmi Narayan and Ors.***, reported in (2019) 5 SCC 688 has held that 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. "

15. In the case of ***Kapil Gupta V. State of NCT of Delhi***, reported in (2022) SCC Online SC 1030, the Hon'ble Supreme Court held that:

"the Court while exercising its power under section 482 Cr.PC, the Court should be slow in quashing the proceedings wherein heinous and serious offences are involved, but 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 proving 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..”

16. In the case of **Mandar Deepak Pawar Versus State of Maharashtra** in **Criminal Appeal No. 44 /2022**, the Hon’ble Supreme Court observed that there is a distinction between a false promise to marriage which is given on understanding by the maker that it will be broken and a breach of promise which is made in good faith but subsequently not fulfilled.

17. In the case of **Pramod Suryahan Pawar Versus State of Maharashtra** reported in **(2019) 9 SCC 608**, the Hon’ble Supreme Court has considered a case of a factual scenario where complainant was aware that there existed obstacles in marrying the accused and still engaged in sexual relations, it would not be an offence of rape under section 376 of IPC and accordingly, the FIR was quashed by the Hon’ble Supreme Court.

18. In the present case, the petitioners are admittedly adult and they were involved in consensual relationship out of their love affairs, it is just that their love relationship could not be happily culminated into marriage, same would not be an offence under section 376 of IPC. Moreover, petitioners have compromised and settled the matter which would result in harmony and cordial relationship.

19. Having considered the facts and circumstances of the case and also the law laid down by the Hon’ble Supreme Court, I am of the considered opinion that this is a fit case to invoke the inherent power under section 482 of Cr.PC whereby the criminal proceedings can be quashed on the facts and

circumstances of the case, as the facts are glaring that the petitioners have chosen to have consensual relationship without marriage for a considerable period of time and the parties fell apart for some reason without marriage and thereafter, they have entered into a settlement and are having a cordial relationship.

20. Consequently, the proceedings in Sessions case no. 41/2022 pending before the Court of Sessions Judge, Yupia is hereby quashed.

21. Accordingly, the criminal petition is allowed and disposed of.

JUDGE

Comparing Assistant