



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

Case No. : Crl.Petn. 84/2023

1: Arun Bk. Deori and 3 Ors.
S/o Sonaram Deori,
Mahadevpur III, PO Mahadevpur, District Namsai, Arunachal Pradesh.

2: Chow Witho Mongkang
S/o Chow Ongpeng Mounkang
Namsai
PO Namsai
District Namsai
Arunachal Pradesh.

3: Chow Khamoon Khen
S/o Chow Phana Khen

Namsai
PO Namsai
District Namsai
Arunachal Pradesh.

4: Chow Raja Mancheykhun
S/o Chow Anukashi Mancheykhun

2nd Mile
Namsai
PO Namsai
District Namsai
Arunachal Pradesh

VERSUS

1: THE STATE OF AP
Through Public Prosecutor.

Advocates

For the petitioners	: Mr. D. K. Deori
For the respondent	: Mr. T. Ete. (Addln. P.P)
Date of hearing	: 08.06.2023
Date of order	: 08.06.2023

**BEFORE
HONBLE MR. JUSTICE KARDAK ETE**

JUDGMENT

Heard Mr. D. K. Deori, learned counsel for the petitioners. Also heard Mr. T. Ete, learned Additional Public Prosecutor for the State.

2. This is an application, under Section 482 of the Code of Criminal Procedure, 1973, praying for quashing of FIR being Namsai P.S. Case No. 21/2023, under Sections 295/295(A) IPC, 1860, on the basis of a compromise between the petitioner no. 1 and the petitioners no. 2, 3 & 4.

3. The petitioner no. 1 is the accused and the petitioners no. 2, 3 & 4 are the complainants.

4. The case of the petitioners, in short, is that on 13.04.2023, at about 8.30 PM, the complainants had gone to Nao-Dihing river bridge under Namsai Police Station in order to ascertain as to whether some person(s) were destroying/removing the Buddhist religious flags, which were erected alongside the National Highway in view of the Poi-Sangken festival, which was commencing from 14th to 16th April, 2023. On reaching the place, the complainants have seen the petitioner no. 1, who was accompanied by some person and saw the petitioner no. 1 removing and destroying the Buddhist flags, which were erected alongside National Highway near the Nao-Dihing

river bridge. When the complainants objected of such act by the petitioner no. 1, he ran towards the car and took out the sword from the vehicle and started to intimidate the complainants. When the complainants asked the petitioner no. 1 to refrain from removing and destroying the Buddhist flags, he replied that they ought to have sought permission from him. Thereafter, the petitioner no. 1 left the place by a vehicle towards Mahadevpur. Thereafter, the complainants filed a complaint/FIR before the Officer-In-Charge, Namsai Police Station for causing an injury and insult to the Buddhist religious community. Accordingly, an FIR was registered being Namsai P.S. Case No. 21/2023, under Sections 295/295(A) IPC, 1860 on 14.04.2023.

5. The petitioner no. 1 after coming to know of such registration of a case, approached a community based organization called *Arunachal Pradesh Bhikkhu Sangha* on 15.05.2023 by seeking an apology, which was duly accepted.

6. Mr. Deori, learned counsel for the petitioners, submit that the petitioners have compromised themselves by entering into a compromise on 15.05.2023 as the CBOs of *Khamti* and *Deori* communities have decided to settled the matter amicably and mutually for greater interest of the society in general and peace and tranquility amongst the communities in particular. This compromise had been entered into with their free consent without there being any pressure or coercion or threat from any anger.

7. Mr. Deori, further submits that on merit also there was no deliberate and malicious acts intended to outrage the religious feelings of any class by insulting its religion or religious beliefs on the part of the petitioner no. 1, much less any aggravated form of insult to religion and disrupting public order, it was just a careless act on the part of the petitioner no. 1, who, at

that point of time was under the influence of alcohol. Therefore, prays for setting aside and quashing the FIR being Namsai P.S. Case No. 21/2023, under Sections 295/295A dated 14.04.2023.

8. Mr. T. Ete, learned Additional Public Prosecutor has produced the scanned copy of the Case Diary.

9. Mr. Ete, learned Additional Public Prosecutor, while referring to the statements of the complainants as well as the accused submits that in the fact of the present case, Section 295A appears to be not attracted in view of the fact that there appears to be no aggravated form of insult to religion perpetrated with deliberate and malicious intention of outraging the religious feelings of a class of citizens. The fact of the case appears to be unwittingly or carelessly done without any malicious or deliberate intention as the accused had stated to be under the influence of alcohol. He further submits that besides *prima facie* lack of ingredients for offence under Section 295A, the petitioners have compromised by entering into a settlement agreement between them for larger interest of the society and also in interest of both the communities respectively and therefore, he fairly submits that there could not be any objection to the prayer of the petitioners.

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

11. On perusal of the Case Diary, it transpires from the statements of the petitioner no. 1, accused, that the accused was under the influence of alcohol had carelessly started to remove the Buddhist flags without any deliberate and malicious act intending to outrage the religious feelings of any class by insulting its religion or religious beliefs.

12. The statement of the complainants recorded under Section 161 Cr.P.C.,

reveals no incriminating materials, rather, has only in consonance with the allegations made in the complaint.

13. This Court also take note that the petitioner no. 1 has tendered an apology to the abovementioned organization as well as to the complainants, which have been duly accepted followed by the compromise deed without there being any pressure, coercion or threat from any anger.

14. In the case of *State of Madhya Pradesh Versus Laxmi Narayan and Others, reported in (2019) 5 SCC 688*, Paragraph-15, the Hon'ble Apex Court has enunciated the principles to be followed while exercising power under Section 482 of the Cr.P.C., which is quoted 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:

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.”

15. In the case of *Mahendra Singh Dhoni Versus Yerraguntla Shyamsundar and Another*, reported in (2017) 7 SCC 760, which the learned counsel for the petitioners has placed reliance on, wherein, the Hon’ble Apex Court has held as under:-

“Section 295A does not stipulate everything to be penalized and any and every act

would tantamount to insult or attempt to insult the religion or the religious beliefs of a class of citizens. It penalizes only those acts of insults to or those varieties of attempts to insult the religion or religious belief of a class of citizens which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class of citizens. Any insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class do not come within the section. It only punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class."

16. On careful consideration of the above principles of law, enunciated by the Hon'ble Apex Court and also in the facts and circumstances of the present case as discussed above, I am of the considered opinion that prayer for quashing of the FIR being Namsai P.S. Case No. 21/2023, under Sections 295/295A, dated 14.04.2023 deserves to be allowed on the ground that the parties have compromised the matter coupled with the fact that the allegations do not satisfied the essential ingredients of the offence.

17. Accordingly, the FIR being Namsai P.S. Case No. 21/2023, under Sections 295/295A IPC, dated 14.04.2023 is hereby set aside and quashed.

18. In the result, the Criminal Petition is allowed.

Case Diary be returned back.

JUDGE

Comparing Assistant