

GAHC040006802023



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

Case No. : Crl.Petn. 90/2023

1:Aman Mangam and Anr.
S/o Shri Hopi Mangam,
Present Add. Boso Colony, Seppa, PO/PS Seppa, East Kameng District, Arunachal Pradesh,
Permanent Add. Vill Mangfi Mangam, PO Sawa, PS Chayang Tajo, District East Kameng, (AP)
Mobile No. 8257863664

2: Minu Nabam Mangam
W/o Shri Aman Mangam

Present Add. Boso Colony
Seppa
PO/PS Seppa
East Kameng District
Arunachal Pradesh.
Mobile No. 961265068

VERSUS

1:THE STATE OF AP
Represented through Public Prosecutor.

Advocate for the Petitioner : R Taku

Advocate for the Respondent : P P of AP

**BEFORE
HONBLE MR. JUSTICE KARDAK ETE**

ORDER

Date : 09-06-2023

Heard Ms. Lipi Niri, learned counsel for the petitioners and Ms. T. Jini, learned Additional PP for the State of Arunachal Pradesh.

2. This application under Section 482 of CrPC, 1973 has been jointly filed by the petitioners praying for quashing of the charge sheet No. 121/2018 arising out of Itanagar Women PS case No. 104/2018 under Section 376(1)/417 of IPC, 1860 and proceeding of Sessions case No. 26/2019 (YPA) pending before the District & Session Judge, Yupia, Arunachal Pradesh on the basis of settlement entered into between the petitioners.

3. The petitioners are husband and wife and they were living together since 2016, however, when the petitioner No. 2 suspected the petitioner No. 1 of having illicit relationship with some other woman, out of anger and misunderstanding, she filed the FIR against the petitioner No. 1 at Itanagar Women PS on 22.11.2018 under the misguidance of some other person. The FIR was registered as Itanagar Women PS Case no. 104/ 2018 under Section 376(1)/417 of IPC, 1860. On completion of investigation, charge sheet no. 121/2018 was filed against the petitioner No. 1 which is pending at the stage of appearance being Session case No. 26/2019(YPA) before the Session Judge, Yupia.

4. After few months of reconciliation made by the relatives of both sides, the petitioners have entered into a Kebang/NYELE in the year 2019 and they

have compromised and settled the matter. Moreover, they are blessed with two children and both of them are living a happy married life.

5. Ms. Lipi Niri, learned counsel for the petitioners submits that the FIR was filed by the petitioner No. 2 against the petitioner No. 1 out of anger and misunderstanding as she has suspected her husband of having an illicit relationship with some other woman. After coming to the actual facts, the parties have entered into a settlement and are living as husband and wife with two children. Since the parties have entered into a settlement between them and they are living peacefully and happily, the Session case No. 26/2019(YPA) may be quashed in the interest of justice.

6. Ms. T. Jini, learned Additional PP fairly submits that though the offence is under Section 376 of IPC, 1860, on perusal of the statements of the parties and the materials available on record, it does not support the case of the prosecution as the FIR has been filed when there was misunderstanding between the petitioners, and thereafter, they started living as husband and wife peacefully and happily. She further submits that the based on the materials available on record the possibility of chance of conviction is remote and bleak and therefore, the present case is fit to be allowed by quashing the session case being Session case No. 26/2019(YPA)

7. I have considered the submissions of the learned counsel for the parties and also gone through the materials available on record. On perusal of the statement of the petitioner No. 2 as well as other witnesses recorded under section 164 and 161 of Cr.PC, it discloses no ingredients of section 376 IPC, rather at best it is a case of infidelity against the petitioner No. 1 in as much as

the allegation made by the petitioner No. 2 is that, while having a relationship with her the petitioner No. 1 was also having a relationship with some other woman and made false promise of marriage. By now, the parties are living happily with their two children and settlement deed has been entered into without there being any coercion or threat from any corner.

8. This Court may profitably refer to the law enunciated by 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 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. "

9. In the case of ***Kapil Gupta V. State of NCT of Delhi***, (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.

10. On the careful consideration of the case at hand as noted above, both the petitioners are living peacefully and happily as husband and wife with their two children. They have entered into a settlement on their own volition to maintain peace and harmony between them and the society at large. The materials placed before this Court discloses no ingredients of offences under Section 376 and the chance of conviction is quite remote and bleak.

11. In view of the above, this Court is of the considered view that this is a fit case where the inherent jurisdiction of this Court under Section 482 Cr.PC, 1973 deserves to be exercised.

12. Accordingly, the charge sheet No. 121/2018 arising out of Itanagar Women PS case No. 104/2018 under Section 376(1)/417 of IPC, 1860 and proceeding of Sessions case No. 26/2019 (YPA) pending before the District & Session Judge, Yupia, Arunachal Pradesh is hereby set aside and quashed.

13. In the result, the criminal petition is allowed and disposed of.

JUDGE

Comparing Assistant