

GAHC040006922023



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

Crl.Petn./94(AP)/2023

1. **Mrs. Sandhya Bora**, W/o of Shri Ruzing Bellai,
Aged about- 44 years
A resident of village Mekailiang, PO/PS
Tezu, District Lohit, State
Arunachal Pradesh.

2. **Shri Bathaso Manyu**, S/o Lt. B. Manyu,
Aged about- 34 years
A resident of Tamnanagar, Tezy
PO/PS- Tezu, District- Lohit,
Arunachal Pradesh.

...PETITIONERS

-VERSUS-

1. State of Arunachal Pradesh represented
through Public Prosecutor, Government
of Arunachal Pradesh, Itanagar.

...RESPONDENT

Advocate for the petitioners : Mr. C.W.Mantaw.

Advocate for the respondent : T. Ete, (A.P.P)

::: BEFORE :::
HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of Hearing : 31.07.2023
Date of Judgment & Order : 11.08.2023

JUDGMENT & ORDER (CAV)

Heard Mr. C. W. Mantaw, learned counsel for the petitioner. Also heard Mr. T. Ete, learned Additional Public Prosecutor for the State of Arunachal Pradesh.

2. This is an application, under Section 482 of the Cr.P.C, praying for quashing and setting aside the FIR dated 10.11.2014 filed by the petitioner No. 2 before the Officer-In-Charge, Tezu, Police Station which is registered as Tezu P.S. Case No. 103/2014, under Sections 468/420/161 IPC.

3. It is stated that the present petition has been filed jointly on the basis of amicable settlement having arrived at between both the parties. The petitioner No. 2 had lodged the FIR on 10.11.2014 before the Officer-In-Charge, Tezu, police Station, against the petitioner No. 1 alleging that in the month of August 2012, the petitioner No. 1 had taken an amount of Rs. 18,000/- (Rupees eighteen thousand) only from the petitioner No. 2 with a promise to provide a job to petitioner No. 2, but she failed to keep her promise and rather after two weeks from taking the loan the petitioner No. 1 issued a forged and fabricated class 10th pass certificate in the name of the petitioner No. 2 which is shown to have been issued by the Board of Secondary Education, Assam.

4. As the petitioner No. 1 failed to provide job to the petitioner No. 2, and hence, he asked her to return back the said amount of Rs. 18,000/- (Rupees eighteen thousand) only. However, the petitioner No. 1 declined to return the said amount and for which, the petitioner No. 2 lodged the FIR against the petitioner No. 1, which is accordingly registered under Section 468/420/161 IPC. On completion of the investigation, the police submitted the charge-sheet, dated 09.03.2014, under Sections 468/420/161 IPC, against the petitioner No. 1, which is presently pending before the Court of learned CJM, Tezu, which is registered as G.R. Case No. 103/2014. At present the case is at the stage of consideration of charge.

5. But, subsequent to the registration of the FIR, the petitioner No. 2 had received an amount of Rs. 50,000/- (Rupees fifty thousand) from the petitioner No. 1 on 17.10.2015, as she failed to provide job to the petitioner No. 2 as per her promise. The amount of Rs. 32,000/- (Rupees thirty-two thousand) only is received by the petitioner No. 2 towards interest of Rs. 18,000/- (Rupees eighteen thousand) only. Accordingly, the money receipt was also acknowledged by the petitioner No. 2 and withdrawal application dated 17.10.2015 was also submitted by the petitioner No. 2 in the Court of learned JMFC, Tezu. As the Section 468 is non-compoundable offence and hence, both the petitioners have jointly filed the petition for quashing and setting aside the criminal proceeding along with the FIR and the Charge-Sheet.

6. Both the petitioners have amicably sorted out the issues and are living peacefully and maintaining cordial relationship with each other and hence, in

such a situation further proceeding of the case would be an abuse of the process of law which would cause serious harm and prejudice to the petitioners and hence, the joint petition is filed by both the petitioners for setting aside and quashing the criminal proceeding by invoking the provision under Section 482 Cr.P.C.

7. It is further stated that the police had wrongly registered the case under Section 161 IPC, as the said Section has been repealed by the Prevention of Corruption Act, 1988 w.e.f. 09.09.1998. Further, it is stated that Section 468 IPC is also not attracted in the present case as no any legal injuries has been sustained by the petitioner No. 2, being the informant in the instant case. Simply an allegation of making a forged document in absence of any legal injury to any person or to the public would not constitute an offence of forgery as defined under Section 463 of the Code. Further, it requires that the forged document has been made to support any claim or title or to cause any person to part with property or to cause any person to enter into an express or implied contract or to commit fraud or that fraud may be committed. Thus, Section 468 IPC is also not at all applicable in the instant case. Further, Section 420 IPC, under which Section the I.O has filed the Charge-Sheeted against the petitioner No. 1, is also not attracted in the present case, as from the contents of the FIR and the allegation brought against the petitioner No. 1, it is seen that the case of civil in nature which is unforceable as there was a void transaction of money by the petitioners in consideration to offer a job.

8. As the petitioner have already arrived at an amicable settlement and the

petitioner No. 2 also returned back the money to the petitioner No. 1, the chance of conviction is very bleak and remote even if the proceeding is allowed to be continued rather, it will be an abuse of process of the Court.

9. Mr. T. Ete, learned Additional Public Prosecutor has submitted that there may be compromise between the parties or the money which is alleged to have been taken by the petitioner No. 1 for providing a job also may have been returned to the petitioner No. 2, but considering the nature and gravity of the offence, it is not a fit case where the criminal proceeding as well as the charge-sheet and the FIR can be quashed by invoking Section 482 Cr.P.C. It is further submitted by the learned Additional Public Prosecutor that in pursuant to the said agreement between the petitioners, the petitioner No. 1 also procured false matriculation certificate from the Board of Secondary Education, Assam to provide a job to the petitioner No. 1 on the basis of said forged document. He may not have succeeded in his attempt to provide a job on the basis of said forged or fabricated certificate, but there was an attempt made by the petitioner No. 1 to produce the said certificate before the authority concern to provide a job to the petitioner No. 2. So, in such a situation the compromise cannot be the only ground to allow the petition filed under Section 482 Cr.P.C and accordingly, the learned Additional Public Prosecutor for the State has objected and submitted that this is not at all a fit case where the criminal proceeding, FIR as well as the Charge-Sheet can be quashed by invoking Section 482 Cr.P.C.

10. After Considering the submissions made by the learned counsel for both sides, it is seen that both the informant and the victim jointly filed the present

petition praying for quashing and setting aside the FIR dated 10.11.2014 filed by the petitioner No. 2 before the Officer-In-Charge Police Station, Tezu which has been registered as Tezu P.S. Case No. 103/2014 under Sections 486/420/161 IPC, as they have already settled their dispute and also entered into a deed of settlement agreement on 25.05.2023, executed before the Magistrate at Hayuliang.

11. It is also stated in the petition that the petitioner No. 1 has already returned 50,000/- (Rupees fifty thousand) only to the petitioner No. 2 i.e., 18,000/- (Rupees eighteen thousand) only for the principal amount and Rs. 32,000/- (Rupees thirty-two thousand) only towards the interest accruing on the said sum of 18,000/- (Rupees eighteen thousand) only. Thus, it is seen that both the parties have amicably settled the matter between them and the present petition is also filed jointly for quashing the criminal proceeding as well as the charge-sheet. But in the FIR, it has been alleged that the petitioner No. 1 not only cheated the petitioner No. 2 but in that process, she also delivered forged matriculation certificate shown to be issued by the Board of Secondary Education, Assam and as per the statement made by the petitioner No. 2, he offered 18,000/- (Rupees eighteen thousand) only to place him in appropriate job but he never asked the petitioner No. 1 to prepare any false or fabricated documents showing him as matriculate candidate. During the investigation the I.O also collected the said forged certificate which is shown to have been issued by the Board of Secondary Education Assam. Thus, it is seen that the petitioner No. 1 procured the said certificate to place the petitioner No. 2 in any job on the basis of forged and fabricated document.

12. For ready reference, Section 468 IPC reads as under- "Whoever commits forgery, intending that the (document or electronic record forged) shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. And as per the Section 463 IPC the forgery is - whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or to cause any person to part with property, or to enter into any express or implied contract, or with commit fraud or that fraud may be committed, commits forgery".

13. Herein the instant case, it is the claim of the petitioners that the document was never placed before any authority to cause any damage or to cheat anyone in this regard and there is only an allegation that the petitioner No. 1 prepared the false and fabricated document showing the petitioner No. 2 as a matric pass candidate and thus, no cheating was committed by the petitioner No. 1 rather both the petitioners has compromised the matter and in pursuant to the said compromise they also entered into a deed of settlement and the money is also returned by the petitioner No. 1 to the petitioner No. 2. But from the ingredients of the Sections 463 and 468 IPC, it is seen that the accused/petitioner No. 1 prepared the forged document that too a matriculation certificate shown to be issued by the Department or authority which itself is sufficient to prima facie establish a case against the petitioner No. 1 under Section 468 IPC. The said certificate may not have been produced before any authority, but, the document was prepared with an intend to cause damage or injury to any person and to cheat or cause damage to the concerned Department by the said false

matriculation certificate.

14. The quashing of the criminal proceeding is called for only in a case where the complaint does not disclose any offence, or any frivolous, vexations, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that the meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If, it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere (**Sonu Gupta vs. Deepak Gupta and Ors. 2015 (3) 424**)

15. In the case of ***Laxmi Narayan (supra)***, the Hon'ble Supreme Court in para-15 has observed 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 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.”

16. Herein in the instant case, it is also seen that there is a prima facie case established against the present petitioner No. 1 and considering the nature of allegation, I find that the compromise cannot be the only ground to quash the entire criminal proceeding as well as the FIR and the Charge-Sheet. Rather, I direct the investigation Officer to book the other culprits also who may be involved in preparing the false matriculate certificate in connection with this Case.

17. In view of above and also considering the entire aspects of this case, I am of the view that this is not a fit where the inherent power under Section 482 Cr.P.C can be invoked to quash the criminal proceeding as well as the FIR and the Charge-Sheet. Resultantly, I find no merit in this petition and accordingly, the same stands dismissed.

18. In terms of above, this criminal petition stands disposed of.

JUDGE

Comparing Assistant