

GAHC040007322023



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

Case No. : Crl.Petn. 99/2023

1:Lizen Gyadi and Anr.
S/o Gagung Gyadi,
Permanent R/o Village Likwa Gyadi, PO Pipu, PS Seppa, District East Kameng, AP.
Permanent Address Lower Chimpu Village, PO/PS Itanagar, District Papumpare,
Arunachal Pradesh.

2: Mebom Jilen
S/o Shri Keme Jilen

Permanent Resident of Villlage Yegri
PO/PS Tirbin
District Lepa Rada
AP.
Present Address C/o Meken Jilen
Belo Complex
Pachin Colony road
Naharlagun
AP

VERSUS

1:THE STATE OF AP
Representing through the Public Prosecutor.

Advocate for the Petitioner : Teto Taba

Advocate for the Respondent : P P of AP

**BEFORE
HONBLE MR. JUSTICE KARDAK ETE**

ORDER

Date : 14-06-2023

Heard Mr. T. Taba, 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 Cr.PC, 1973 has been jointly filed by the petitioners praying for quashing of criminal proceeding of GR case no. 619/2016 under sections 307/326/201 of IPC, 1860 corresponding to Itanagar PS case no. 246/2016 pending before the Chief Judicial Magistrate, Yupia on the ground of settlement between the petitioners.

3. The case of the petitioners in nut-shell is that the written FIR was filed by the petitioner No. 2 before the Itanagar PS on 04.09.2016 stating that on 03.09.2016 at around 10 pm, the petitioner No. 1 has attempted to murder him with a sharp weapon(machete) at his residence at Chimpu without any valid reason. Pursuant to such FIR, a case was registered being Itanagar PS case no. 246/2016 under sections 307/326/201 IPC, 1860. On completion of the investigation, the police had submitted the charge sheet being charge sheet no. 74/2017 on 22.03.2017 against the petitioner No. 1. The stage of criminal proceeding is at evidence stage, after the charge has been framed against the petitioner no. 1, no prosecution witness has been examined till date.

4. In the meantime, on 23.05.2023, the settlement deed has been executed between the petitioner no. 1 and petitioner No. 2 by mutually settling the misunderstanding with the intervention of friends, relatives and well-

wishers. The parties have decided and settled the matter as the incident had happened out of misunderstanding of facts and to maintain cordial relationship between each other and they had buried all the differences.

5. Mr. T. Taba, learned counsel for the petitioners submits that since the parties have mutually and amicably settled the matter to maintain cordial relation and thereby buried down the misunderstanding, in view of the offences charged under section 326 which is not compoundable in nature, the parties have approached this Court for quashing the criminal proceeding pending before the learned Chief Judicial Magistrate, Yupia. He further submits that since the parties have settled the matter, the possibility of conviction is remote and bleak and the continuance of the criminal proceeding in the present case would be futile.

6. Placing reliance on the decision of the Hon'ble Supreme Court in the case of ***Narinder Singh And Ors Vs. State of Punjab and Anr*** reported in *2014(6) SCC 466* learned counsel for the petitioners submitted that the Hon'ble Supreme Court has held that when the parties have reached the settlement and when the possibility of conviction is remote and bleak and continuance of criminal case would be futile, then the High Court should exercise its inherent power under Section 482 of Cr.PC, 1973 and quash the criminal proceeding in order to secure the ends of justice and to prevent the abuse of the process of the Court. Therefore, he submits that the criminal proceeding being GR Case no. 619/2016 pending before the learned Chief Judicial Magistrate, Yupia may be quashed.

7. Ms. T. Jini, learned Additional PP fairly submits that in the facts and

circumstances of the present case, the continuance of the proceeding would be futile and to prevent such futile proceeding, this Court may pass an appropriate order in the interest of justice.

8. I have considered the submissions advanced by the learned counsel for the parties and also scrutinized the materials available on record.

9. The principle of law regarding the quashing of criminal proceedings by exercising power under section 482 of Cr.PC, 1973 has been 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:

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. "

10. 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.

11. On the scrutiny of the materials available on record and having considered the submission of the learned counsel for the parties, I find that the petitioner No. 1 was charge-sheeted under sections 307/326/201 of IPC, 1860 and the matter was committed to the Sessions Judge. The Sessions Court

framed the charge against the accused/petitioner No. 1 under Section 326 of IPC, 1860 and after framing of the charge it was transferred to the Chief Judicial Magistrate, Yupia.

12. The petitioners have entered into a settlement by mutual agreement on 23.05.2023 as the incident happened out of misunderstanding of facts and they have decided to maintain cordial relationship with each other and had buried all the differences. The settlement is without any coercion or threat from any angle rather it appears to be on their own volition. In the facts and circumstances of the present case, this Court is of the view that the chances of conviction is remote and bleak and continuance of the criminal proceeding will be futile and tantamount to abuse of the process of the Court.

13. In view of the discussion made herein above, and the law laid down by the Hon'ble Apex Court, this Court is of the opinion that it is a fit case for exercising the power under section 482 Cr.PC., 1973 for quashing the aforesaid criminal proceeding pending before the learned Chief Judicial Magistrate, Yupia.

14. Accordingly, the criminal proceeding of GR case no. 619/2016 under sections 326 of IPC, 1860 corresponding to Itanagar PS case no. 246/2016 pending before the Chief Judicial Magistrate, Yupia is hereby set aside and quashed.

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

JUDGE

Comparing Assistant