

GAHC040007392023



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

Case No. : Crl.Petn. 100/2023

1:Gora Lotak and 2 Ors.
S/o Late Gora Tayam,
Resident of 6 KM, (near GREF Camp) PO/PS Itanagar, District Papum Pare,
Arunachal Pradesh.. Phone No. 8787558814.

2: Gora Nayum
Wife of Gora Lotak

Resident of 6 KM
(near GREF Camp) PO/PS Itanagar
District Papum Pare
Arunachal Pradesh. Phone No. 8787614530

3: Markio Yalung Gora
Wife of Gora Lotak

Resident of Hill Top
PO/PS Itanagar
District
Papum Pare
Arunachal Pradesh. Phone No. 986299432

VERSUS

1:THE STATE OF AP
Represented by the Public Prosecutor, Gauhati High Court, Itanagar Permanent
Bench, Naharlagun, Arunachal Pradesh.

Advocate for the Petitioner : Biki Tapa

Advocate for the Respondent : P P of AP

**BEFORE
HONBLE MR. JUSTICE KARDAK ETE**

ORDER

Date : 21.06.2023

1. Heard Mr. B. Tapa, learned counsel for the petitioners and Ms. L. Hage, learned Additional Public Prosecutor for the State of Arunachal Pradesh.

2. This is an application under Section 482 of Cr.P.C, 1973 has been jointly filed by the petitioners being husband and wives, praying for quashing of the charge-sheet No. 67/2022 dated 28.07.2022 in G. R. Case No. 567/2022 arising out of Itanagar Women P.S. Case No. 81/2022 under Sections 498(A)/494/326 IPC pending before the Court of Chief Judicial Magistrate, Yupia, on the basis of the settlement.

3. The brief facts of the case is that an FIR was lodged on 09.07.2022 by the petitioner No. 2 alleging that her husband i.e., Petitioner No. 1 has committed offence under domestic violence Act against her by using his weapon (knife) and has attacked her. Accordingly, FIR was registered being Itanagar Women P.S. Case No. 81/2022 under Sections 498(A)/494/326 IPC. After completion of the investigation, the charge-sheet was filed on 28.07.2022 under Section 498(A)/494/326 IPC against the petitioner No. 1.

4. Mr. B. Tapa, learned counsel for the petitioner submits that the case is purely of a matrimonial disputes relating to the misunderstanding between the first wife and second wife of the petitioner No. 1. The petitioner No. 2 who is

the first wife came to the house of the petitioner No. 3 and began to destroy the household items to which the petitioner No.1 was trying to prevent. Unintentionally, in the process some injuries were inflicted on her. He further submits that the second wife has also filed FIR against the petitioner No. 2 which has been settled amicably by the Lok Adalat as the matter was compoundable in nature. In the meantime, the petitioners have entered into a settlement amongst themselves and are now living together peacefully as husband and wives maintaining matrimonial relationship. Therefore, the charge-sheet dated 28.07.2022 and the consequential proceedings pending before the Court of Chief Judicial Magistrate, Yupia may be set aside and quashed as the parties have amicably settled their disputes and the chance of conviction is remote and bleak.

5. Mr. G. Tado, learned Additional Public Prosecutor for the State vehemently opposed the prayer of the learned counsel for the petitioner on the ground that as per the MLC report there was a deep cut injury on the right shoulder which attracts the offences under Section 326 and may lead to the framing of charges under Section 307 which is serious in nature. He further submits that the possibility of conviction is not remote. Therefore, the present case is a fit case in which this court may refuse to exercise the inherent power under Section 482 Cr.P.C, 1973 and prays for dismissal of the present petition.

6. The learned Additional Public Prosecutor has relied on the judgment of the ***Hon'ble Apex Court in the case of Narinder Singh & Ors Vs. State of Punjab & Anr.,*** reported in 2014(6) SCC 466. He has 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 continuation 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. However, in the present case, there are materials clearly establishes the commission of offences and chances of conviction is not bleak, therefore, submits that the criminal proceeding being GR Case no. 567/2022 pending before the learned Chief Judicial Magistrate, Yupia be allowed to proceed.

7. I have considered the submissions advanced by the learned counsel for the parties and also I have perused the materials available on records.

8. The Hon'ble Supreme Court in the case of the ***State of Madhya Pradesh Vs. Lakshmi Narayan and Ors (supra)*** has enunciated the law after consideration of the earlier cases of the Supreme Court including the case of the ***Narinder Singh & Ors Vs. State of Punjab & Anr (Supra)*** 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 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. Having carefully considered the submissions of the learned counsel for the parties and the materials available on record, this Court finds that the petitioner Nos. 2 & 3 are the wives and they appears to have had altercation when the petitioner No. 2 came to the house of the petitioner No. 3. And according to the medical report there is deep cut injuries and there are materials which may attract the offences under Sections 326/494 IPC. However, considering the settlement entered with amongst the parties on 12.02.2023 which shows that they have decided to maintain peace and harmony and live together as husband and wives. In the interest of justice and considering the fact that they are husband and wives, this Court is of the considered view that the charge-sheet dated 28.07.2022 arising out of Itanagar Women P.S. Case No. 81/2022 and the consequential proceedings in G. R. Case No. 567/2022 pending before the Court of Chief Judicial Magistrate, Yupia, deserved to be quashed.

10. Accordingly, the charge-sheet dated 28.07.2022 under Sections 498(A)/494/326 IPC pending before the Court of Chief Judicial Magistrate, Yupia, is hereby set aside and quashed.

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

JUDGE

Comparing Assistant