

GAHC040008412022



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

Case No. : Crl.Petn. 78/2022

1:Khoda Taring
Son of Late Khoda Tago,
Resident of Village Tadarko, PO Raka, PS Ziro, Lower Subansiri District, Lower
Subansir, PIN 791120

VERSUS

1:THE STATE OF AP and Anr.
Through P P (AP)

2:Buru Mali
Son of Late Buru Amo

Resident of Village Mudang Tage
PS Ziro
District Lower Subansiri
PIN 79112

Advocate for the Petitioner : Gimi Tarak

Advocate for the Respondent : P P of AP

**BEFORE
HONBLE MR. JUSTICE PARTHIVJYOTI SAIKIA**

ORDER

Date : 18.01.2023

Heard Mr. T. Garam, learned counsel appearing for the petitioner. Also heard Mr. J. Tsering, learned Public Prosecutor for the state of Arunachal Pradesh and Mr. S. Tasik, learned counsel appearing for the private respondent.

2. This is an application under Section 482 of the Code of Criminal Procedure, 1973 praying for quashing the impugned judgment and order dated 01.06.2022 passed by the learned District & Sessions Judge, Lower Subansiri District, Ziro, Arunachal Pradesh, in Sessions Case(Z) No. 05/2020, whereby the petitioner was convicted under Section 325 of Indian Penal Code.

3. The petitioner was initially charge-sheeted under Sections 307/326 of the Indian Penal Code. On conclusion of trial, the trial court did not find any materials under Sections 307/326 of the Indian Penal Code against the petitioner. Thereafter, he was convicted under Section 325 of the Indian Penal Code.

4. In order to buttress his point, Mr. Garam, the learned counsel for the petitioner, has relied upon a decision of the Hon'ble Supreme Court that was delivered in **Ram Gopal & Anr. Vs State of Madhya Pradesh**, reported in **2021 (4) Crimes 17**, wherein, in Paragraph No. 13 of the said judgment, it has been held as under:

"It appears to us that criminal proceedings involving nonheinous offences or where the offences are predominantly of a private nature, can be annulled irrespective of the fact that trial has already been concluded or appeal stands dismissed against conviction. Handing out punishment is not the sole form of delivering justice. Societal method of applying laws evenly is always subject to lawful exceptions. It goes without saying, that the cases where compromise is struck post conviction, the High Court ought to exercise such discretion with Page | 10 rectitude, keeping in view the circumstances surrounding the incident, the fashion in which the compromise has been arrived at, and with due regard to the nature and seriousness of the offence, besides the conduct of the accused, before and after the incidence. The touchstone for exercising the extraordinary power under [Section 482](#) Cr.P.C. would be to secure the ends of justice. There can be no hard and fast line constricting the power of the High Court to do substantial justice. A restrictive construction of inherent powers under [Section 482](#) Cr.P.C. may lead to rigid or specious justice, which in the given facts and circumstances of a case, may rather lead to grave injustice. On the other hand, in cases where heinous offences have been proved against perpetrators, no such benefit ought to be extended, as cautiously observed by this Court in [Narinder Singh & Ors. vs. State of Punjab & Ors.](#)³ and Laxmi Narayan (Supra)."

5. On the other hand, Mr. Tsering, learned Public Prosecutor, also relied upon a judgment of the Hon'ble Supreme Court that was delivered in **Ramawatar Vs. State of Madhya Pradesh**, reported in **2021 0 Supreme (SC) 625**, further emphasized on Paragraph No. 13 of the said judgement, which is quoted

as under:

"We, however, put a further caveat that the powers under [Article 142](#) or under [Section 482](#) Cr.P.C., are exercisable in postconviction matters only where an appeal is pending before one or the other Judicial forum. This is on the premise that an order of conviction does not attain finality till the accused has exhausted his/her legal remedies and the finality is subjudice before an appellate court. The pendency of legal proceedings, be that may before the final Court, is sinequanon to involve the superior court's plenary powers to do complete justice. Conversely, where a settlement has ensued post the attainment of all legal remedies, the annulment of proceedings on the basis of a compromise would be impermissible. Such an embargo is necessitated to prevent the accused from gaining an indefinite leverage, for such a settlement/compromise will always be loaded with lurking suspicion about its bona fide. We have already clarified that the purpose of these extraordinary powers is not to incentivise any hollowhearted agreements between the accused and the victim but to do complete justice by effecting genuine settlement(s)."

6. The learned counsel, Mr. Tasik, appearing for the private respondent (victim), has submitted that he has no objection if the prayer of the petitioner is allowed.

7. I have given my anxious considerations to the submissions of the learned counsels of the both sides in the light of the materials available before me.

8. The power under Section 482 of the Code of Criminal Procedure is an extra-ordinary power of the high court. This power is exercised in order to prevent an abuse of the process of the Court.

9. The petitioner was convicted under Section 325 of the Indian Penal Code. This offence is compoundable under Section 320 of the Criminal Procedure Code.

10. Here both sides have compromised the matter and the victim also wants that the judgment against the petitioner should be quashed. Moreover, the instant offence under Section 325 of the Indian Penal Code against the present petitioner does not affect the entire society. It is a private dispute between 2(two) persons and has nothing to do with others.

11. Therefore, this court has decided that the impugned judgement deserves to be quashed. Accordingly, the impugned judgment and order dated 01.06.2022 passed by the learned District & Sessions Judge, Lower Subansiri District, Ziro, Arunachal Pradesh, in Sessions Case(Z) No. 05/2020, convicting the petitioner under Section 325 of the Indian Penal Code, is set aside.

12. The criminal petition stands disposed of in terms above.

JUDGE

Comparing Assistant