

GAHC040009672023



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

Case No. : Crl.Petn./128/2023

- 1: Boto Nilling @ Jeke S/o Rabu Nilling @ Jeke, R/o Vill - Jeke Camp, Liruk Colony Daporijo, Upper Subansiri District, A.P
- 2: Tanga @ Renga Nilling S/o Tare Nilling @ Jeke R/o Vill - Nilling P.O and P.S Daporijo Upper Subansiri District A.P Contact. 8257878475
- 3: Lode Nilling S/o Porlo Nilling R/o Vill - Jeke Camp DST Colony Daporijo P.O and P.S Daporijo Upper Subansiri District A.P Contact. 8131802225
- 4: Gioging Nilling @ Tagin Jeke S/o Shri Tagio Nilling R/O Village - Jeke Camp Tigre Colony Daporijo PO/PS Daporijo Upper Subansiri. A.P. Cont. 9436420196
- 5: Lopa Nilling S/O Dalo Nilling R/O Village - Nilling Camp SBI Colony Daporijo PO/PS Daporijo Upper Subansiri District A.P Cont. 9436420196
- 6: Giodap Nilling S/O Regio Nilling @ Jeke R/O Village - Jeke PO/PS Daporijo Upper Subansiri District A.P Cont. 8798238659
- 7: Giokar @ Takar Nilling @ Jeke S/O Regio Nilling @ Jeke Village

PO/PS Daporijo Upper Subansiri District A.P Cont. 9862674152

8: Nyapung Jeke Permanent R/o Jeke village Upper Subansiri District A.P Contact. 8119091516

9: Keji Jeke R/o of Jeke Village Dist. Upper Subansiri. A.P. Cont. 9774178112

10: Rialin Jeke R/o Jeke Village Dist. Upper Subansiri A.P. Cont. 9436827740

11: Take Jeke R/o Jeke Village Dist. Upper Subansiri A.P. Cont. 9774178112

12: Tala Jeke Marbom S/o Lt. Taching Jeke Marbom R/o Jeke village Upper Subansiri Dist. A.P Cont. 8119091516

13: Smti Achal Jeke Nyapung Jeke Village Jeke Upper Subansiri dist. AP. Cont. 9774178112.

14: Smti Yani Jeke W/o Yani Jeke Village Upper Subansiri dist. AP Cont. 9436827740

15: Kojum Jeke Village Jeke Dist. Upper Subansiri. A.P

16: Gero Jeke S/o Porgi Jeke village Jeke Dist. Upper Subansiri AP. Cont. 943682774

VERSUS

THE STATE OF AP

Through the Public Prosecutor

Advocate for the Petitioner : L Kurdu

Advocate for the Respondent : P P of AP

**BEFORE
HONBLE MR. JUSTICE KARDAK ETE**

ORDER

Date : 29-08-2023

Hear Mr. L. Kurdu, learned counsel for the petitioners and also heard Mr. J. Tsering, learned Public Prosecutor for the State of Arunachal Pradesh.

2. By filing this application under Section 482 of the Cr.P.C 1973, the accused, informants and victims have jointly approached this Court and prayed for quashing of the Daporijo P.S. Case No. 19/2019 and Charge-sheet No. 46/2020 dated 31.08.2020 under Sections 452/324/325/354/120B IPC, read with Section 27 of Arms Act, 1959 and consequential proceeding in G.R Case No. 32/2019 pending before the Chief Judicial Magistrate, Daporijo on the ground of settlement of matter amongst the parties.

3. The petitioners No.1 to 7 are the accused persons and the petitioners No.8 to 16 are the informants and the victims who,claims to be of same clan members.

4. The genesis of the matter emanates from the fact that on 12.04.2019 an FIR was lodged by the informants against the

petitioners No.1 to 7 alleging that on 11.04.2019 during the Assembly and Parliamentary Election while they were at village Jeke, around 50 persons led by accused persons surrounded the house of the informants at around 03.00 PM and tried to enter the house and attempted to kill them and again around 05.00 PM, the same group i.e. the accused persons surrounded the house of the informants armed with *Daos* and sticks.

5. On the receipt of FIR, case was registered being Daporijo P.S. Case No.19/2019. On completion of the investigation charge-sheet was laid down on 31.08.2020 under Sections 452/324/325/354/120B IPC, read with Section 27 of Arms Act, 1959 which was numbered as G.R Case No. 32/2019. Charges were framed under Sections 341/324/354/34 IPC and 120(B) IPC against the petitioners No.1 to7. In the course of the trial, the evidence of 3 prosecution witnesses have been recorded as on date.

6. Mr. L. Kurdu learned counsel for the petitioners submits that the differences amongst the parties who are of same clan members having been cropped up due to certain differences and misunderstanding during the last Assembly and Parliamentary Election with regard to their choice of candidates, there was minor altercation amongst the family members during the election. However, after realising their mistakes, parties have amicably settled

their differences which culminated into a family settlement vide dated 07.07.2023 by executing a settlement deed before the Executive Magistrate, Naharlagun.

7. The learned counsel for the petitioners submits that no charges have been framed under Section 27 of the Arms Act against the accused person i.e petitioners' No. 1 to 7.

8. The learned counsel for the petitioner further submits that in view of the settlement arrived at amongst the petitioners, the chances of conviction is bleak and proceedings in present case will be futile. Therefore, the criminal proceeding in G. R. Case No.32/2019 may be quashed.

9. Mr. J. Tsering, the learned Public Prosecutor for the State fairly submits that in view of the settlement amongst the parties and offences charged not being heinous in nature, the accused as well as the informants and the victims are said to be of same clan members, who have approached this Court jointly for quashing of the proceedings referred to above for which he would not have any objection if this Court quash the proceedings in the present case. He further submits that in view of the observation and law laid down by the Hon'ble Supreme Court, this may be one amongst the matters which this Court may quash the proceedings.

10. I have considered the rival submissions made by the learned counsel for the parties and materials available on record of the G.R. Case No. 32/2019.

11. It is noted that case was registered on the basis of FIR lodged by the petitioners No.8 to 16, who are the informant and the victims. And accordingly, FIR was registered and charge-sheet was filed by the Investigating Officer under Sections 452/324/325/354/120B IPC, read with Section 27 of Arms Act, 1959. No charge has been framed by the Trial Court under Arms Act by omitting Section 27 of Arms Act, 1959, though it was mentioned in the chargesheet.

12. It transpires that during the pendency of the trial, the family settlement has been entered into amongst them, i.e by petitioners No.1 to 7, who are the accused persons, informants i.e petitioners No.8 to 10 and victims i.e petitioners No.11 to 16. It provides that they have amicably settled their disputes in present of their family members as they are clan brothers and sister-in-law of the parties and it is purely out of the election related differences during the time of the voting in the last Assembly and parliamentary election.

13. In the case of the ***State of Madhya Pradesh versus Laxmi Narayan and others*** reported in ***(2019) 5 SCC 688***, the Hon'ble

Supreme Court in Para-15 has held which is reproduced herein:-

“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 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 307IPC 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 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. "

14. In the case of ***Kapil Gupta versus State of NCT of Delhi and another*** reported in ***2022 SCC online SC 1030*** the Hon'ble

Supreme Court in para-13 has held which is reproduced as under;

“13. It can thus be seen that this Court has clearly held that though the Court should be slow in quashing the proceedings wherein heinous and serious offences are involved, the High Court 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.”

15. Reverting to present case, on examination of the materials on record, although Section 27 of Arms Act was mentioned in the charge sheet but same has been dropped and no charges were framed under the said Section against the accused(s). Merely because there is a mention of Section 27 of the Arms Act in the charge sheet, it would not fall under the category of heinous or serious offences, as the same has been dropped by the learned trial Court while framing the charges. It appears to be out and out election related differences amongst the petitioners which is of common feature in such situation. The petitioners have entered into settlement amongst themselves which would result in harmony amongst them which would improve their future relationship.

16. Having regard to the facts and circumstances of the present case and considering the fact that petitioners are clan members and closely related, the matter being of election related differences of choice of their candidates and they have entered into settlement by way of compromise amongst themselves and also in view of the observation and law laid down by the Hon'ble Supreme Court, I am of the considered view that this is one of the matters, where inherent power of this Court under Section 482 Cr.P.C 1973 can be invoked.

17. Consequently, the proceedings in the G.R Case No.32/2019 pending before the learned Chief Judicial Magistrate, Daporijo is hereby quashed.

18. The criminal petition stands disposed of, accordingly.

JUDGE

Comparing Assistant