

GAHC040009822023



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

Case No. : Crl.Petn./131/2023

1: Emmi @ Mefa Lamgu and Anr.
D/o Mr. Longya Lamgu,
Permanent Resident of Village Richi Lamgu, PO/PS Seppa, District East Kameng,
Arunachal Pradesh.
Presently residing at Pappu Hills, Naharlagun, Dist. AP

2: Doba Lamnio
S/o Lt. Bagro Lamnio,
Parmanent Resident of Lamnio Village, P.O/P.S: Seppa District, East Kameng,
Presently residing at Senki View, Itanagar, P.O/P.S: Itanagar, Papum Pare District.
Arunachal Pradesh.

VERSUS

THE STATE OF AP
Through the Public Prosecutor, Arunachal Pradesh.

Advocate for the Petitioner : Vijay Jamoh

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MR. JUSTICE KARDAK ETE

ORDER

Date : 30-08-2023

Heard Mr. V. Jamoh, the learned counsel for the petitioners and also heard Mr. G. Tado, the learned Additional Public Prosecutor for the State respondent.

2. By filing this present application under Section 482 of the Cr.P.C, 1973, the petitioners have jointly prayed for quashing of the criminal proceeding arising out of Itanagar Women P.S. Case No. 45/2019 in Session Case No. 49/2022 under Sections 366/354/342/506 IPC pending before the Sessions Judge, Yupia on basis of the settlement entered between petitioner No.1 and petitioner No.2.

3. The facts in the present matter started with filing of an FIR by the petitioner No.1 against the petitioner No.2 on 15.06.2019 before the Officer-in-Charge of Naharlagun Police Station alleging *inter alia* that the petitioner No.2 in the pretext of dropping her back to her rented house after having dinner at the house of petitioner No.2, as she happens to be the friend of younger sister of petitioner No.2, has molested her after taking her to different locations instead of rented house of the petitioner No.1. The petitioner No.1 further alleged that she was forcefully taken away and attempt has been made to force her to agree to the proposal of marriage by petitioner No.2. Despite repeated requests to drop her in her rented house, he

started to molest the petitioner No.1 inside the car after locking the car door from his side by taking her to undisclosed place with a threat of dire consequences, if the petitioner No.1 does not listen to the words of the petitioner No.2.

4. Naharlagun Police after receipt of the FIR, forwarded the FIR to the Women Police Station Itanagar, and accordingly, Itanagar Women P.S Case No. 45/2019 under Sections 354(A)(1) (ii)/362/342/506 IPC was registered. After completion of the investigation, charge sheet was filed on 30.01.2020. Thereafter, the learned Court below has framed the charges against the petitioner No.2 on 24.01.2023.

5. Mr. V. Jamoh, the learned counsel for the petitioner submits that the petitioner No.1 is a close friend of the younger sister of petitioner No.2. There appears to be misunderstanding between the petitioners after the parties have taken dinner at the house of the petitioner No.2. They are from the same area with a good relationship and are family friends. The petitioner No.1 and petitioner No.2 have voluntarily entered into the deed of settlement supported by the close relatives and family members of the petitioners. The deed of amicable settlement was entered on 12.06.2023 without any duress. The petitioners have also decided to move on to their respective lives for their better future and are

having good relationship as they are from the same area, where families and friends are having a cordial relationships. Therefore, he prays for quashing of the criminal proceedings in Session Case No. 49/2022 pending before the learned Sessions Judge, Yupia.

6. The learned counsel for the petitioners while relying on various decisions of the Hon'ble Supreme Court submits that since the offences charged against the petitioner No.2 is not serious and heinous in nature coupled with the subsequent compromise and settlement between the petitioner No.1 and petitioner No.2, the proceedings may be quashed as the same would be futile and wastage of precious judicial time of Court.

7. Mr. G. Tado, the learned Additional Public Prosecutor while strongly refuting the submission of the learned counsel for the petitioner submits that the offences charges against the petitioner No.2 is heinous and serious in nature, for which, the proceedings cannot be easily quashed by exercising the inherent power under Section 482 of the Cr.P.C, 1973. While referring to the contents of the FIR as well as statement recorded under Sections 161/164 Cr.P.C, the learned Additional Public Prosecutor submits that *prima facie* it establishes the guilt of the petitioner No.2. Therefore, this Court may allow the trial to proceed instead of quashing the proceedings.

8. I have considered the submissions of the learned counsel for the parties and carefully scrutinised the materials available on record.

9. It is seen from the contents of the FIR that the petitioner No.2 had taken the petitioner No.1 to drop her back to her rented house after having dinner at the house of petitioner No.2. The petitioner No.2 had taken the petitioner No.1 to undisclosed place with marriage proposal and attempt has been made to physically and sexually assault the victim i.e. petitioner No.1. Statement recorded under Section 161 Cr.P.C of the petitioner No.1 has consistency with the allegation reflected in the FIR. It is also noticed that while framing the charges under Section 366/354/342/506 IPC, the Trial Court has dropped the charges under Section 354 (A). It is not disputed that petitioner No. 1 is the close friend of younger sister of the petitioner No. 2.

10. The petitioner No. 1 and the petitioner No.2 have settled their matter so as to move on in their lives and to have cordial relationship among their family members as they are from the same society and same place. Compromise and settlement appears to have been made voluntarily by the parties.

11. 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 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;

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 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. "

12. 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."

13. This Court is not oblivious of the judgments and law enunciated by Hon'ble Supreme Court that offences which falls under the category of heinous and serious offences, the Court should not quash the proceedings by invoking the inherent power under Section 482 of the Cr.P.C, 1973. In the present case, considering the materials, this Court is of the view that the charges against the petitioner No.2 may falls under the category of heinous and serious offences. However, the petitioners for their better future and relationships have entered into a settlement voluntarily without any coercion from any angle. The continuation of proceedings in such cases, in the considered view of this Court would be exercise in

futility as the chances of conviction are bleak and remote.

14. In view of the above and the law enunciated by the Hon'ble Supreme Court, this Court is of the considered view that the present case being Session Case No.49/2020 arising out of Itanagar Women P.S Case No.45/2019 under Sections 366/354/342/506 IPC pending before the Sessions Judge, Yupia deserves quashment by invoking the inherent power under Section 482 Cr.P.C, 1973.

15. Consequently, the criminal proceedings of Session Case No. 49/2020 arising out of Itanagar Women P.S Case No. 45/2019 under Sections 366/354/342/506 IPC pending before the Sessions Judge, Yupia is hereby quashed.

16. Accordingly, the criminal petition stands allowed and disposed of.

17. It is made clear that above view of this Court shall not be remotely construed that such allegations and charges should be discarded easily. It is only on the basis of settlement entered into between the petitioners and for their better future and on attending facts situation of the present case, this Court invokes the inherent power under section 482 Cr.P.C, 1973.

JUDGE

Comparing Assistant