

GAHC040010582023



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

Case No. : Crl.Petn./144/2023

1. Smti Biki Nanium and 2 Ors.

Permanent Resident of Chambang Village, P.O Chambang, PS Palin District Kra Daadi, Arunachal Pradesh, Presently residing at Niya Colony Niti vihar, Itanagar PO Itanagar, P.S Niti Vihar, District Papum Pare Arunachal Pradesh. Mobile No. 9402893320

2: Biki Napang @ Tapang

Age:

Occupation :

3: Smti Dayum Mary

Age:

Occupation

VERSUS

THE STATE OF AP

Through the Public Prosecutor, Arunachal Pradesh.

Advocate for the Petitioner : Mr. Taja Garam

Advocate for the Respondent : Mr. J. Tsering, (P P of AP)

BEFORE
HONBLE MRS. JUSTICE MITALI THAKURIA
JUDGMENT& ORDER(ORAL)

Date: 10.08.2023

Heard Mr T. Garam, learned counsel for the petitioners. Also heard Mr. J. Tsering, learned Public Prosecutor for the State of Arunachal Pradesh.

2. This is an application under Section 482 Cr.P.C praying for quashing and setting aside the WPS Case No. 122/2015 and the Charge-Sheet No. 35/2016 under Sections 498(A)/354(B)/323 IPC, corresponding to G.R. Case No. 27/2015 presently pending before the learned Chief Judicial Magistrate, Capital Complex, Yupia.

3. The petitioner No. 1 is the informant of this case and the petitioner Nos. 2 & 3 are the accused in the present case. All the present petitioner Nos. 1, 2 & 3 have jointly filed this present petition praying for quashing and setting aside the WPS Case No. 122/2015 under Sections 498(A)/354(B)/323/506/34 IPC, pending before the learned Chief Judicial Magistrate, Yupia, as well as the corresponding G.R. Case No. 27/2015 against the petitioner Nos. 2 & 3.

4. The petitioner No. 1 lodged an FIR on 09.11.2015 against the petitioner

Nos. 2 & 3 to the effect that the petitioner No. 2 married the petitioner No. 3 as a second wife and they started living separately and the petitioner No. 2 did not give any financial assistance to the petitioner No. 1 and her three minor children. So, on 09.11.2015, the petitioner No. 1 came to the rented house of the petitioner Nos. 2 & 3 and asked for financial assistance, but due to misunderstanding, there was a scuffle where the petitioner No. 1 sustained some minor injury and consequently, she lodged the FIR in WPS which is accordingly registered as WPS Case No. 122/2015 under Sections 498(A)/354(B)/323/506/34 IPC. But subsequently, considering the future of three minor children, the petitioner Nos. 1 & 2 who are the husband and wife have settled the matter amicably and hence, all the petitioners approached this Court with the present petition under Section 482 Cr.P.C for quashing and setting aside the criminal proceeding arising out of WPS Case No. 122/2015, which is registered against the Petitioner Nos. 2 & 3.

5. It is submitted by the learned counsel for the petitioners that the misunderstanding and the altercation between the parties started after the marriage between the petitioner Nos. 2 & 3 and when the petitioner No. 2 started living separately with his second wife, i.e., petitioner No. 3. During the scuffle, it is alleged that the cloth of the petitioner No. 1 was torn out and for which Section 354(B) has been incorporated, though no such incident of outrage of modesty took place. Presently all the petitioners are living peacefully and, in this case, both the petitioner Nos. 1 & 2 also executed a deed of mutual settlement on 05.03.2023, declaring that the differences between the

petitioners have been settled and they agreed to withdraw their respective criminal case, which is pending before the Court of the learned Chief Judicial Magistrate, Yupia. It is to be mentioned that one case is also lodged by the petitioner No. 2 against the family members of the petitioner No. 1, which is also pending before the Court of the learned Chief Judicial Magistrate, Yupia. By entering into the said mutual deed of agreement, both the petitioner Nos. 1 & 2 agreed to withdraw their respective criminal cases.

6. It is further submitted that the learned Court below could not compound the case by applying the provision of Section 320 Cr.P.C, as the case is registered under non-compoundable offences and hence, the present petition is jointly filed for quashing the criminal proceeding along with the FIR and the Charge-Sheet by invoking the power under Section 482 Cr.P.C. Further, it is submitted that the nature of the case is private in nature which arose only due to matrimonial dispute/family dispute. Further, it is submitted that in pursuant to the compromise the petitioner No. 1 is not interested and willing to proceed with the case further and in that event, the conviction of the petitioner Nos. 2 & 3 are bleak and remote even if the proceeding is allowed to be continued rather it will be an abuse of the process of court. Accordingly, it is prayed that the criminal proceeding along with the FIR No. 122/2015 and the Charge-Sheet No. 35/2016 pending before the learned Chief Judicial Magistrate, Yupia, be set aside and quashed.

7. Mr. J. Tsering, learned Public Prosecutor has submitted in this regard that

the case is purely private in nature arising out of matrimonial and family dispute and hence, it squarely covers by the judgments of the Hon'ble Apex Court passed in ***State of Madhya Pradesh Vs. Laxmi Naryan & Ors.***, reported in ***(2019) 5 SCC 688*** and in the case of ***State of Haryana Vs. Bhajan Lal*** reported in ***1992 Supp. (1) SCC***. Accordingly, he submitted that the prosecution has no objection if the petition is allowed by invoking the power under Section 482 Cr.P.C.

8. After hearing the submissions of learned counsels for both sides, I have perused the petition and the documents placed on record and I find that this petition is jointly preferred by the informant/petitioner No. 1 and the accused/petitioner Nos. 2 & 3, who are happens to be husband and wives. It also appears that they have resolved their dispute amicably by executing a deed of mutual settlement in presence of their family members and they are now living peacefully without any differences.

9. In the case of ***State Of Madhya Pradesh Vs. Laxmi Narayan***, reported in ***(2019) 5 SCC 688***, Hon'ble Supreme Court, in paragraph No. 13(i), observed that "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 of 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." It is

further held that “when the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:-

- (i) ends of justice, or
- (ii) to prevent abuse of the process of any court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.”

10. Here in this case, the dispute between the petitioners Nos. 1, 2 & 3 have arisen out of matrimonial dispute and also it is a family dispute and they have resolved the entire dispute amongst themselves and now they are living peacefully.

11. In view of above, ends of justice would be meted out if the petition is allowed. Further, since the matter has already been settled between the petitioners, it is unlikely that the petitioner No. 1 will depose against the petitioner No. 2, and in that event allowing the proceeding to continue before the learned Court below would be an abuse of the process of the Court.

12. Under the above facts and circumstances and considering the submission made by the learned counsel for both sides, also considering the nature of offences which is a matrimonial/family dispute and also in view of the Hon’ble Apex Court, I find it is a fit case where the extra-ordinary power under Section 482 Cr.P.C can be invoked to quash the proceeding pending before the Court of

learned Chief Judicial Magistrate, Yupia. Accordingly, the petition stands allowed. The FIR of Itanagar WPS Case No. 1122/2015, as well as the Charge-Sheet No. 35/2016, under Section 4498(A)/354(B)/323 IPC, corresponding to G. R. Case No. 27/2015, pending before the Court of learned Chief Judicial Magistrate, Yupia, stands set aside and quashed.

13. In terms of above, this criminal petition stands disposed of.

JUDGE

Comparing Assistant