



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

Case No. : Crl.Petn. 134/2021

1:Takam Yaging knee Tania Yaging
D/o Shri Tania Talom,
Resident of P Sector, Itanagar, PO and PS Itanagar, District Papum Pare, Arunachal Pradesh

VERSUS

1:THE STATE OF AP and Anr.
Represented by its Public Prosecutor

2:Takam Tagung
Son of Late Takam Tich

Resident of Village Langdang
PO Palin and PS Sangaram
District Kra Dadi
Arunachal Pradesh

Advocates for the petitioner : Mr. P. Taffo, Adv.

Advocates for the respondents : Mr. G. Tado, Addl.P.P.

Mr. T. Topu, Complainant

:::BEFORE:::

HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 17.04.2023

Date of Judgment & Order : 20.04.2023

JUDGMENT & ORDER (CAV)

Heard Mr. P. Taffo, learned counsel for the petitioner. Also heard Mr. G. Tado, learned Additional Public Prosecutor representing the State respondent No. 1 and Mr. T. Topu, learned counsel for the complainant/respondent No.2.

2. This is an application filed under Section 482 of the Code of Criminal Procedure, 1973, praying for quashing of the proceeding of Sangram P.S. Case No.18/2017, corresponding to RNGR No.93/19, which is pending before the Court of learned Judicial Magistrate First Class, Koloriang, Kurung-Kumey District, Arunachal Pradesh.

3. The brief facts leading to the filing of the present petition is that an FIR has been lodged on 18.12.2017, before the Officer-in-Charge of Koloriang Police Station filed by the respondent No. 2, alleging that the present petitioner had stolen the local beads and one Maruti-800 car bearing registration No.AR-01-E-7787 from his residence and fled to Itanagar. On the strength of the said FIR a case has been registered under Sections 380/506 of the IPC. After completion of the investigation, a charge-sheet has been filed against the present petitioner vide charge-sheet No.08/2018 dated 28.05.2018 and presently the matter is pending before the learned Judicial Magistrate First Class, Koloriang, Kurung-Kumey District.

4. The fact of the case in nutshell is that the present petitioner is the

divorced wife of the respondent No.2/complainant. They got married sometime in the year 1999 according to the Nyishi custom and tradition; two daughters were born out of their wedlock. But, from the very inception of their marriage the petitioner was subjected to physical and mental torture and also had to suffer from sexual abuse by the respondent No.2. In the year 2007 the respondent No.2 developed a physical relationship with the petitioner's younger sister and brought her to their home in the year 2008. Thereafter, too the petitioner was subjected to mental and physical torture and she left the matrimonial house along with her two daughters as she could not bear the atrocities meted out to her by the respondent No.2.

5. It is also stated that the respondent No. 2 used to torture her physically without any provocation for which she had sustained several injuries. In this regard the petitioner had lodged an FIR against the respondent No.2 before the Officer-in-Charge Women Police Station, Itanagar and accordingly a case was registered vide case No.25/15, under Section 498A/323/506 of the IPC. She also filed a divorce petition being DIVORCE Case No.08/15 before the learned District & Sessions Judge, Yupia and same was disposed off vide order dated 22.10.2019, wherein, the said Court passed an order dissolving the marriage between the petitioner and the respondent No.2. Apart from that the petitioner also filed a Maintenance Case No.08/205, registered under Section 125 Cr.P.C. against the respondent No.2 before the Court of learned Chief Judicial Magistrate, Yupia and the same was disposed off vide order dated 17.08.2015, wherein, the respondent No. 2 was directed to pay a monthly maintenance of Rs.10,000/- (Rupees ten thousand) only.

6. It is further stated that while the divorce case was pending before the Court of learned District & Sessions Judge, Yupia, the respondent No.2 filed the

FIR dated 18.12.2017, before the Sangram Police Station which is registered as Sangram P.S. Case No.18/2017, under Section 380/506 IPC. It was alleged in the aforesaid FIR that the present petitioner had stolen the vehicle along with some local beads on 16.02.2015. The FIR has been lodged after more than 2 years and 10 months of the alleged incident of theft. However, no any explanation has been given for the delay of lodging the FIR. The allegation brought in the FIR is totally false and concocted one. There is no any statement to make out the case under Section 506 IPC as there is no allegation that the petitioner had threatened the respondent No.2. Further, the vehicle in question was purchased jointly by the petitioner and the respondent No.2 in the year 2012. However, the registration of the vehicle was done under the name of the respondent No.2. The petitioner used to drive the vehicle as the respondent No.2 does not know driving, therefore, the said vehicle was always under the custody of the petitioner. Hence, the question of stealing the vehicle does not arise at all. It is stated that the respondent No.2 has lodged the aforesaid FIR with an ulterior motive to harass the petitioner.

7. However, it is a fact that the petitioner with her two daughters left their matrimonial house without informing the respondent No. 2, due to continuous mental and physical torture on her. And the FIR had been lodged by the respondent No.2 only to harass her mentally, as she had filed an FIR as well as a divorce petition and also a maintenance case against the respondent No.2. The FIR lodged by the respondent No.2 does not reveal sufficient ingredients of offences as alleged. There is not even a remote chance of conviction of the petitioner. Moreover, the dispute between the parties was purely personal in nature. It arose from marital discords. No public interest is involved whatsoever and continuation of criminal proceeding would be a futile exercise. The offence alleged is neither heinous nor against society. There is no any evidence to

support the allegation made in the FIR and hence, the present petitioner has prayed for quashing and setting aside the Sangram P.S. Case No.18/2017, corresponding to RNGR No.93/19, which is pending before the Court of learned Judicial Magistrate First Class, Koloriang, Kurung-Kumey District, Arunachal Pradesh.

8. It is further submitted by the learned counsel for the petitioner that the FIR was lodged after a gap of more than 2 years and 10 months only with a view to harass the present petitioner as she had filed an FIR before the officer-in-charge Women Police Station, Itanagar which was registered vide case No.25/15, under Section 498A/323/506 of the IPC. Along with that she also filed a divorce petition being DIVORCE Case No.08/15 before the learned District & Sessions Judge and the same was disposed off vide order dated 22.10.2019 as well as she had filed a Maintenance Case No.08/205, registered under Section 125 Cr.P.C. against the respondent No.2 before the Court of learned Chief Judicial Magistrate, Yupia. It is admitted fact that the petitioner was staying with the respondent No.2 along with two daughters and had left the matrimonial house due to physical and mental torture after the second marriage of the respondent No.2 with her own younger sister. The respondent No. 2 had filed the FIR regarding the theft of the local beads and the vehicle, only during the pendency of the divorce petition. More so, the charge-sheet has been filed only for the vehicle and there is no mention about the stealing of local beads in the same.

9. In addition, the learned counsel for the petitioner has relied on the decision of the Hon'ble Delhi High Court reported in the case of ***Subhajit Banerjee vs. State Govt. of NCT of Delhi***, reported in 2017 (0) Supreme (Del) 559, wherein, it is held that;

[“Para 18.....*In a matrimonial household, all articles would, normally, be in the joint possession of the couple. That possession would not change merely because there may be a discord between the two.*”

10. Relying on the above mentioned decision, the learned counsel for the petitioner submitted that the car was purchased jointly by the petitioner and the respondent No.2, when they were staying together as husband and wife. The vehicle was in possession of the petitioner as the respondent No.2 does not know to drive the vehicle, though the vehicle was registered under the name of the respondent No.2. Further, it is also submitted that the respondent No.2 had not given any explanation of delay of 2 years & 10 months which also creates doubt regarding the veracity of the prosecution case.

11. In support of his arguments, the learned counsel for the petitioner also relied on the decision of the Hon’ble High Court of Jammu in the case of ***State of J & K vs. Gulzar Ahmed Bhat and Others***, reported in 2017 (4) JKJ 41, wherein, the para 29 & 32 read as under;

“29.....the inordinate delay in lodging the FIR has not been explained by the prosecution and this unexplained delay is fatal to the prosecution case, benefit whereof must go to the accused persons and earn them acquittal.

“32.... Law in regard to the effect of delay in lodging the FIR by now is well settled. In Kanhaiya Lal and Ors. v State of Rajasthan, (2014) 4 SCC 715 the Supreme Court has reiterated that mere delay in lodging the First Information Report cannot be regarded by itself as fatal to the case of the

prosecution. However, it is obligatory on the part of the court to take notice of the delay and examine, in the backdrop of the case, whether any acceptable explanation has been offered by the prosecution and if such an explanation has been offered whether the same deserves acceptance being found to be satisfactory. Supreme Court in this case has referred to an earlier three-Judge Bench decision of the Court in State of H.P. v. Gian Chand, (2001) 6 SCC 71 where their lordships have held:

'Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case.'

12. In this regard, Mr. T. Topu, learned counsel for the complainant/respondent No.2 has submitted that the case has been charge-sheeted against the present petitioner, as the car was stolen by her. And upon several request of the respondent No.2, the said vehicle was not returned by the petitioner. Thus, the question of quashing does not arise at this stage. He further requested to remand back the case before the learned Trial Court for further proceeding.

13. In this context, Mr. G. Tado, learned Additional Public Prosecutor

representing the State respondent No. 1 has submitted that the entire dispute aroused only due to marital discords. He also submitted that the respondent No.2 specifically alleged that the petitioner had stolen the vehicle and some local beads. Accordingly, after investigation of the same the police filed a prima facie case against the present petitioner and also submitted a charge-sheet in this regard. Thus, the proceeding cannot be quashed at this stage, as the petitioner side will get ample opportunity to contest and to produce evidence in the said case..

14. After hearing the submissions made by both the parties and upon perusal of the relevant documents, it is found admitted that the FIR was lodged after a gap of 2 years & 10 months, without any proper explanation of delay. The only explanation brought in the FIR is that the petitioner refused to return the car and local beads. But, there is no mention about the reasons of delay of 2 years and 10 months delay in lodging the same. It cannot be denied that after the investigation of the matter the police had found a prima facie case against the present petitioner and the charge-sheet is furnished accordingly. It is also seen that the statement of the petitioner has been recorded under Section 161 of the Cr.P.C., wherein, it has been admitted that she had left the matrimonial house along with her two daughters without informing the respondent No.2 on the ground of continuous physical and mental torture as well as second marriage of the respondent No. 2 with the petitioner's younger sister.

15. The Hon'ble Supreme Court in the case of **State of Haryana & Ors. Vs. Bhajan Lal & Ors.**, reported in **1992 Supp (1) SCC 335**, has held as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law

enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a magistrate within the purview of Section 155(2) of the Code.*
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and*

continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

16. In the instant case also it is seen that the dispute arose between the parties only on some marital issues. And for which the petitioner lodged criminal cases along with cases for maintenance and divorce. The instant FIR was lodged after more than two years of the incident only at the time pendency of the divorce suit. Thus, it reveals that the FIR is lodged with a *mala-fide* intention to harass the petitioner. More so, the vehicle in question was purchased, while, they were staying together as husband and wife along with their children and the car was used jointly by both the petitioner and the respondent No. 2 and the car was also under the care and custody of the petitioner. On the particular day of incident, she might have left her matrimonial house along with her children. But, on these circumstances of the case, I find that there is no chance of conviction, if the case is proceeded further. Rather, it will be abuse of process of law.

17. Under the above facts and circumstances of this case and also considering the view of the Hon'ble Apex Court in **Bhajan Lal (supra)**, I am of the considered opinion that this is a fit case where the extra-ordinary power under Section 482 Cr.P.C. can be invoked to quash the criminal proceeding.

18. Accordingly, the proceedings of the Sangram P.S. Case No.18/2017,

corresponding to RNGR No.93/19, which is pending before the Court of learned Judicial Magistrate First Class, Koloriang, Kurung-Kumey District, Arunachal Pradesh, stand set aside and quashed.

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

20. Send down the LCR to the learned Trial Court.

JUDGE

Comparing Assistant