

GAHC040013222023



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

Case No. : Crl.Petn./181/2023

1: Toram Jopir and 4 Ors.

S/o Lt. Boken Jopir,

Permanent Resident of Village Karko, PO/PS Jengging, Dist. U/Siang, AP, Presently residing at Vivek Vihar, Itanagar, PO/PS Itanagar, Dist. Papumpae, Arunachal Pradesh.

2: Nuku Nobeng S/o Apo Nobeng Permanent Resident of Vill. Karko PO/PS Jengging District Upper Siang, Arunachal Pradesh.

3: Kamin Tabo S/o Mr Tamang Tabo Permanent Resident of Vill. Pangkang PO/PS Boleng Siang District, Arunachal Pradesh.

4: Lidam Gamlin S/o Mr. Yali Gamlin Permanent Resident of Vill Tego Gamlin PO/PS Yomcha Page No.# 2/2 West Siang District and Presently residing at Mowb II Itanagar PO/PS Itanagar Dist. Papumpare, Arunachal Pradesh.

5: Ili Gamlin S/o Mai Gamlin Permanent Resident of Vill Daba Gamlin PO/PS Yomcha West Siang District, Arunachal Pradesh.

VERSUS

THE STATE OF AP

Represented by the Public Prosecutor, AP

Advocate for the Petitioner : Vijay Jamoh

Advocate for the Respondent : P P of AP

Date of hearing : 14.11.2023

Date of Judgment and Order : 14.11.2023

**BEFORE
HONBLE MR. JUSTICE KARDAK ETE**

JUDGMENT & ORDER(Oral)

Heard Mr.V. Jamoh, the learned counsel for the petitioners and Ms L. Hage, the learned Additional Public Prosecutor for the State of Arunachal Pradesh.

2. By filling this petition jointly by the petitioners under Section 482 of the Cr.P.C, 1973, the petitioners have prayed for quashing of criminal proceedings arising out of FIR dated 31.08.2022 registered as Itanagar P.S Case No. 216/2022 in G. R. Case No.730/2022 under Sections 341/326/201/34 IPC, 1860 pending before the JMFC, Yupia on the basis of settlement.

3. The facts of the case, in nutshell, is that on 31.08.2022 a complaint was lodged by the petitioner No.5, the elder brother of petitioner No.4 alleging that on 30.08.2022 at around 10 pm at Happy restaurant, Gandhi Market, Itanagar, the petitioner Nos. 1, 2 and 3 had attacked his brother with sharp weapon and as a result the petitioner No.4 had sustained grievous injuries and admitted to R.K. Mission Hospital, Itanagar. Accordingly, an FIR was registered being Itanagar P.S. Case No.216/2022 under Sections 341/326/34 IPC. After

completion of the investigation, charge-sheet vide dated 23.11.2022 under Sections 341/326/201/34 IPC, 1860, was filed against the petitioner No. 1, 2 and 3. The case is pending at the stage of appearance before the Judicial Magistrate First Class, Yupia.

4. Mr. V. Jamoh, the learned counsel for the petitioners submits that with the intervention of the family members and well wishers, the matter has been resolved and the petitioner Nos.1, 2 and 3 had borne all the medical expenses of the petitioner No.4. The petitioners have also executed a mutual deed of agreement on 29.11.2022 before the Executive Magistrate, Itanagar and they have resolved and settled the matter.

5. Mr. Jamoh, the learned counsel for the petitioners submits that petitioner Nos.1, 2 and 3 after attending the Solung festival on 28.11.2022 had visited the restaurant located at Itanagar. They sat down in one of the cabins of the said restaurant where they consumed alcohol and in the other cabin some group of boys were enjoying their drinks. During the course of making payment, the petitioner No.3 had arguments with the lady Manager of the restaurant for charging exorbitant bill upon them. While negotiating the payment of bill, all of a sudden, the petitioner No.4 pushed down the petitioner No.3 and on witnessing that the petitioner No.1 came for rescue of petitioner No.3. Thereafter some scuffles ensued outside the restaurant in the open space and in the process both of them got injured. Since, it was dark no one could make out how the parties got injured.

6. He further submits that since the issue has arisen out of mere argument between the Manager and the petitioner No. 3, and upon the interference of petitioners No.4 and 5, there is nothing to show that there was any intention to harm or injure anyone by the petitioners. Be that as it may, the parties have entered into a settlement on 29.11.2022 on the intervention of family members and well wishers and solved the matter amicably amongst themselves, for which the chance of conviction is bleak and trial of the case will be futile. Therefore, he submits that FIR dated 31.08.2022 and the consequential criminal proceedings of G.R. Case No.730/2022 pending before the Court of Judicial Magistrate First Class, Yupia may be quashed.

7. Ms L. Hage, the learned Additional Public Prosecutor submits that as per the medical report, the injuries are grievous in nature which clearly attracts Section 326 of the IPC, however, she fairly submits that in view of the settlement amongst the parties, this Court may consider and pass an appropriate order that may be deemed fit in accordance with law.

8. I have considered the submissions of the learned counsel for the parties and also perused the scanned copy of the LCR produced by the learned Additional Public Prosecutor.

9. 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 after consideration of all the earlier cases, has enunciated the law regarding the quashing of criminal proceedings invoking the inherent power under Section 482

of the Cr.PC, 1973, which is reproduced herein below:-

"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:

15.1) 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;

15.2) 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;

15.3) 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;

15.4) offences under Section 307 IPC 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;

15.5) 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."

10. In the case of **Kapil Gupta -vrs- State of NCT of Delhi**, reported in **(2022) SCC online 1030**, the Hon'ble Supreme Court held that while exercising its power under Section 482 of the Cr.P.C, the court should be slow in quashing the proceedings wherein heinous and serious offences are involved, but should not be 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 relationship.

11. It is seen that the parties have entered into a settlement on 29.11.2022 and resolved the matter amicably amongst themselves on the intervention of elders of their respective families and well wishers. It is also noticed that medical expenses of the injured (petitioner No.4) has also been borne by the petitioners No.1, 2 and 3 and they have decided to maintain a cordial relationship amongst themselves.

12. This Court also take note of the fact that scuffle between the petitioners was due to petty issues being argument regarding the bill which may have caused some injuries to the parties. As noted above, during the pendency of the proceeding, the parties have entered into settlement and resolved to maintain a cordial relationship amongst the parties and would result into harmony between them which may improve their relationship. In such view of the matter, this Court is of the considered view that the FIR dated 31.08.2022 and consequential criminal proceedings in G.R. Case No.730/2022 pending before the Court of Judicial Magistrate First Class, Yupia may end up in futile proceeding as the chances of conviction are bleak in the attending facts situation of the present case. Thus, this Court is of the opinion that this present case is one of the cases where inherent power of this Court under Section 482 of the Cr.P.C, 1973 can be invoked.

13. In view of what has been discussed above and considering the law enunciated by the Hon'ble Supreme Court, the FIR dated 31.08.2022 and the consequential criminal proceedings of G.R. Case No.730/2022 under Sections 341/326/201/34 IPC, 1860 pending before the Court of Judicial Magistrate First Class, Yupia is hereby quashed.

14. Consequently, the present criminal petition is allowed and disposed of.

JUDGE

Comparing Assistant