

GAHC040013892022



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

Case No. : Crl.Petn. 121/2022

1:Surjit Das @ Raju Das and 2 Ors.
S/o Late Kamal Das,
Permanent Resident of Sibali Goan, PO/PS Silapathar, Dhemaji District, Assam.

VERSUS

1:THE STATE OF AP
Represented through the Ld. Public Prosecutor.

Advocate for the Petitioner : Dugmar Kamduk

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 17.03.2023

Heard Mr. D Kamduk, learned counsel for the petitioners. Also heard Ms. T Jinin, learned Additional PP, Arunachal Pradesh.

02. This is an application filed under Section 482 of the Code of Criminal Procedure, 1973 praying for quashing of the trial being GR No. 140/2015 under Section 363 IPC arisen out of the Aalo PS Case No. 83/2013 under

Section 363 IPC.

03. This present petitioner No. 1 and petitioner No. 3 are husband and wife by relation and petitioner No. 2, who is the father-in-law of the petitioner No. 1. Thus all the petitioners are close family members as such they have filed this instant application jointly for quashing of the trial proceeding of GR Case No. 140/2015 pending in the court of learned CJM, Aalo as well as quashing of order dated 17.10.2022 passed by the learned CJM, Aalo, FIR dated 03.08.2013 and Charge-Sheet No. 98/2013 under Section 363 IPC. Further, this present petition is filed in a background that the complainant/victim and the accused had settled the matter amicably between them and therefore, this court in exercise of power under Section 482 of Cr.P.C. should quash the criminal prosecution as the offences charged are not compoundable under Section 320 of Cr.P.C.
04. The contents of the F.I.R. discloses that the petitioner No. 1 and petitioner No. 3 had love affair. The petitioner No. 2, who is the father of the petitioner No. 3 was against their love affair being belong from two differences of community. As a result petitioner No. 1 and petitioner No. 3 on their own volition fled away from their respective home to Eyi village at the resident of one Shri Marto Naso. Thereafter, petitioner No. 2 out of anger lodged FIR dated 03.08.2013 before the Aalo Police Station against the petitioner No. 1 alleging that his daughter and some jewellery have been missing from his house and accordingly, on the basis of such FIR, Aalo PS case No. 83/2013 under Section 363/380 IPC was registered.
05. After the registration of the FIR, the case was investigated by the Investigating Officer and Charge Sheet was filed vide Charge Sheet No. 98/2013 dated 11.12.2013 corresponding to the Aalo PS Case No.

83/2013.

06. Subsequently, the petitioners have mutually settled the matter and to that effect, a copy of Deed of Settlement was drawn in between the complainant/victim/petitioner No.2 and petitioner Nos. 1 and petitioner No. 3, which is annexed in this petition as Annexure No. 5.
07. In the aforesaid backdrop, this Court is now to decide whether this is a fit case where this Court can exercise its inherent power under Section 482 of Cr.P.C. to quash the criminal proceeding being GR Case No. 140/2015 pending in the court of learned CJM, Aalo.
08. It is by now settled that a High Court in exercise of its power under Section 482 of Cr.P.C. can very well quash a criminal proceeding or a criminal complaint under Section 482 of Cr.P.C., but while doing so, the Court is to follow certain principles as enunciated by the Hon'ble Apex Court in ***Gian Singh –Vs- State of Punjab and Another*** reported in ***2012 10 SCC 303***, and in ***State of Madhya Pradesh –Vs- Laxmi Narayan and Others*** reported in ***2019 5 SCC 688***.
09. In the case of State ***of Madhya Pradesh & Laxmi Narayan***, reported in ***AIR 2019 SC 1296***, the Hon'ble Supreme Court has laid down certain guidelines for exercise of powers under Section 482 Cr.P.C., it is submitted that instant case falls within the guidelines laid down by the Hon'ble Supreme Court.
10. For ready reference, paragraph-13 of ***State of Madhya Pradesh & Laxmi Narayan*** (Supra) is extracted herein below:

“13. 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) *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) *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) *iv) 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;

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.”

11. Perused the material including the 161 Cr.P.C. statement. From the materials, it is revealed that the petitioner No. 2 / informant is the father of the petitioner No. 3 and father in law of the petitioner No. 1. Petitioner No. 1 is charged as accused in the present case. It was informed in the FIR that petitioner No. 1 and petitioner No. 3 had love affairs but the petitioner No. 2 did not support the said love affair and the petitioner No. 2 lodged the FIR out of anger. Now the dispute has been settled between them mutually. In the meantime petitioner Nos. 1 and 3 got married and stated to be living happily. The statement recorded under Section 161 of the Cr.P.C. of the victim girl also discloses that the accused petitioner has not compelled her to go along with him or used any deceitful means inducing her to go along with him. There is no allegation of forceful sexual intercourse. Considering the matter in entirety, this court is of the view that this is a fit case where the power under Section 482 Cr.P.C. can be exercised as held in ***Laxmi Narayan*** (Supra).
12. Accordingly, this petition is allowed by setting aside and quashing the criminal proceeding being GR No. 140/2015 under Section 363 IPC arisen out of the Aalo PS Case No. 83/2013 under Section 363 IPC pending in the court of learned CJM, Aalo.

JUDGE

Comparing Assistant