

GAHC040014082023



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

Case No. : Crl.Petn./189/2023

Riba Amo and Anr.

S/o Late Mor Amo, a resident of Gaur Hill, Aalo, P.O and P.S Aalo, West Siang District, Arunachal Pradesh. 918413080876 2: Dayir Ete Amo

Age:

Occupation

VERSUS

The State of AP and Anr.

through Public Prosecutor. 2:The Officer-In-Charge

Age: 0

Occupation

Advocate for the Petitioner : Muk Pertin, Senior Advocate

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MR. JUSTICE BUDI HABUNG

ORDER

Date : 06.12.2023

Heard Ms. R. Riba, learned counsel for the petitioner. Also heard Ms. T. Jini, learned Additional Public Prosecutor for the State of Arunachal Pradesh.

2. This is a joint petition filed by Shri Riba Amo (husband) and Mrs. D. Ete Riba (wife) under Section 482 of the Code of Criminal Procedure, 1973, praying for quashing and setting aside the FIR dated 23.04.2023 lodged against the petitioner number 1 by the petitioner No.2, which was registered as Aalo Women P.S. Case No. 04/2023 under Section 498(A)/ 506/323 IPC. The petitioners are also praying for setting aside and quashing of the subsequent Charge-Sheet No. 02/2023 submitted against the petitioner No.2 on 03.09.2023 in the above WPS case.

3. The case of the petitioner in brief is that due to marital discords and difference between the husband and wife (petitioner No. 1 & 2 respectively), the petitioner No. 2 out of anger and at the heat of a moment lodged a written FIR against the petitioner No.1 before the Women Police Station Aalo alleging him of entering into an extra martial affair with another woman and for committing violence against her. The said FIR was registered as Aalo Women P.S. Case No. 04/2023 under Section 498(A)/ 506/323 IPC.

4. However, considering that the accused and the informant are husband and wife having three children, they have mutually settled the matter amicably on 07.11.2023, whereby, the parties have agreed to maintain cordial relationship between them and the petitioner No. 2 has agreed to withdraw the FIR lodged against the petitioner No. 1.

5. The learned counsel for the petitioner submits that the petitioner Nos. 1 & 2 are husband and wife having 3 (three) minor children born out of their marriage and now they are happily staying together as husband and wife in the same

roof and under the circumstances the continuation of the court case against the husband (petitioner No.1) would cause harassment to the entire family and their harmonious life. And since, there is no any grievances against the petitioner No. 1, the further proceeding of the case would not serve any purpose. Hence, both the petitioners prays that the FIR dated 23.04.2023 which was registered as Aalo WPS Case No. 04/2023 under Section 498(A)/ 506/323 IPC and subsequent charge-sheet filed against the petitioner No. 1 being charge-sheet No. 02/2023 dated 03.09.2023 be set aside and quashed.

6. The learned Additional Public Prosecutor Ms. T. Jini also conceded with the submission of the learned counsel for the petitioners and further submits that since both the petitioners are husband and wife and they have already settled the matter mutually, and as now both the petitioner No. 1 and petitioner No. 2 are living together as husband and wife along with their 3(three) minor children and as there is no further grievance against the petitioner No. 1 by the petitioner No. 2 she has no objection if the prayer of the petitioners are granted. In support of her submission, she has further relied on the following judgments of the Hon'ble Supreme Court.

7. In the case of ***Kapil Gupta vs. State of NCT of Delhi & Anr.*** reported in (2022) 8 Supreme 341, the Hon'ble Supreme Court held 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."

8. In the case of the *State of Madhya Pradesh vs. Laxmi Narayan & Ors.* reported in (2019) 5 SCC 688, the Hon'ble Supreme Court held as under:

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) 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 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 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.

9. In view of the above submission made by both the learned counsels for the parties and the above decisions of the Supreme courts and considering that both the petitioners are husband and wife and they are now happily living together as husband and wife with their three minor children, and also considering the welfare and harmonious life of the petitioner's family, this court is of the opinion that the pendency of the above case against the husband petitioner No.1 before the learned court below would hardly serve any purpose. For the reasons as stated above, this petition is allowed. Accordingly, the FIR dated 23.04.2023, which was registered as Aalo Women P.S. Case No. 04/2023 under Section 498(A)/ 506/323 IPC and subsequent Charge-Sheet No. 02/2023 dated 03.09.2023 under Section 498(A)/ 506/323 IPC submitted before the learned Chief Judicial Magistrate, Aalo against the petitioner No.2 Shri Riba Amo is hereby set aside and quashed.

With the above observation, this criminal petition stands allowed and disposed of.

Send back the LCR.

JUDGE

Comparing Assistant