

GAHC040014172022



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

Case No. : Crl.Petn. 126/2022

1:Techi Nyajung and Anr.
S/o Techi Hania,
a Permanent Resident of Khamir Village, PO and PS Balijan, District Papum
Pare,Arunachal Pradesh.

2: Teli Tayo
S/o Teli Lokhi

Permanent Resident of Gungu Village
PO/PS Balijan
District Papum Pare
Arunachal Pradesh

VERSUS

1:THE STATE OF AP
Represented through Public Prosecutor, Arunachal Pradesh Gauhati High Court
Itanagar Permanent Bench, Naharlagun.

Advocate for the Petitioner : Taba Topu

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 04-01-2023

This application under Section 482 Cr.P.C. is preferred jointly by the

petitioners for quashing and setting aside the Charge-Sheet No. 05/2020 of Balijan Police Station FIR No.21/2020 under Section 323/353/332 IPC corresponding to G. R. Case No. 403/2020.

2. Heard Mr. T. Topu, learned counsel for the petitioners and Mr. J. Tsering, learned PP for the State of Arunachal Pradesh.

3. The brief facts leading to filing of the present petition is that the petitioner No. 2 is the Recruit Constable IRBN under the Home Department, Government of Arunachal Pradesh and during the last COVID-19 period, the petitioner No. 2 was deployed duty at Moin Happa Check post near culvary English School Jote Poma road to restrain the spread of the corona virus by the COVID-19 committee of Circle Officer Sangdupota and OC Balijan. While attending the duty, the petitioner No. 1 had some argument with the petitioner No. 2 for some minor issue and later on altercation took place between them. During the course of altercation, the petitioner No. 2 received some minor bodily injured and for which he lodged an FIR against the petitioner No. 1 before the Balijan Police Station on 24.03.2022. On the basis of the said complaint, the Balijan Police Station registered a case against the petitioner No. 1 as Balijan P.S. Case No.21/2020 under Section 323/353/332 IPC and started the investigation.

4. On completion of investigation, Police filed Charge-Sheet against the petitioner No. 1 vide Charge-Sheet No. 05/2020 and accordingly, the learned Chief Judicial Magistrate, Yupia took cognizance and issued summon to the petitioner No. 1. The petitioner No. 1, thereafter,

appeared before the learned Court below and after consideration of the Charge, both the parties have settled the dispute and accordingly, one deed of mutual settlement is also executed by both the parties in presence of the family members as well as the Panchayat Elders and Youths of the said locality on 23.09.2022 and thereby both the parties decided not to continue with the case based on FIR No. 21/2020 lodged before the Balijan Police Station which is under trial before the Chief Judicial Magistrate, Yupia.

5. Further, the petitioner No. 1 also agreed that he shall not repeat the same thing against the petitioner No. 2 in any circumstances and they also decided to maintain peace and tranquillity within them and accordingly, they put their signatures in the deed of mutual settlement in presence of the witnesses and family members.

6. Both the parties voluntarily decided not to pursue or contest the case before any Court of law in pursuance of the deed of mutual settlement executed by both the parties after framing of the Charges in this case.

7. It is further submitted by the learned counsel for the petitioners that as Section 353 and 323 IPC are non-compoundable in nature, the parties have approached this Court with the present petition under Section 482 Cr.P.C. for quashing the FIR as well as the case registered against the petitioner No. 1.

8. It is also submitted that the petitioners belongs to same locality and the said incident had happened only out of some minor dispute and

misunderstanding between the parties and at present, they are living peacefully and they do not have any grievance against each other. Moreover, there is no chance of any witnesses to depose against the petitioner No. 1 and therefore, there is no possibility of conviction. Hence, further continuance of criminal proceeding would put the parties to a great oppression and prejudice. Moreover, if the criminal proceeding continues, the petitioner No. 1 will face great hardship and humiliation in front of the society despite of the fact that the parties have mutually agreed and settled the matter amicably outside the Court.

9. Accordingly, it is submitted by the learned counsel for the petitioners that it is a fit case where this Court can invoke the inherent jurisdiction under Section 482 Cr.P.C. and accordingly, prayed to set aside and quash the FIR No.21/2020 under Section 323/353/332 IPC corresponding to G. R. Case No. 403/2020 and the Charge-Sheet No. 05/2020.

10. The learned counsel for the petitioners has relied on the decision of the Hon'ble Supreme Court in the cases of ***Gian Singh-vs-State of Punjab***; reported in ***(2012) 10 SCC 303*** and ***State of Madhya Pradesh-vs- Laxmi Narayan and Others***; reported in ***(2019) 5 SCC 688*** in support of his submission.

11. The learned PP Mr. J. Tsering in this context has submitted that the case was initially registered and Charge-Sheeted under Section 323/353/332 IPC but at the time of framing of Charge, the learned CJM, Yupia has dropped Section 353 IPC and charge was framed only under Section 323/332 IPC. Further, it is submitted by the learned PP that as the

parties have settled their disputes amicably and they are no longer willing to proceed with the case and in pursuance to their amicable settlement, they have also entered into a deed of mutual settlement, the State has no objection, in the event of allowing the petition.

12. Considering the submission of the learned counsel for the parties, I have perused the petition and the documents placed on record as well as the scanned copies of the record received from the Court of learned CJM, Yupia.

13. It appears that the petitioner No. 1 has already appeared before the learned CJM, Yupia and the learned Court below has also framed charges against the petitioner No. 1 under Section 323/332 IPC.

14. As stated above, both the parties have amicably settled the matter in presence of the family members and other panchayat members as well as some Youths of the society, they mutually agreed not to proceed with the case.

15. So only the issues to be decided in this case is as to “whether this is a fit case, wherein, this Court can exercise its inherent power under Section 482 Cr.P.C. to set aside and quashed the FIR No.21/2020 under Section 323/353/332 IPC and Charge-Sheet No. 05/2020 corresponding to G. R. Case No. 403/2020 initiated against the petitioner No.1?”.

16. Here in this case, it is seen that during the pendency of the trial and after framing the charge both the parties entered into a deed of mutual

settlement with some terms and conditions which is annexed with the petition as Annexure-3. For ready reference, the terms and conditions of the deed of mutual settlement is extracted hereinbelow:-

- (1) That both the parties have decided to discontinue Balijan P.S. Case No. 21/2020 which is under trail before the Hon'ble CJM, Yupia and compoundable in nature;
- (2) That the 1st part is agreed not to repeat the same against 2nd party in near future;
- (3) Pertaining to this case, the parties and their relatives will not discuss after settlement which shall provoke each other; and
- (4) This settlement is irrevocable in any circumstance in days to come.

17. It is to be noted here that in the case of Gian Singh (supra) and Laxmi Narayan (supra), the Hon'ble Supreme Court has opined that in respect of non-compoundable offences, the power under Section 482 Cr.P.C. can be invoked if the case is private in nature and if the same do not have a serious impact on the society and also if there is any settlement or compromise between the victim and the offenders. However, the conduct of the accused is also to be considered.

18. In paragraph-13 of Laxmi Narayan, it has been 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".

19. In the present case, the petitioner No. 1 and petitioner No.2 had altercation while the petitioner No. 2 was deployed in the duty for COVID-19 and out of the said altercation, the petitioner No. 2 sustained some minor injury and for which he lodged the FIR against the petitioner No. 1 which was registered as Balijan P.S. Case No.21/2020 under Section 323/353/332 IPC but at the time of framing of charge, the learned CJM, Yupia had dropped Section 353 IPC as there was no materials to frame charge under the said Section and the charge was framed under Section 323/332 IPC. Further, it is seen that after the said incident, both the parties have amicably settled the matter in presence of some elderly people; family members; panchayat members; and some youths of the locality and in pursuance of the said deed of mutual settlement, they have approached this Court for quashing the proceeding pending before the Court of learned CJM, Yupia and also prayed to quash the FIR as well as

the Charge-Sheet, aforementioned, against the petitioner No. 1.

20. In view of the above circumstances and also considering the mutual settlement deed between the parties, I am of the considered opinion that ends of justice would be meted out, if the petition is allowed.

21. Further, since the matter has already been settled between the parties, it is unlikely that the petitioner No. 2 will depose against the petitioner No. 1, if the proceeding is allowed to be continued and in the event of allowing the proceeding to continue before the learned Court below, it would be an abuse of the process of the Court.

22. Under the above facts and circumstances, this Court is of the view that this 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 CJM, Yupia.

23. In the result, the petition stands allowed. The Charge-Sheet No. 05/2020 of Balijan Police Station and FIR No.21/2020 under Section 323/353/332 IPC corresponding to G. R. Case No. 403/202 stands set aside and quashed.

This criminal petition stands disposed of in terms of the above.

JUDGE

Comparing Assistant