

GAHC040014912022



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

Case No. : Crl.Petn. 130/2022

1: Tassar Charu and 5 Ors.

Son of Shri Tagia Charu,

Permanent Resident of Village Charu, PO and PS Nacho, Upper Subansiri District of Arunachal Pradesh.

2: Tagru Tame

Son of Late Tagru Takap

a Permanent Resident of Village Dotte

PO Tali

PS Sangram

District Kurung Kumey

Arunachal Pradesh.

3: Tako Olo

Son of Shri Tako Tale

Permanent Resident of Village Boksu

PO and PS Nyapin District Kurung Kumey of Arunachal Pradesh.

4: Hari Takter

Son of Shri Hari Tapak

Permanent Resident of Nyokum Lapang

PO and PS Itanagar

District Papum Pare of Arunachal Pradesh.

5: Techhi Sonu

Son of Shri Techhi Lali

Permanent Resident of Doimukh
PO and PS Doimukh
District Papum Pare of Arunachal Pradesh.

6: Unti Umbrey
Son of Lt. Eri Umbrey

a permanent resident of Village Eduli
PO and PS Roing
District Lower Dibang Valley
Arunachal Pradesh

VERSUS

1:THE STATE OF AP
Represented by the Public Prosecutor, Arunachal Pradesh.

Advocate for the Petitioner : Gimi Tarak

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MR. JUSTICE KARDAK ETE

ORDER

Date : 03-05-2023

Heard Mr. T. Garam, learned counsel for the petitioners and also heard Mr. J. Tsering, learned PP for the State.

2. This application under Section 482 of Cr.PC, 1973 has been jointly filed by the petitioner Nos. 1 to 6 praying for quashing of the criminal proceedings in GR case No. 574/2014 corresponding to Itanagar PS case No. 150/2014 under Sections 120B/452/326/324/427/34 IPC pending before the CJM, Yupia, Arunachal Pradesh on the basis of compromise/settlement.

3. The brief facts of the case is that an FIR dated 11.07.2014 was lodged

by petitioner No. 6 against petitioner Nos. 1 to 5, alleging interalia that a group of people led by petitioner No, 1 entered into the dwelling place of petitioner No. 6 and assaulted him. The name of the petitioner Nos. 1, 2 and 3 were mentioned in the FIR as they have come to the dwelling place of petitioner No. 6 to discuss about the ongoing dispute within the SUMA executive body and they were the executive member of Shri Biri Tabin faction. Just thereafter, large numbers of members came to his house and commotion started whereby he received cut injury so the petitioner No. 6 mentioned their names in the FIR.

4. The petitioner Nos. 1 to 3 were arrested by the police on 22.07.2014 and was released on bail. After completion of the investigation on 08.08.2014, the police submitted the charge-sheet being charge-sheet No. 223/14 whereby the GR Case No. 574/2014 was registered against the petitioner Nos. 1 to 5 under Sections 120B/452/326/324/427/34. However, the CJM, Yupia has framed the charges under Section 120B/452/326/324/427/34 IPC against the petitioner Nos. 1 to 5 which is pending before the learned CJM, Yupia.

5. The learned counsel for the petitioners submits that the FIR dated 11.07.2014 was a result of misunderstanding and miscommunication that arose solely because of the circumstances that led to believe that petitioner No. 1 and a few others attacked and assaulted the petitioner no. 6. Before the incident, the petitioner Nos. 1 to 5 came to the dwelling place of petitioner No. 6 to discuss union matter, however on the refusal by the petitioner No. 6 stating that it was already midnight and asked them to leave as it was not the right time to discuss any union matters, the petitioner Nos. 1 to 5 left the house. Thereafter, on carefully recalling the incident, the petitioner Nos. 1 to 5 were not present during the time of the incident. The incident occurred in a large group

commotion and exactly who caused the injury was also not ascertained. Thus the matter was mutually settled even before the charge-sheet was filed, but there was no formal agreement to that effect.

6. The learned counsel for the petitioner had submitted that though the matter between the petitioners was already settled verbally in 2014 itself without any written agreement, the parties have agreed to enter into a deed of mutual settlement on the ground that the petitioner Nos. 1 to 5 were not involved in the commotion and the offences under the aforesaid sections against the petitioner nos. 1 to 5 are not compoundable offences and the trial court is not in a position to consider the settlement agreement if submitted by the petitioners in terms of Section 320 Cr.PC. Since the parties have mutually settled the matter amongst themselves and the present Criminal proceeding was a result of misunderstanding and miscommunication among the petitioners and in order to keep cordial relationship among friends, the said agreement dated 17.11.2022 has been entered into by way of compromise/settlement.

7. The learned counsel for the petitioners submits that the petitioner No. 6 has already deposed before the learned Trial Court of the true fact of the case that the present accused persons, i.e., petitioner Nos. 1 to 5 were not the persons who assaulted him but rather stated that the assailants were completely unknown to him. The instant case cropped up due to the misunderstanding and miscommunication and the petitioner No. 6 lodged the FIR dated 11.07.2014 only out of confusion as he thought petitioner No, 1 was leading the group of the perpetrators but it was later found that the petitioner Nos. 1 to 5 had already left the place of the incident before the mob attacked petitioner No. 6. Thus, it turned out that the petitioner Nos. 1 to 5 were not

involved.

8. The learned counsel for the petitioners submits that since the petitioners have mutually settled the matter amongst themselves and the present criminal proceedings were initiated on the basis of FIR lodged on 11.07.2014 which was a result of misunderstanding and miscommunication among the petitioners and in order to keep cordial relationship among themselves, it is a fit case wherein this Hon'ble Court by invoking its inherent powers may quash the criminal proceedings being GR Case no. 574/2014 pending before the CJM, Yupia.

9. Mr. J. Tsering, learned PP for the State referred to the documents on record and submits that the Section 120B/452/326/324/427/34 IPC under which the petitioner Nos. 1 to 5 have been charged are non-compoundable in nature and may not be compoundable under section 320 of Cr.PC. However, he fairly submits that Section 320 may not limit or affect the powers of the Hon'ble Court under Section 482 of Cr.PC, 1973 and this Hon'ble Court in the exercise of its inherent power has to consider the facts and circumstances of the case and may pass appropriate order.

10. I have considered the submissions advanced by the learned counsel for the parties and I have also carefully perused the materials available on record.

11. The offences which are not compoundable cannot be compounded by the Court as the Court has the power of compounding offences under Section 320 of Cr.PC, however, in the given case, the High Court can quash the criminal proceedings in exercise of its inherent power under Section 482 of Cr.PC having

regard to the fact that the parties have amicably settled their disputes and the victim has no objection even if the offences are non-compoundable. In the present case, the petitioners have executed a deed of settlement with their full consent, sound mind and without any coercion. As noted above, the petitioner No. 6 who is the victim/informant has deposed that the accused persons, i.e., petitioner Nos. 1 to 5 have not assaulted him and the FIR dated 11.07.2014 mentioning the names of petitioner Nos. 1 to 3 were out of confusion, misunderstanding and miscommunication.

12. Quashment of criminal proceeding of non-compoundable offences on the basis of the compromise under Section 482 of Cr.PC has been enunciated by the Hon'ble Apex Court. After consideration of the earlier decisions the Hon'ble Supreme Court in the case of the ***State of Madhya Pradesh Vs. Lakshmi Narayan and Ors.***, reported in (2019) 5SCC 688 has held which is reproduced 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) 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. "

13. On consideration of the materials available on record in the instant case, this Court finds that the petitioner Nos. 1 to 5 and petitioner No. 6 (victim) are friends and have entered into a settlement deed on 17.11.2022 and the FIR was filed out of confusion, misunderstanding and miscommunication and they have also decided to maintain cordial and peaceful relation amongst them, being friends. This Court is of the opinion that this is a fit case wherein the inherent power under Section 482 of Cr.PC, 1973 can be invoked for quashing of criminal proceedings being GR case no. 574/2014.

14. Having regard to the facts and circumstances of the present case and considering the fact that the petitioners are friends who have entered and executed a settlement deed and also in view of the principle laid down by the

Hon'ble Supreme Court, this Court is of the considered view that the present petition for quashing the GR case No. 574/2014 corresponding to Itanagar PS case No. 150/2014 under Sections 120B/452/326/324/427/34 IPC pending before the CJM, Yupia is liable to be quashed. Accordingly, the same is quashed.

15. This criminal petition is accordingly allowed and disposed of.

JUDGE

Comparing Assistant