

GAHC040015332022



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

Case No. : Crl.Petn. 132/2022

1:Kara Nayum and Anr.
D/o Sh. Kara Sako,
R/o Upper Nyorch, Yupia, PO and PS Naharlagun, Papumpare District, Arunachal Pradesh.
Contact No. 8131909684, Email Nil

2: Kipa Hipik
S/o Lt. Kipa Takia

R/o Upper Nyorch
Yupia
PO and PS Naharlagun
Papumpare District
Arunachal Pradesh. Contact No. 8974765922. Email Ni

VERSUS

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

Advocate for the Petitioner : Rajesh Sonar

Advocate for the Respondent : P P of AP

**BEFORE
HONBLE MR. JUSTICE KARDAK ETE**

ORDER

Date : 03-05-2023

Heard Mr. R. Sonar, learned counsel along with Mr. T. Topu, learned counsel for the petitioners and also heard Mr. T. Ete, learned Additional PP for the State.

2. This instant application under Section 482 of Cr.PC has been jointly filed by the petitioners for setting aside the criminal proceedings in POCSO Case No. 13/2020 under Sections 354(A)/506 of IPC, 1860 read with Section 8 of the Protection of Children from Sexual Offences Act, 2012, corresponding to Itanagar Women PS Case no. 91/2020 pending before the Special Judge (POCSO), Yupia on the basis of compromise/settlement between the accused and the victim.

3. The facts of the case in brief is that on 06.11.2020, an FIR was filed by the petitioner No. 1 at Women Police Station, Itanagar, *interalia*, alleging that the petitioner No. 2 molested her on 21.10.2020 at around 5:20 AM near Yupia water tank and since then he had been calling and texting her saying "he is in love with her". It was also alleged that on the intervening night of 03.11.2020, the petitioner No. 2 also fired several rounds of firing from his revolver and threatened her. It was on the basis of the aforesaid FIR, Itanagar Women Police Station Case No. 91/2020 dated 07.11.2020, under sections 354/354A(1)/354D/336/506 of the IPC, 1860 read with Section 8 of the Protection of Children from Sexual Offences Act, 2012 and Section 27(1) of the Arms Act was registered against the petitioner No. 2.

4. The petitioner No. 2 was arrested in connection with the above case and later he was released on bail. On the completion of the investigation, charge-sheet No. 79/20 dated 19.11.2020 was filed before the jurisdictional Special Judge, Yupia against the petitioner No. 2. The petitioner No. 2 was found to have committed various offences under sections 354/354A(1)/354D/336/506 of IPC read with Section 8 of the Protection of Children from Sexual Offences Act, 2012. The learned Special Judge, Yupia vide its order dated 17.05.2022 has framed the charges under the aforesaid sections against the petitioner No. 2 which is pending trial before the Special Judge, Yupia at the stage of Prosecution Evidence.

5. After the arrest of the petitioner No. 2, at the initiative of the family members and close relatives of both the parties, they had compromised and settled the matter as the basis of filing of the FIR against the petitioner No.2 was out of sheer misunderstanding and miscommunication between the parties as the petitioner No. 1 was under the impression that petitioner No. 2 was stalking her. Considering the fact that the parties are immediate neighbors and share an amiable and familial relationship with each other, and the allegation had arisen out of sheer misunderstanding and miscommunication between the parties and at the heat of moment, the family members and the close relatives had unanimously agreed to amicably and mutually settle the aforesaid criminal case and to that effect, a mutual agreement dated 20.11.2020 was executed between the parties. Now, the respective family members of both the parties have buried the hatchet and have been maintaining an amiable, cordial and familial relationship with each other and in view of which the petitioner no, 1 and her families do not intend to further pursue the aforesaid case against the petitioner no. 2.

6. On the basis of aforesaid settlement, the petitioners have jointly filed the present criminal petition for quashing the criminal proceedings in POCSO Case No. 13/2020 which is pending before the learned Special Judge (POCSO), Yupia.

7. Mr. R. Sonar, learned counsel for the petitioners submits that the present criminal case has arisen out of sheer misunderstanding and miscommunication between the parties at the spur of moment and the parties and their respective family members realizing the same have already settled the matter mutually and amicably. The petitioners, their respective family members and close relatives after considering the matter in its entirety has unanimously and unequivocally settled the matter mutually and amicably by executing a mutual settlement agreement dated 20.11.2020.

8. The learned counsel for the petitioners submits that petitioner No. 2 is a married person and is well settled with his family comprising of his wife and minor school going children who are completely dependent upon him as he is the sole bread earner in the family. Therefore prays that that the criminal proceedings in POCSO Case No. 13/2020 corresponding to Itanagar Women PS Case no. 91/2020 pending trial before the Special Judge, Yupia may be quashed. The learned counsel for the petitioner has placed reliance in the case of **Vimal Kumar Gupta V. State of Rajasthan** in Criminal Misc(Pet.)/1348/2022, **K. Dhandapani V. The State by the Inspector of Police** in CrI. Ap./796/2022, **Tarun Vaishnav V. State of Rajasthan** in Criminal Misc(Pet.)/6323/2022, **S. Satish Kumar V. S. Venkatesan and Anr** in CrI.O.P./7837/2022.

9. Mr. T. Ete, learned Additional PP while opposing the prayer of the petitioners submits that merely based on the compromise/settlement between the petitioners, the criminal proceedings in POCSO Case No. 13/2020 pending before the Special Judge, Yupia cannot be quashed by invoking the inherent powers of this Court under Section 482 of Cr.PC, 1973 as the offences committed by the petitioner No. 2 are heinous and serious in nature. The petitioner No. 1 at the time of occurrence was a minor, therefore, the present petition is liable to be dismissed.

10. Mr. T. Ete, learned counsel has placed reliance on the judgment of Kerala High Court in CrI.MC/5636/2019 wherein the learned Single Judge of the Hon'ble High Court of Kerala has quashed the FIR and all further proceedings, which was taken to appeal before the Hon'ble Supreme Court by the State of Kerala being SLP (CRL)/280/2022 whereby the aforesaid order of the Kerala High Court was set aside by the Hon'ble Apex Court.

11. Mr. T. Topu, learned counsel appearing along with Mr. R. Sonar, learned counsel for the petitioners submits that the compromise/ settlement has been arrived at between the parties voluntarily without any coercion.

12. I have considered the submissions advanced by the learned counsel for the parties.

13. The Hon'ble Supreme Court in the case of ***Gian Singh V. State of Punjab and Anr.*** reported in (2012) 10 SCC 303, held as under:

" 55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent

continuation of unnecessary judicial process. This is founded on the legal maxim quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest. The full import of which is whenever anything is authorized, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorized in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. Ex debito justiae is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection.

56. It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a straitjacket formula regulating the exercise of inherent powers under section 482. No precise and inflexible guidelines can also be provided."

14. In the case of ***State of Madhya Pradesh V. Laxmi Narayan & Ors***, reported in (2019) 5 SCC 688, the Hon'ble Apex Court after consideration of earlier decisions 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. "

15. On consideration of the materials available on record, this Court finds that the settlement/compromise arrived at between the parties appears to be a genuine one. The settlement agreement had been arrived at between the petitioner No. 1 and petitioner No. 2 at the initiative of the family members and close relatives of both the parties as the basis of filing the FIR against the petitioner No. 2 was out of sheer misunderstanding and miscommunication between the petitioner No. 1 and petitioner No. 2. Considering the fact that the parties are immediate neighbors and share an amiable and familial relationship with each other, and the allegation had arisen out of sheer misunderstanding

and miscommunication between the petitioner No. 1 and petitioner No. 2 and they have arrived at a settlement, this Court is of the view that that the present petition for quashing the proceeding pending before the Special Judge, Yupia is warranted. In view of the above said settlement, the continuance of prosecution of the present case will not serve any purpose.

16. On the attending the facts and circumstances of the present case, this Court is of the considered view that the principles laid down by the Hon'ble Apex court can be applied in the present case. Accordingly, the POCSO Case No. 13/2020 pending before the Special Judge, Yupia against the petitioner No. 2 is hereby quashed.

17. Crl.Petn/132/2022 is accordingly allowed.

JUDGE

Comparing Assistant