

GAHC040015402022



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

Case No. : Crl.Petn. 134/2022

1:Smt. Yama Potom and 2 Ors.
Smti. Yama Potom (Wife of accused)
W/o Shri Talu Potom, Presently resident of power h
House Colony, Naharlagun, District-Papum-Pare, A.P
M.No 8730944109

2: Tau Potom (Accused)
S/O
Tadul Potom
Village- Degi- Potom
P.O
and P.S- Darak
District- West Siang
Arunachal Pradesh.
P/R- Power House Colony
PO/PO Naharlagun
Papum-Pare District
A.P

3: Nabam Nanu (Complainant)
D/o Shri Nabam Bate
Resident of Power House Colony
Naharlagun PO/PS Naharlagun
Papum-Pare District
Arunachal Pradesh

VERSUS

1:THE STATE OF AP
through learned Public Prosecutor

Advocate for the Petitioner : Lissing Perme

Advocate for the Respondent : P P of AP

**BEFORE
HONBLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

Date : 08-02-2023

Heard Mr. L. Perme, learned counsel for the petitioners. Also heard Mr. G. Tado, learned Additional Public Prosecutor for the State of Arunachal Pradesh.

2. This is an application filed under Section 482 of the Code of Criminal Procedure, 1973 praying for quashing and setting aside of Charge sheet No. 59/2022 dated 10.05.2022 under Section 453 of IPC, 1860 corresponding to Naharlagun P.S. Case No. 47/2022 under Section 455 of IPC and its corresponding proceeding initiated as GR No. 360/2022 under Section 453 of IPC pending before the learned Court of Chief Judicial Magistrate, Capital Complex at Yupia, Arunachal Pradesh.

3. This present petition is filed by the accused in the aforesaid charge-sheet and he is the petitioner No. 2 along with his wife as petitioner No. 1, in the present application. This petition is also joined by the petitioner No. 3 who is the complainant of the alleged offence and she lodged the F.I.R. Further, this present petition is filed in a background that the complainant 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.

4. The contents of the F.I.R. discloses that on the alleged day i.e. 09.05.2022

the petitioner No. 2 at around 4:00 AM to 4:30 AM out of a sudden went out of the house without informing his family members after knowing the act in the wee hours when the family members realized that the petitioner No. 2 is not in the house they started to search him in the nearby area and found him after sometime and later on came to know that a FIR/Complaint has been filed by petitioner No. 3 alleging inter-alia that one unknown intruder broke into her building at around 4:30 AM and looked every corner of the building with a dao (Machaete) in his hand. In the aforesaid backdrop, the petitioner No. 3, lodged an FIR on 09.05.2022 before the Officer-In-Charge Naharlagun Police Station which was registered as Naharlagun PS Case No. 47/2022 under Section 455 of IPC.

5. After the registration of the FIR, the case was investigated by the Investigating Officer and Charge Sheet was laid against the petitioner Nos. 2, vide Charge Sheet No. 59/2022 dated 10.05.2022 corresponding to GR No. 360/2022 under Section 453 of IPC.

6. Subsequently, the petitioners have mutually settled the matter and entered into a Deed of Amicable Settlement on 02.12.2022, at Itanagar, Arunachal Pradesh, which is part of the present petition. In the Deed of Amicable Settlement, the present accused is described as 1st Party, the complainant is described as 2nd Party and wife of accused is described as 3rd Party. The said Settlement discloses the following:-

“Whereas presently First Party is totally bedridden due to stroke and not in position to move out from house and as such the Third Party being natural wife of the First Party is necessary party in this mutual settlement deed.

Whereas, after knowing the identity of the First Party and also having knowledge about the fact that First Party is totally bedridden, the Second Party agreed to settle

the case mutually under the supervision of many elders, prominent public figure and other persons from both the parties”

7. On the basis of the disclosure, the following terms were incorporated in the settlement amongst other terms.

“1. The Second Party has no more grudge and grievance against the First Party.

2. That Second Party firmly believed that the incident reported by her in FIR dated 09.05.2022 happened without any ill intention on the part of the First Party.

3. That as the First Party is bedridden, the Second Party and Third Party will do every endeavour and every needful to make sure that the GR No. 360/2022 U/s 453 IPC pending trial before Chief Judicial Magistrate, Capital Complex, Yupia got set aside and quashed.

4. That all the parties mutual settled the aforesaid mention case for betterment and continuity old age tribal belief that pardon each other's is best policy for peaceful coexistence in society”.

08. 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 of Charge sheet No. 59/2022 dated 10.05.2022 under Section 453 of IPC, 1860 corresponding to Naharlagun P.S. Case No. 47/2022 under Section 455 of IPC and its corresponding proceeding initiated as GR No. 360/2022 under Section 453 of IPC pending before the learned Court of Chief Judicial Magistrate, Capital Complex at Yupia, Arunachal Pradesh.

09. 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**.

10. In the case of State **of Madhya Pradesh & Laxmi Narayan**, (supra), 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.

11. For ready reference, paragraph-13 of **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) 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 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.”

12. Considering the factual background of the present case and also considering the nature of offence and declaration by the parties that the petitioner No. 2 has also been suffering from psychiatric disorder and has been completely bedridden from past many months, as well as considering the fact that the compromise was proposed immediately between the parties and taking note of the materials available on record including the statements recorded under Section 161 of Cr.P.C., and the Charge-Sheet, this Court is of the considered opinion that this is a fit case, where this Court should exercise its inherent power under Section 482 of Cr.P.C. to Charge sheet No. 59/2022 dated 10.05.2022 under Section 453 of IPC, 1860 corresponding to Naharlagun P.S. Case No. 47/2022 under Section 455 of IPC and its corresponding proceeding initiated as GR No. 360/2022 under Section 453 of IPC pending before the learned Court of Chief Judicial Magistrate, Capital Complex at Yupia, Arunachal Pradesh. This Court has, coming into such conclusion also considered that the offence alleged to have been committed is not heinous and shall not have serious impact on the society.

13. Accordingly, this petition is allowed by setting aside and quashing the Charge sheet No. 59/2022 dated 10.05.2022 under Section 453 of IPC, 1860 corresponding to Naharlagun P.S. Case No. 47/2022 under Section 455 of IPC and its corresponding proceeding initiated as GR No. 360/2022 under Section 453 of IPC pending before the learned Court of Chief Judicial Magistrate, Capital

Complex at Yupia, Arunachal Pradesh.

JUDGE

Comparing Assistant