

GAHC040015802022



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

Crl.Petn.138(AP)/2022

1. Shri Sunil Kumar Lakhotia
S/o. Shri Ram Gopal Lakhotia,
C/o-Sachin Textile Mills Kher Road
Balotra, Dist: Bharmar (Rajasthan).
2. Smti Sunita Lakhotia,
W/O. Lt. Shri Dwarka Prasad Lakhotia,
P/R: of Village Nokha,
P.O.-P.S: Nokham of Damsite,
District : Bikaner, (Rajasthan),
P/Add: of G-Extension,
PS/PO: Naharlagun,
Dist: Papum Pare (Arunachal Pradesh).

..... Petitioners

VERSUS

1. State of Arunachal Pradesh
representing through the Public
Prosecutor

..... Respondents

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Advocate for the Petitioners : Ms. K. Rimi, Advocate

Advocate for the Respondent : Ms. L. Hage, Advocate

Date of Hearing : 29.05.2023

Date of Judgment : 26.09.2023

JUDGMENT & ORDER (CAV)

1. This is an application u/s 482 of the Code of Criminal Procedure, 1973 (Cr.PC for short) with prayer for quashing the criminal proceeding of G.R. Case No. 78/2009 registered u/s 406/420/120(B)/418/419/507/34 of Indian Penal Code (IPC for short) pending in the Court of the Judicial Magistrate, First Class, Capital Complex, Yupia.

2. Brief facts of this case are that an FIR was lodged by Shri Dwarka Prasad Lakhotia that on 16.01.2009 at about 9 PM one Radhe Shyam Rathi and Raju Rathi introduced the informant to one Sri Ritesh Kumar Lahoti stating that Sri Ritesh Kumar Lahoti is an expert in share market and would be able to advise him to invest diligently in the share market with maximum returns. The informant was thereby induced by Ritesh Kumar Lahoti to invest in the share market and the informant who did not have enough money at that time requested for some time to return to Arunachal Pradesh to manage the amount required for investment. As soon as the informant reached Naharlagun, Ritesh Kumar Lahoti called him over phone and asked him to arrange the money immediately and provided him the account number of one Sri Vishnu Karwa being Account No. 10637175441 and the Account No. of Shri Sunil Kumar Lahoti being Account No. 30253532488 of SBI. Thereafter the informant paid the required amount into the account number of Vishnu Karwa and Sunil Kumar Lahoti on different dates as advised by Ritesh Kumar Lahoti. He deposited as follows:-

- 1] An amount of Rs. 15,00000.00 into the account of Sri Vishnu Karwa; AC No. 10637175441 through Cheque No. 245740 dated 28.01.2009.
- 2] An amount of Rs. 10,00000.00 to Sri Vishnu Karwa through Cheque No. 245742 dated 27.01.2009.
- 3] An amount of Rs. 3,00000.00 to Sri Vishnu Karwa through Cheque No. 245743 dated 28.01.2009.
- 4] An amount of Rs. 5,00000.00 to Sri Vishnu Karwa through Cheque No. 245749 dt. 03.02.09.
- 5] An amount of Rs. 2,00000.00 to Sri Vishnu Karwa through Cheque No. 491865 dt. 27.01.09.
- 6] An amount of Rs. 5,00000.00 to Sri Sunil Kumar Lahoti A/C No. 30253532488 through Cheque No. 245754 dt 11.02.09.
- 7] An amount of Rs. 5,00000.00 to Sri Sunil Kumar Lahoti Cheque No. 245759 dt. 18.02.09.
- 8] An amount of Rs. 5,00000.00 to Sunil Kumar Lahoti through Cheque No. 245761 dt. 16.02.09.

3. It is contended that after expiry of one month the informant asked Shri Hitesh Kumar Rathi, Shri Vishnu Karwa and Shri Sunil Kumar Lahoti to return the loan amount of Rs. 50 lacs, but to his dismay he was informed that the money

which was invested in the share market could not be returned as they had to suffer loss in the shares so invested. The informant later learnt that no account or de-mat account was opened in his name to invest the money forwarded to the miscreants in the share market. The complainant then realised that the miscreants siphoned off the money and cheated him. Then an FIR was lodged by the informant which was registered as NLGPS Case No. 21/2009 u/s 406/420/34 IPC. Investigation commenced and charge-sheet was laid against the accused-persons on 02.10.2009. It is averred that the IO has reflected in the charge-sheet that both the parties have compromised and amicably settled their dispute as the informant was asserted that the money invested will be paid back to him. The widow of Late Dwarka Prasad Lakhotia had also given a declaration in favour of the accused-persons to compound the case as her husband had already settled the matter with the accused-persons before his death. It is submitted that as the matter has already been compromised and settled, possibility of conviction appears to be remote and bleak and further proceeding will indeed be an abuse of the process of the Court. The petitioner No. 1 Sri Sunil Kumar Lahoti and the petitioner No. 2 who is the wife of the deceased informant have amicably settled their dispute and they have no hard feelings at present.

4. The petitioners have also relied on the decision of the Hon'ble Supreme Court in *Narinder Singh and Other vs. State of Punjab and Another*, reported in (2014) 6 SCC 466 wherein several guidelines have been laid down relating to invoking inherent jurisdiction when a case is amicably settled between the parties.

5. Heard Ms. K. Rimi, learned counsel for the petitioners. Also heard Ms. L.

Hage, learned Addl. P.P., Arunachal Pradesh.

6. I have given my thoughtful consideration to the submissions at the Bar. I have also relied on the decision of Hon'ble the Supreme Court in *Narinder Singh's case (supra)*. I have scrutinised the LCR and the agreement between the parties tagged along with the petition. Seen the Annexure- P/9 which is a self-declaration by Smt. Sunita Lakhotia wife of Late Dwarka Prasad Lakhotia. From the self-declaration it appears that the informant had settled the matter relating to Naharlagun P.S. Case No. 21/2019 during his life time vide Settlement Deed dated 08.05.2009. This Settlement Deed is tagged along with the petition which clearly reveals that the informant Late Dwarka Prasad Lakhotia vide the mutual agreement settled his dispute with the accused-persons during his life time. I have also perused the scanned copies of the LCR. This case was pending at the stage of appearance and furnishing of copies. As both the parties have amicably settled their dispute this appears to be a fit case to invoke the inherent jurisdiction u/s 482 Cr.PC.

7. It has been observed by Hon'ble the Supreme Court in *Narinder Singh's case (supra)* that :-

"29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.1. Power conferred under Section 482 of the Code is to be

distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any Court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.3. Such a power is not be exercised in those prosecutions which involve 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. Similarly, for offences alleged to have been committed under special statute like the 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.

29.4. On the other, those criminal cases having overwhelmingly and pre-dominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. 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 proving 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. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is

going to result in harmony between them which may improve their future relationship.

29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already

recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.

8. Reverting back to this case it is held that the late informant's wife had jointly filed this petition with the accused. This is a case relating to financial matters which has already been settled between the parties amicably. Both the parties have buried their hatchet. Probability of conviction indeed appears to be remote and bleak. Further proceeding will indeed be an abuse of the process of the Court.

9. In the wake of the foregoing discussions the petition is allowed. The proceeding of G.R. case No. 78/2009 u/s 406/420/120(B)/418/419/507/34 IPC is hereby quashed and set aside.

JUDGE

Comparing Assistant