

GAHC040015862023



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

Case No. Crl.Petn/215(AP)2023

1. Shri Hoshiar Singh Dahiya, S/o-Lt. Jugal Dahiya, R/o-C-4/32, SDA, New Delhi-110016.
2. Shri Harinder Singh, S/o-Shri Napohli Singh, R/o Jatoli village, PO/PS-Hassanpur, Distt. Palwal, Haryana.
3. Shri Paksing Maling, S/o-Shri Tapak Maling, R/o-Pakpu Maling village, PO/PS-Taliha, Upper Subansiri District, A.P.
4. Shri Nabi Maling, S/o-Shri Paksing Maling, R/o Pakpu Maling village, PO/PS-Taliha, Upper Subansiri District, A.P.
5. Shri Bupak Dui, S/o-Lt. Tabu Dui, R/o-Dui village, PO/PS-Taliha, Upper Subansiri District, A.P.

.....***Petitioners***

-Versus-

1. The State of Arunachal Pradesh represented by the Public Prosecutor.

.....***Respondent***

Advocates

For the petitioners	:Mr. Duge Soki
For the respondent	: Mr. Token Ete (Addl. P.P.)
Date of hearing	: 21.12.2023
Date of order	: 21.12.2023

:::BEFORE:::

**HON'BLE MR. JUSTICE KARDAK ETE
JUDGMENT & ORDER (ORAL)**

Heard Mr. D. Soki, learned counsel for the petitioners. Also heard Mr. T. Ete, learned Addl. P.P., appearing for the State.

2. By filing this petition under Section 482 of the Criminal Procedure Code, 1973, the petitioners have jointly prayed for quashing of the GR case No.05/2021, under Sections 448/323/365/34, IPC, 1860, pending before the Court of learned CJM, Daporijo, on the basis of compromise between the parties.

3. The brief background fact of the case is that the petitioner No.1 is the authorized signatory of a Russia based joint stock company, who participated in the tender process of Package-5 of the Trans- Arunachal Highway and was awarded the work. The petitioner No.1 agreed to sublet the contract work to the petitioner No.3 and the petitioner No.3 accordingly moved his men and machineries to the work site. However, due to certain factors, the petitioner No.1 had to award the above referred work to different contractors and as such some misunderstanding cropped up between petitioner No. 1 and petitioner No.

3. Due to such misunderstanding, on 23.12.2020, the petitioner No.3 along with the petitioner Nos.4 & 5 took the petitioner No.2, who is the Project Manager, to their house and verbally abused him and later dropped him back to his room.

4. On 19.01.2021, the Deputy Commissioner, Upper Subansiri, Daporijo, directed the petitioner No.1 to start the work. Accordingly, the petitioner No.1 responded vide his letter dated 22.01.2021 expressing difficulties being faced by him on the ground and also mentioned the fact about the petitioner No.3 taking the petitioner No.2 to his house. Thereafter, the Deputy Commissioner, Upper Subansiri, Daporijo, forwarded the letter of the petitioner No.1 to the Officer-in-Charge of the Daporijo Police Station. On receipt of the said letter dated 22.01.2021, on being forwarded by the Deputy Commissioner, a case was registered being Daporijo P.S. Case No.05/2021, under Sections 448/323/365/34 of the IPC.

5. The petitioners appeared before the Investigating Authority and their statements were recorded, whereby they have clearly stated that the incident of 23.12.2020 was due to certain misunderstanding during the course of commercial transaction. Petitioners claimed that matter being arises out of certain misunderstanding between the parties in the course of commercial transaction; they were under the impression that the same would be closed. However, the charge sheet has been filed by the Investigating Officer on 26.08.2021 and the charges were framed against the petitioner Nos.3, 4 and 5, under Sections 448/323/365/34, IPC, 1860 by the learned CJM, Daporijo.

6. Mr. D. Soki, learned counsel for the petitioners submits that in fact the matter was settled between the parties long back and they were under the impression that the matter has been closed. However, after framing of the charges against the petitioner Nos.3, 4 and 5, the petitioner Nos.1 & 2 had

received the summons for recording of their depositions as prosecution witnesses before the learned CJM, Daporijo. He further submits that the petitioners have already sorted out their misunderstanding, which has arisen during the course of business transaction long back and the petitioners have finally entered into a settlement deed on 20.11.2023. He submits that in view of such settlement and the nature of allegation, the chances of conviction is bleak and remote and continuation of the proceedings would be futile. Therefore, he prays that the proceedings of GR Case No.05/2021, under Sections 448/323/365/34 of the IPC, against the petitioner No. 3, 4 and 5, pending before the Court of learned CJM, Daporijo, may be quashed.

7. Mr. T. Ete, learned Addl. PP, appearing for the State fairly submits that the offences charged with against the petitioner Nos.3, 4 and 5 are punishable with seven (7) years imprisonment which are serious but not heinous in nature. More so, the parties have settled the matter between them and there is very less chance of conviction of the accused persons. Therefore, Mr. Ete submits that he would not have serious objection if this Court pass an appropriate order deem fit and proper in accordance with law.

8. I have considered the submissions of learned counsel for the parties and perused the scanned copy of the LCR.

9. On consideration of the submissions of learned counsel for the parties and the materials available on record, it transpires that the allegation has emanates from certain misunderstanding in the course of business transaction between the petitioner No.1 and petitioner Nos.3 with regard to the subletting of work. Indisputably, there was no written FIR/Complaint filed by the petitioner No.1. The case was registered on the basis of the forwarding letter by the Deputy Commissioner, Upper Subansiri, Daporijo, on the letter written by the petitioner

No.1 to the Deputy Commissioner, responding the Deputy Commissioner who directed the petitioner No.1 to commence with the road construction work which was awarded to petitioner No.1 as referred to above. It is also seen that the petitioners have entered into a settlement on 20.11.2023, without their being any coercion or otherwise and amicably resolved the matter between them.

10. In view of the above facts and circumstances, this Court is of the view that even if the trial of the case is allowed to be proceeded, the prosecution is unlikely to prove the charges leveled against the accused persons which would be an abuse of process of law. The offences charged with are though serious but not heinous in nature. The chance of conviction appears to be far too remote. Thus, the present case is one of the cases where the inherent power of this Court under Section 482 of the Cr.P.C, 1973 is fit to be invoked.

11. A profitable reference may be made to the case of **State of Madhya Pradesh vrs. Laxminarayan and Ors.**, reported in **(2019) 5 SCC 688**, wherein the quashment of criminal proceedings of non-compoundable offences on the basis of compromise under section 482 of Cr.P.C, has been authoritatively enunciated, which is reproduced herein under:-

“15. Considering the law on the point and the other decisions of this court on the point referred to herein above, it is observed and held as under:-

15.1. That the power conferred under section 482 of the Code to quash the criminal proceedings for 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;

15.2. Such power is not to be exercised in those prosecution 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;

15.3. Similarly, such power is not to be exercised for the offences under special statutes like the Prevention of Corruption Act or the offences committed by the public servants while working in that capacity are not to be quashed merely on the basis of compromised between the victim and offender;

15.4. 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 serious impact on the society cannot be quashed in exercise of the power under section 482 of the Code, on the ground that 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 the provision. It would be open to the High Court to examine as to whether incorporation of section 307 IPC is there for sake of it or the prosecution has collected sufficient evidence, which if proved, would led to framing of charge under section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of the injury sustained, whether such injury is inflicted on the vital/delicate parts of the body, nature of the 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 farmed 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 decisions 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.

15.5. 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 serious impact on the 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; conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he has managed with the complainant to enter into compromise, etc.”

12. In the present case, having regard to the fact and circumstances of the present case and considering the fact that the petitioners have entered and executed compromise deed dated 20.11.2023 and have amicably resolved the matter which has arisen out of sheer misunderstanding in the course of business transaction and also in view of the law laid down by the Hon'ble Supreme Court, I deem it appropriate to allow the present criminal petition jointly filed by the petitioners.

13. Accordingly, the proceedings of GR case No.05/2021, under Section 448/323/365/34 of the IPC, 1860 against the petitioner N0. 3, 4 and 5, pending before the Court of learned CJM, Daporijo is hereby quashed.

14. The Criminal Petition stands allowed and disposed of accordingly.

JUDGE

Comparing Assistant