

GAHC010088792023



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

Case No. : Crl.Pet./384/2023

ELIYAS HUSSAIN
S/O HASEN ALI, VILL-KUTHURIJHAR, P.O.-BARENGABARI, P.S.-
GOBARDHANA, DIST-BAKSA, ASSAM, PIN-781315

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:MINATI TAPPO
W/O LATE SADHU TAPPO
R/O VUILL-PANIMUDRI
P.O.-BARCHAKADAL
P.S.-SIMLA
DIST-BAKSA
ASSAM
PIN-78137

Advocate for the Petitioner : MS J HAZARIKA

Advocate for the Respondent : PP, ASSAM

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
ORDER

21.08.2023

Heard Ms. M. Khatun, learned counsel for the petitioner. Also heard Mr. P. S. Lahkar, learned Additional Public Prosecutor for the State of Assam representing the State respondent and Mr. M. Rahman, learned counsel for the respondent No. 2.

2. This is an application filed under Section 482 of the Code of Criminal Procedure, 1973 praying for setting aside and quashing the impugned F.I.R. in Simla P.S. Case No. 26/2020 and incidental proceeding in PRC Case No. 519/2021 under Section 279/304(A) I.P.C. pending before the learned Chief Judicial Magistrate, Baksa at Mushalpur. The aforesaid case was registered on the basis of the FIR lodged by the respondent No. 2 against the petitioner No. 1.
3. This present petition is filed in a background that the petitioner No. 1 and the respondent No. 2, 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 facts of the case is that the respondent No. 2 as informant lodged an ejahar dated 08.03.2020 alleging inter alia that on 08.03.2020 at about 11:00 AM while the informant/respondent No. 2 along with her husband were proceeding from their house Panimudri to Domni Bazar for household marketing and when they reached at Kadamtoli (Tuprakuchi) on Kadamtoli-Domni PWD Road, one vehicle bearing registration No. AS-28-C-6509 (Tractor), driven by the petitioner No. 1, in a rash and negligent manner and knocked down the husband of the respondent No. 2. As a result of the said accident husband of the respondent No. 2 was died on the way to Hospital at Mushalpur.

5. On receipt of the said ejahar the Officer-in-Charge of Simla Police Station, registered a case which was registered as Simla P.S Case No. 26/2020 under Sections 279/304(A) IPC and started investigation.
6. After completion of the investigation, submitted the Charge Sheet before the learned CJM, Baksa in connection with PRC Case No. 519/2021.
7. The learned CJM, Baksa, after taking cognizance in the PRC No. 519/2021, issued summon to the petitioner No. 1 for appearance.
8. Subsequently, the petitioner No. 1 and the respondent No. 2 have amicably settled their disputes by clearing their misunderstanding and in this regard, respondent No. 2 had executed an affidavit before the Notary Public, Kamrup (M) at Guwahati which is annexed as Annexure-3 to this petition, wherein the respondent No. 2 declared to the effect that she will have no objection if the Hon'ble Court quash the impugned F.I.R. in Simla P.S. Case No. 26/2020 and incidental proceeding in PRC Case No. 519/2021 under Section 279/304(A) I.P.C. pending before the learned Chief Judicial Magistrate, Baksa at Mushalpur against the petitioner No. 1.
9. 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 the impugned F.I.R. in Simla P.S. Case No. 26/2020 and incidental proceeding in PRC Case No. 519/2021 under Section 279/304(A) I.P.C. pending before the learned Chief Judicial Magistrate, Baksa at Mushalpur.
10. 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***.

11. In the case of State ***of Madhya Pradesh & Laxmi Narayan***, reported in ***AIR 2019 SC 1296***, 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.
12. For ready reference, paragraph-13 of ***State of Madhya Pradesh & 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 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. From the materials available on record including the affidavit filed by the respondent No. 2, this Court is of the view that the matter relates to disputes 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 petitioner No. 1 and respondent No. 2, this is a fit case where the power under Section 482 Cr.P.C. can be exercised as held in **Laxmi Narayan** (Supra).

14. Accordingly, this petition is allowed by setting aside and quashing the impugned F.I.R. in Simla P.S. Case No. 26/2020 and incidental proceeding in PRC Case No. 519/2021 under Section 279/304(A) I.P.C. pending before the learned Chief Judicial Magistrate, Baksa at Mushalpur.

JUDGE

Comparing Assistant