

GAHC010093882023



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

Case No. : Crl.Pet./411/2023

DAVID KUMAR NATH
S/O SRI KIRAN CHANDRA NATH
R/O VILL- PACHIM SENSUA
P.O SENSUA, PS. NAGAON SADAR
DIST. NAGAON, ASSAM, PIN-782002

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, STATE OF ASSAM

2:SRI JYOTIKA DEVI
D/O SRI SURENDRA NATH
W/O SRI DEVID KUMAR NATH
R/O VILL- PACHIM SENSUA
P.O. SENSUA
P.S. NAGAON SADAR

DIST. NAGAON
ASSAM

PIN-78200

Advocate for the Petitioner : MR. P P BARUAH

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

13.09.2023

Heard Mr. R. Sharma, learned counsel for the petitioner. Also heard Mr. S. H. Bora, learned Additional Public Prosecutor representing the State respondent No.1 and Mr. M. Sarma, 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 quashing and setting aside of the Charge-Sheet No.1435/2018 dated 31.10.2018 submitted in connection with Nagaon Sadar P.S. Case No. 3144/2015 under Section 420/493/376 of IPC and the proceeding of PRC Case No.574/2022, which is pending before the Court of learned Chief Judicial Magistrate, Nagaon.

3. I have given my anxious consideration to the submissions at the Bar, with circumspection.

4. It is submitted by the learned counsel for the petitioner, Mr. R. Sharma that the present petitioner and the respondent No.2 are husband and wife and they got married on 07.10.2015. But, due to some misunderstanding and out of anger, the respondent No.2 lodged an FIR on 13.11.2015 against the present petitioner which has been registered as Nagaon Sadar P.S. Case No. 3144/2015 under Section 420/493/376 of IPC. Thereafter, on 23.05.2016, the petitioner and the respondent No.2 registered their marriage under Special Marriage Act, 1954 and at present both are living together as husband and wife without any difference and dispute between them. Subsequently, the investigating officer submitted the Charge-sheet No.1435/2018 dated 31.10.2018 against the

petitioner without considering the fact that both are living peacefully as husband and wife and correspondingly, a proceeding being PRC Case No. 574/2022 is pending before the learned Chief Judicial Magistrate, Nagaon against the petitioner. Since, both the petitioner and the respondent No.2 are living together as husband and wife in peaceful manner till date without any disturbance and dispute between them, the continuation of the PRC Case No.574/2022 against the petitioner will adversely affect the married life of both the parties and the same is an abuse of the process of Court.

5. He also submitted that dispute has been resolved between the parties which arose only due to misunderstanding and at present they are living together as husband and wife. Hence, it is a fit case where the inherent power under Section 482 of Cr.P.C. can be invoked by setting aside and quashing of the criminal proceeding as stated above.

6. In this context, Mr. M. Sarma, learned counsel for the respondent No.2 has raised no objection if the criminal proceeding initiated against the present petitioner is set aside and quash by invoking the power under Section 482 of Cr.P.C. He also submits that there is remote chance of conviction even if the proceeding is continued.

7. Mr. S. H. Bora, learned Additional Public Prosecutor has submitted that as the matter has been settled between the parties outside the Court and are living peacefully as husband and wife, and thus, she raised no objection on the prayer made by the petitioner.

8. Hearing the submissions made by the learned Advocates of both sides, as well as considering the fact that the petitioner and respondent No.2 had

registered their marriage under Special Marriage Act, 1954 and at present they are living together as husband and wife. I find that there is remote chance of conviction even if the proceeding is allowed to be continued. It is also stated that the respondent No.2 had lodged the FIR only due to anger and she is not willing to further proceed with the case.

9. In this regard, a decision of ***Hon'ble Apex Court in the Case of Kapil Gupta vs. State of NCT of Delhi, reported in (2022) 0 Supreme (SC) 1108***, can be cited, wherein it has been held that "*(B) Indian Penal Code, 1860 – Section 376 – Criminal Procedure Code, 1973, - Sections 320 and 482 – Rape – Quashing petition – Amicable settlement between the parties – Case and counter- case – Respondent No.2 is a young lady of 23 years – She feels that going through the trial in one case, where she is a complainant and in other case, wherein she is accused would rob prime of her youth – In both cases, though the charge-sheets have been filed, charged are yet to be framed and as such, trial has not yet commenced – Since respondent No. 2 herself is not supporting prosecution case, even if criminal trial is permitted to go ahead, it will end in nothing else than an acquittal – If request of the parties is denied, it will be amounting to only adding one more criminal case to already overburdened criminal Courts – Both criminal proceedings quashed*". And, paragraph 13 of the said judgment is read as under:-

"3. It can thus be seen that this Court has clearly held that though the Court should be slow in quashing the proceedings wherein heinous and serious offences are involved, the High Court is not foreclosed from examining as to whether there exists material for incorporation of such an offence or as to whether there is sufficient evidence which if proved would lead to proving the charge for the offence charged with. The Court has also to take into consideration as to whether the settlement between the parties is going to result into harmony between them which may improve their mutual relationship."

10. Further, the decision of the Hon'ble Supreme Court in the case of ***State of Madhya Pradesh-vs-Laxmi Narayan***; reported in **(2019) 5 SCC 688**, also can be relied on, wherein, it has been observed 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 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.

11. In the instant case, both the parties have registered their marriage under Special Marriage Act, 1954 on 23.05.2016 and at present both are living together as husband and wife, therefore, possibility of conviction appears to be remote and bleak and the disputes between the parties are predominantly private in nature and further proceeding will be an abuse of the process of the Court.

12. So considering submission made by the learned counsels of both sides as well as considering the view of the decision made by the Hon'ble Apex Court in the case of ***Kapil Gupta (Supra) and Laxmi Narayan (Supra)*** as well as considering the fact that both the parties are living together peacefully as husband and wife, I am of the view that is a fit case where the provision under Section 482 Cr.P.C. can be invoked.

13. In view of the foregoing discussions, the FIR, dated 13.11.2015 along with the Charge-Sheet No.1435/2018 dated 31.10.2018 submitted in connection with Nagaon Sadar P.S. Case No. 3144/2015 under Section 420/493/376 of IPC and the proceeding of PRC Case No.574/2022, which is pending before the Court of learned Chief Judicial Magistrate, Nagaon is hereby set aside and quashed.

14. In terms of the above, this Criminal Petition stands allowed and disposed of.

JUDGE

Comparing Assistant