

GAHC010139962023



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

Case No. : Crl.Pet./626/2023

JOGENDRA NATH RAJBONGSHI @ TALUKDAR @JOGENDRA NATH
RAJBANGSHI AND 2 ORS. .
S/O LATE MERO RAM
RAJBONGSHI @ TALUKDAR
R/O VILL- NASATRA
P.S. SARTHEBARI, DIST. BARPETA, ASSAM

2: SANJOY TALUKDAR @ SANJAY TALUKDAR
S/O TARUN TALUKDAR
R/O VILL- NASATRA
P.S. SARTHEBARI
DIST. BARPETA

3: XHON RAJBONGSHI @ XHON TALUKDAR @ SANAT KUMAR
RAJBONGSHI
S/O JOGENDRA NATH RAJBONGSHI
R/O VILL- NASATRA
P.S. SARTHEBARI
DIST. BARPETA

VERSUS

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

2:RATI KANTA RAY
S/O LATE RAM CHARAN RAY
R/O VILL- NASATRA
P.S. SARTHEBARI
DIST. BARPETA
ASSAM

3:SONESWAR RAY
S/O SRI RATI KANTA RAY

R/O VILL- NASATRA
P.S. SARTHEBARI
DIST. BARPETA
ASSA

Advocate for the Petitioner : MR. A CHAUDHURY

Advocate for the Respondent : PP, ASSAM

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

27.06.2023

Heard Mr. B.K. Mahajan, learned counsel appearing for the petitioners. Also heard Mr. P. Borthakur, the learned Addl. Public Prosecutor, Assam representing the respondent no.1. Heard Mr. A. Khan, learned counsel representing respondent nos.2 and 3.

2. This is an application under Section 482 of the CrPC praying for quashing the criminal proceeding of Sessions Case No.79/2022 under Sections 447/325/307/506 and 427 of the Indian Penal Code pending in the court of Addl. Sessions Judge (FTC), Barpeta.

3. It is alleged in the FIR that on 13.11.2019 at about 11.30 A.M., the petitioner Jogen Talukdar @ Rajbongshi beat on the head of Soneswar Roy/respondent no.3 with a bamboo stick. Police filed the *charge sheet* under Sections 447/325/307/506 and 427 of the Indian Penal Code.

4. Thereafter, both sides compromised the matter and approached the

trial court under Section 320 of the CrPC. The trial court rejected the prayer on the ground that Section 307 of the Indian Penal Code is non-compoundable under Section 320 of the CrPC. Therefore, both sides approached this Court under Section 482 of the CrPC for quashing the proceeding because they claimed that being neighbours, they have settled the matter between themselves and they do not to proceed further with the case.

5. Mr. Mahajan has relied upon a judgment of a Supreme Court delivered in *Yogendra Yadav v. State of Jharkhand*, (2014) 9 SCC 653. Paragraphs 4, 5 and 6 of the said judgment is quoted as under:

“4. Now, the question before this Court is whether this Court can compound the offences under Sections 326 and 307 IPC which are non-compoundable? Needless to say that offences which are non-compoundable cannot be compounded by the court. Courts draw the power of compounding offences from Section 320 of the Code. The said provision has to be strictly followed (*Gian Singh v. State of Punjab* [*Gian Singh v. State of Punjab*, (2012) 10 SCC 303 : (2012) 4 SCC (Civ) 1188 : (2013) 1 SCC (Cri) 160 : (2012) 2 SCC (L&S) 988]). However, in a given case, the High Court can quash a criminal proceeding in exercise of its power under Section 482 of the Code having regard to the fact that the parties have amicably settled their disputes and the victim has no objection, even though the offences are non-compoundable. In which cases the High Court can exercise its discretion to quash the proceedings will depend on facts and circumstances of each case. Offences which involve moral turpitude, grave offences like rape, murder, etc. cannot be effaced by quashing the proceedings because that will have harmful effect on the society. Such offences cannot be said to be restricted to two individuals or two groups. If such offences are quashed, it may send wrong signal to the society. However, when the High Court is convinced that the offences are entirely

personal in nature and, therefore, do not affect public peace or tranquillity and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice, it should not hesitate to quash them. In such cases, the prosecution becomes a lame prosecution. Pursuing such a lame prosecution would be waste of time and energy. That will also unsettle the compromise and obstruct restoration of peace.

5. In *Gian Singh* [*Gian Singh v. State of Punjab*, (2012) 10 SCC 303 : (2012) 4 SCC (Civ) 1188 : (2013) 1 SCC (Cri) 160 : (2012) 2 SCC (L&S) 988] this Court has observed that: (SCC p. 340, para 58)

“58. Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor.”

Needless to say that the above observations are applicable to this Court also.

6. The learned counsel for the parties have requested this Court that the impugned order [*Yogendra Yadav v. State of Jharkhand*, Criminal MP No. 1915 of 2011, order dated 4-7-2012 (Jhar)] be set aside as the High Court has not noticed the correct position in law in regard to quashing of criminal proceedings when there is a compromise. Affidavit has been filed in this Court by complainant Anil Mandal, who is Respondent 2 herein. In the affidavit he has stated that a compromise petition has been filed in the lower court. It is further stated that he and the appellants are neighbours, that there is harmonious relationship between the two sides and that they are living peacefully. He has further stated that he does not want to contest the present appeal and he has no grievance against the appellants. The learned counsel for the parties have confirmed that the disputes between the parties are

settled; that parties are abiding by the compromise deed and living peacefully. They have urged that in the circumstances pending proceedings be quashed. The State of Jharkhand has further filed an affidavit opposing the compromise. The affidavit does not persuade us to reject the prayer made by the appellant and the second respondent for quashing of the proceedings."

6. Mr. Borthakur has objected to the prayer made by the petitioners on the ground that Section 307 of the IPC is a serious offence and such an offence cannot be allowed to be compounded under Section 482 of the CrPC.

7. I have my anxious considerations to the submissions made by the learned counsels of both sides.

8. The guidelines for exercising the power under Section 482 of the CrPC are laid down by the Supreme Court in *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335: AIR 1992 SC 604. Paragraph 102 of the judgment are quoted as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the

complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

9. Sometimes, the severity of an offence depends upon the facts and

circumstances of the case. Under the given circumstances of the case, the alleged under Section 307 of the Indian Penal Code is a private dispute between two persons. They have come forward to compound the offence on the ground that they are neighbours and they have been living peacefully.

10. I am of the considered opinion that under the given circumstances, there is no possibility of future conviction. So, allowing such proceeding to continue before the trial court, would an abuse of the process of the court. I find that this is a fit case for exercising the power under Section 482 of the CrPC. Accordingly, the criminal proceeding of Sessions Case No.79/2022 under Sections 447/325/307/506 and 427 of the Indian Penal Code pending in the court of Addl. Sessions Judge (FTC), Barpeta, is quashed.

The criminal petition is disposed of.

JUDGE

Comparing Assistant