

GAHC010153022021



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

Case No. : Crl.Pet./585/2021

BIJOY CHANDRA PAUL
S/O LATE BADAL CHANDRA PAUL, R/O VILL-KAIMARI PART-5, P.S.-
GOLAKGANJ, DIST-DHUBRI, ASSAM

VERSUS

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

2:SANTOSH KUMAR RAY
S/O SRI DHIRENDRA NATH RAY
R/O VILL-KAIMARI PART-7
P.S.-GOLAKGANJ
DIST-DHUBRI
ASSAM
PIN-78333

Advocate for the Petitioner : MR I HAQUE

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 10-03-2023

Heard Mr. I Haque, learned counsel for the petitioner. Also
heard Ms. S.H Bora, learned Addl. PP, appearing for the State

respondent No.1 and Mr. A Sharma, learned counsel for the respondent No.2.

2. The petitioner Shri. Bijoy Chandra Paul has filed an application under section 482 Cr.P.C., with a prayer for quashing the FIR and the Charge sheet being Golakganj PS Case No.1371/2018 and CS dated 31.01.2020, corresponding PRC Case No.835/2020 registered under sections 279/304 A IPC.

3. The FIR was lodged by the respondent No.2 contending inter alia that the petitioner along with the younger brother of the informant Sanjit Kr. Ray were travelling on a motorcycle as pillion rider bearing registration No.AS 17G 5727.

4. It has been alleged in the FIR that due to the rash and negligent act of the petitioner, the accident occurred which resulted in the death of Sanjit Kr. Ray. An FIR was lodged by the informant which was registered as the aforementioned Golakganj PS case No.1371/2018 and investigation commenced and finally charge sheet was laid against the petitioner under sections 279/304 A IPC.

5. It is submitted on behalf of the petitioner that the deceased was inebriated and while he was travelling as pillion rider on the petitioner's motor cycle, he toppled down from the motor cycle and sustained the fatal injury which led to his death.

6. On the other hand, the respondent No.2 has filed an affidavit that the FIR was lodged immediately after the incident due to misunderstanding regarding the accidental death of the deceased. On being influenced by the other persons and due to a misunderstanding, FIR was lodged and the respondent No.2 was desirous to withdraw the

FIR and thereafter, a settlement deed was executed between both the sides.

7. I have given my anxious consideration to the submissions at the bar.

8. As this case is not compoundable, withdrawal was not possible but at the same time, further proceedings will be an abuse of the process of the Court.

9. The learned counsel for the petitioner has relied on the decision of the Delhi High Court in ***Babu Khan and Anr Vs. State & Ors in W.P. (Crl) 2227/2019***, wherein it has been held in paragraph Nos.11, 12, 20 and 21 as follows:

11. In [Parbatbhai Aahir v. State of Gujarat](#): (2017) 9 SCC 641, the Supreme Court, inter alia, observed that "the decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated."

12. The question whether an FIR, alleging an offence under [Section 304A](#) of the IPC, can be quashed under [Section 482](#) Cr.P.C. on the basis of a settlement arrived at between the accused and the victims of the incident, is required to be examined on the facts of each case. In a recent decision in [State of Madhya Pradesh v. Laxmi Narayan & Ors.](#): (2019) 5 SCC 688, the Supreme Court had referred to various other decisions and had summarized the law relating to the powers exercised under [Section 482](#) of the Cr.P.C. for quashing criminal proceedings, in the following words:-

"15. 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:

15.1 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;

15.2 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;

15.3 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;

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 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;

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 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."

20. In [Jacob Mathew v. State of Punjab and Anr.](#): (2005) 6 SCC 1, the Supreme Court had explained that for a negligent act to constitute an offence, under [Section 304A](#) of the IPC, the same should be gross negligence and an element of mens rea must be shown to exist. The Court had further explained that the degree of negligence which is punishable under [Section 304A](#) of the IPC should be of a high degree. The Court had observed as under:-

"48. We sum up our conclusions as under:

...(5) The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of mens rea must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.

(6) The word 'gross' has not been used in [Section 304A](#) of IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be 'gross'. The expression 'rash or negligent act' as occurring in [Section 304A](#) of the IPC has to be read as qualified by the word 'grossly'..."

21. Thus, while evaluating whether a proceeding relating to an alleged offence, under [Section 304A](#) of the IPC, be quashed on the basis of a settlement between the accused and the victim, it would also be

necessary to consider whether it is probable that the facts presented would constitute gross negligence and an element of mens rea, which is likely to secure a conviction.

10. In the case at hand, I have considered the submissions at the bar that the deceased is related to the petitioner, and he was travelling as pillion rider of the petitioner. Definitely, the petitioner had no *mens rea*. It was also submitted that the petitioner also did not act in a rash and negligent manner.

11. I have considered the submissions that both the parties have amicably settled their dispute and they have filed a copy of their compromise deed marked as Annexure – 8. Possibilities of conviction is indeed remote and bleak. Further proceedings will indeed be an abuse of the process of the Court.

12. I have considered the gravity of the offence and the role of the petitioner. The petitioner, the informant and the deceased are all relatives.

13. Considering all aspects and in view of the foregoing discussions, I believe that this is a fit case to invoke the inherent jurisdiction under Section 482 Cr.P.C.

14. The FIR dated 28.12.2018 being Golakganj PS case No.1371/2018 under sections 279/304-A IPC, the CS No.44/2020 dated 31.01.2020 and the order dated 31.10.2020 passed by the JMFC, Dhubri in PRC Case No.835/2020 whereby cognizance was taken against the petitioner are all set aside and quashed.

JUDGE

Comparing Assistant