

GAHC010159382023



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

Case No. : Crl.Pet./737/2023

SAROJ GANERIWAL
W/O LATE MADAN MOHAN GANERIWAL
R/O GANERIWAL HOUSE, NEXT TO APE DEALER, MAKUM ROAD,
TINSUKIA, ASSAM, PIN-786125

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE PP, ASSAM

2:NAINA GANERIWAL
D/O LATE PWAN HARLALKA
R/O HOUSE NO. 13
NEXT TO S.P. BUNGLOW
FANCY VALLEY
TURA

WEST GARO HILLS
MEGHALAYA
PIN-794001

3:PREETI HARLALKA
W/O LATE PAWAN HARLALKA

R/O HOUSE NO. 13
NEXT TO S.P. BUNGLOW
FANCY VALLEY
TURA
WEST GARO HILLS
MEGHALAYA
PIN- 794001

Advocate for the Petitioner : MR. P DEKA

Advocate for the Respondent : PP, ASSAM

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

27.07.2023

Heard Mr. P. Deka, learned counsel appearing for the petitioner. Also heard Mr. P. Borthakur, the learned Addl. Public Prosecutor, Assam representing the respondent no.1. Heard Mr. A. Chetia, learned counsel representing respondent nos.2 and 3.

2. This is an application under Section 482 of the CrPC praying for quashing the PRC Case No.236/2023 under Sections 389 of the Indian Penal Code pending in the court of learned Chief Judicial Magistrate, Tinsukia.

3. Both sides have compromised the case. But the learned Chief Judicial Magistrate held that the offence under Section 389 of the Indian Penal Code is a non-compoundable offence. Hence, the present petition under Section 482 of the CrPC has been filed.

4. Mr. Deka has relied upon a judgment of the Supreme Court delivered in *Narinder Singh & Ors. -vs- State of Punjab & Anr.*, reported in (2014) 6 SCC 466. Paragraphs 8 and 29.2 of the said judgment are quoted as hereunder:

“8. We find that there are cases where the power of the High Court under Section 482 of the Code to quash the proceedings in those offences which are uncompoundable has been recognised. The only difference is that under Section 320(1) of the Code, no permission is required from the Court in those cases which are compoundable though the Court has discretionary power to refuse to compound the offence. However, compounding under Section 320(1) of the Code is permissible only in minor offences or in non-serious offences. Likewise, when the parties reach settlement in respect of the offences enumerated in Section 320(2) of the Code, compounding is permissible but it requires the approval of the Court. Insofar as serious offences are concerned, quashing of criminal proceedings upon compromise is within the discretionary powers of the High Court. In such cases, the power is exercised under Section 482 of the Code and proceedings are quashed. Contours of these powers were described by this Court in *B.S. Joshi v. State of Haryana* [*B.S. Joshi v. State of Haryana*, (2003) 4 SCC 675 : 2003 SCC (Cri) 848] which has been followed and further explained/elaborated in so many cases thereafter, which are taken note of in the discussion that follows hereinafter.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

- (i) ends of justice, or
- (ii) to prevent abuse of the process of any court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.”

5. The learned counsel Mr. Chetia has supported the fact that both sides have compromised the case in the out of court settlement.

6. I have considered the submissions made by the learned counsels of both sides.

7. The power under Section 482 of the CrPC is the inherent power of the High Court for preventing the abuse of the process of the Court. The guidelines for exercising power under Section 482 of the CrPC are laid down by the Supreme Court in *State of Haryana v. Bhajan Lal*, AIR 1992 SC 604. The relevant paragraph is 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."

8. Since both sides have compromised the matter, I find that there is no possibility of future conviction in this case and allowing the criminal proceeding to continue would be an abuse of the process of the court. This is a fit case for exercising the power under Section 482 of the CrPC. The criminal petition is allowed.

9. Accordingly, the criminal proceeding of PRC Case No.236/2023 under Sections 389 of the Indian Penal Code pending in the court of learned Chief Judicial Magistrate, Tinsukia, is quashed.

The criminal petition is disposed of.

JUDGE

Comparing Assistant