

GAHC010168782021



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

Case No. : Crl.Pet./582/2021

AMULYA KALITA AND 4 ORS.

S/O- LATE NIRMAL KALITA, R/O- ADALBARI, P.O. ADALBARI, MOUZA-
DAKSHIN BAKSA, P.S. MUSHALPUR, DIST.- BAKSA, ASSAM

2: KHANINDRA KALITA @ KHANENDRA NATH BARMAN

S/O- LATE NIRMAL KALITA @ LATE NIRMAL CHANDRA BARMAN

R/O- ADALBARI

P.O. ADALBARI

MOUZA- DAKSHIN BAKSA

P.S. MUSHALPUR

DIST.- BAKSA

ASSAM

3: RABINDRA NATH DUTTA

S/O- LATE DINABANDHU DUTTA

SECRETARY OF RUPKONWAR JATIYA BIDYALAYA

ADALBARI

P.O. ADALBARI

MOUZA- DAKSHIN BAKSA

P..S MUSHALPUR

P.S. MUSHALPUR

DIST.- BAKSA

ASSAM

4: THANENESWAR RAJBONGSHI

S/O- LATE MADHAB RAJBONGSHI

PRESIDENT OF RUPKONWAR JATIYA BIDYALAYA

ADALBARI

P.O. ADALBARI

MOUZA- DAKSHIN BAKSA

P.S. MUSHALPUR

DIST.- BAKSA

ASSAM

5: Maheswar Baro
S/O- LATE GOBARDDDBANA BARO
R/O- VILLAGE- RONA KUCHI
P.S-TIHU
DISTRICT-NALBARI
RETIRED LAT MANDAL
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. I CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 16-03-2023

Heard Ms. K. Bora, learned counsel for the appearing on behalf of Mr. I. Choudhury, learned conducting counsel. Also heard Mr. K. K. Das, learned Additional Public Prosecutor for the State respondent.

2. This application is filed under Section under Section 482 of the Code of Criminal Procedure, 1973 of the Code of Criminal Procedure, 1973 praying for quashing of FIR in connection with Mushalpur Police Station Case No. 13/2020, registered under Section 120(B)/420/468/294/34 of the Indian Penal Code.

3. It is submitted by the learned counsel appearing on behalf of the Conducting counsel, Ms. K. Bora, that both the petitioner No. 1 & 2 are own

brothers and the petitioner No. 2 lodged an FIR against his own brother due to some misunderstanding and both of them have amicably settled their differences and has approached this Court for quashing the FIR lodged by him.

4. She has also submitted that the dispute amongst the two brothers arose only for the share of the land/property. Till date no charge sheet has been filed and also the petitioner No. 2 has no intention of pursuing the case against his own brother/petitioner No.1 and accordingly, both the petitioners have preferred this joint petition for quashing of the FIR out of free will and there is no kind of threat or coercion or any influence in preferring the instant petition. More so, the case is non-bailable in nature, thus, the IO had advised the petitioners to approach before this Court for quashing of the FIR.

5. In this regard, Mr. K. K. Das, learned Additional Public Prosecutor has submitted that the petitioner No. 2 has stated that out of some misunderstanding he lodged the FIR against his own brother/petitioner No.1 as well as upon other petitioners. The dispute arose between two brothers regarding share of the land, and the petitioner No. 2 filed the FIR with a grievance that a portion of the land was allotted in the name of Rupkonwar Jatia Bidyalaya, Adalbari, without the consent of the petitioner No.2. It is seen that he has already appeared before the IO. At the same time it revealed from the case diary, that the land which was donated in the name of the Rupkonwar Jatia Bidyalaya, Adalbari has been returned. Accordingly, the petitioner No. 1 & 2 have solved their matter amicably, thus, further investigation may be not required here in this case.

6. Further, Mr. K. K. Das, learned Additional Public Prosecutor has also submitted that it is the duty of this Court to see as to whether the further proceeding of this case will be abuse of the process law or there is any chance of conviction of the present accused/petitioners. The petitioner No. 2 is also not at all willing to proceed with this case and thus, it is an admitted fact that both the parties have entered into amicable settlement as the petitioner No. 1 & petitioner No. 2 are brothers and thus, there is remote chance of conviction even if the proceeding is continued.

7. After hearing the submissions made by the learned Advocates of both sides, as well as perusing the materials available in the Case Diary, it is seen that the matter has already been settled amicably between the parties and hence from the note of the IO also it reveals that the petitioner No. 2 already appeared before the IO stating that he is not at all interested to proceed with this case.

8. Thus it is seen, that both the parties have settled their matter amicably and has no grievances against each other. In this context, 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**, can also be relied on, wherein, in para 13 thereof, it has been held 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 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.

9. So considering the view of the decision made by the Hon'ble Apex Court in the case of Laxmi Narayan (*Supra*) as well as the view that the matter was settled amicably between the parties, I am of the view that is a fit case where the provision under Section 482 Cr.P.C. can be invoked.

10. Accordingly, the FIR in connection with Mushalpur Police Station Case No. 13/2020, registered under Section 120(B)/420/468/294/34 of the Indian Penal Code, stands set aside and quashed.

11. Accordingly, this Criminal petition stands allowed and dispose of.

JUDGE

Comparing Assistant