

GAHC010188172019



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

Case No. : Crl.Pet./913/2019

ABHIJIT BARUA
S/O SRI BIJIT KUMAR BORUAH, VILL-SRIGRAM, P.S.-SAPAR, DIST-DHUBRI,
ASSAM, P/R/A SUNDARPUR 1ST BYELANE, OPPOSITE NRL PETROL PUMP,
HOUSE NO. 12, GUWAHATI-781005

VERSUS

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

2:DIPAK RAJBONGSHI
S/O LATE PRAFULLA RAJBONGSHI
VILL-MAKHIBAHA
P.S.-TIHU
DIST-NALBARI
ASSAM
PIN-78137

Advocate for the Petitioner : MD. A HASSAN

Advocate for the Respondent : PP, ASSAM

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

Date : 24-03-2023

Heard Md. A. Hassan, learned counsel for the petitioner. Also heard Mr. K. K. Parasar, learned Additional Public Prosecutor representing the State respondent and Ms. K. Devi, learned counsel for the respondent No.2.

2. This application is filed under Section 482 of the Code of Criminal Procedure, 1973, praying for quashing of the proceedings in connection with Tihu P.S. Case No.84/12, registered under Sections 406/420 of the IPC, corresponding to GR Case No.84/2012, which is pending before the learned Court of Judicial Magistrate, 1st Class, Tihu.

3. It is submitted by the by the learned counsel for the petitioner, Md. A. Hassan, that the present petitioner is running a institution named Convergence Education Society, where he imparts software development training to B.E, B.Tec, MCA students. The respondent No.2 lodged an FIR on 26.09.2012, alleging the bouncing of a check amounting of Rs. 4891/- of IDBI Bank. Accordingly, the case is charge-sheeted against the present petitioner under Sections 406/420 of the IPC and he also appeared in the trial after filing of the charge-sheet. Thereafter, both the parties have amicably settled their dispute and the informant have received back the money along with interest.

4. He also submits that during the pendency of the present petition, the respondent No. 2 appeared and filed affidavit-in-opposition, wherein, it is stated that due to some misunderstanding he lodged the FIR against the present

petitioner as well as the Branch Manager. Further, during the Trial of GR Case No.84/2012, the matter was amicably settled and the respondent No.2 also received the check amounting to Rs.4891/- along with interest of Rs. 1000/- and hence, the respondent No.2 has no objection, if the present petition is allowed.

5. In this regard, Ms. K. Devi, learned counsel for the respondent No.2 has submitted that the matter has been settled amicably between them. Hence, she raised no objections on the prayer made by the petitioner.

6. So considering the compromise between the parties and also considering the fact that the respondent No.2 has raised no objection, and has jointly prayed for quashing and setting aside of this case, the petition may be considered.

7. In this context, Mr. K. K. Parasar, learned Additional Public Prosecutor has 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/petitioner. The victim 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 and thus there is remote chance of conviction even if the proceeding is continued.

8. After hearing the submission made by the learned Advocated of both sides and also after perusing the case diary as well as the case records which has already been received, it is seen that both the parties have compromised the matter and in pursuant to the settlement both the petitioner and respondent

No.2 deposed before the Court that they are not willing to proceed with this case further.

9. Thus it is seen, that both the parties have settled their matter amicably. 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 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 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.

10. 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 invoke.

11. Accordingly, the Tihu P.S. Case No.84/12, registered under Sections 406/420 of the IPC, corresponding to GR Case No.84/2012, which is pending before the learned Court of Judicial Magistrate, 1st Class, Tihu, stands set aside and quashed.

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

JUDGE

Comparing Assistant