

GAHC010193012022



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

Case No. : Crl.Pet./1000/2022

MONIKA BORAH GOHAIN
W/O SRI PRANJAL GOHAIN
R/O KAMALABARI ROAD, KHEREMIA, P.O. AND P.S. DULIAJAN
DIST. DIBRUGARH, ASSAM
PIN-786602

VERSUS

NIRA BORAH AND ANR.
W/O LATE JOGESH BORAH
R/O CARE OF MR. ATUL CHANDRA BANIA, VILL- CHAKARI GAON, P.O.
TULSHIMUKH, P.S. NAGAON SADAR, DIST. NAGAON, ASSAM, PIN-782101

2:THE STATE OF ASSAM
REP. BY P.P.
ASSA

Advocate for the Petitioner : MS M DAS

Advocate for the Respondent : MR A SHARMA (R

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

Date : 28-03-2023

Heard Mr. P. Saikia, learned counsel for the petitioner. Also heard Mr. A. Sharma, learned counsel for the respondent No.1 and Mr. K. K. Parasar, learned Additional Public Prosecutor representing the State respondent No.2.

2. This application is filed under Section 482 of the Code of Criminal Procedure, 1973, praying for quashing of the FIR dated 04.10.2016 in connection with Nagaon P.S. Case No.2545/16 [G.R.No.5770/2017] registered under Sections 420/ 406/ 384/ 506/34 of the IPC, and charge-sheet No.353/2017 dated 30.04.2017.

3. A brief facts leading to the filing of the present petition is that the respondent No.2 namely, Smti. Nira Borah had filed an FIR alleging *inter alia* that after expiry of her husband on 06.02.2016, the present petitioner namely Monika Borah Gohain and her husband misappropriated her property and RCC building and also snatched away the key of her Hyundai i10 car, LIC documents, bank pass book, land documents, ornaments etc. and she was thrown out of her own house. The petitioner and her husband also pressurized her to give her property and Rs.40 lacs in their names.

3.1. Initially the police authority was not willing to register the said FIR. Subsequently, the application was filed before the Superintendant of Police, Nagaon, and thereafter, the case was registered against the present petitioner and her husband and the same was numbered as Nagaon P.S. Case No.2545/16

[G.R. No.5770/2017], registered under Sections 420/406/384/506/34 of the IPC.

3.2. After, registration of the said FIR, the police started the investigation of the same and accordingly, the charge-sheet was filed under Sections 448/384/506/34 IPC and the same was submitted on 30.04.2017 being numbered as CS.No.353/2017.

4. The learned counsel for the petitioner has submitted that the petitioner is a housewife by profession having one minor son and the accused No.2 is her husband and the respondent No.1 namely Smti. Nira Borah is her mother. Presently the respondent No.1 is residing in a rented house in Duliajan, Dibrugarh. The petitioner had filed a Title suit before the learned Civil Judge, Dibrugarh on 20.05.2016 by claiming 1/3rd of the share of the property of her deceased father. Thereafter the respondent filed an FIR against the said disputed property.

5. It is also submitted that the allegations raised in the FIR has already been settled amicably between the parties in T.S.No.36/2016 and on the basis of the said settlement the Court of learned Civil Judge, Dibrugarh had given a judicial consideration and disposed the said dispute vide order dated 23.07.2018. But, prior to settlement of the said suit the Police authority has submitted charge sheet on the said FIR as a result, the consequence of settlement between the parties could not be brought before the authority to conclude the matter. Now, no issue alive to pursue the instant FIR dated 04.10.2016 and charge sheet dated 30.04.2017 to adjudicate in PRC case No.1822/2017, which is pending before the learned Court of Chief Judicial Magistrate, Nagaon initiated in PRC case

No.1822/2017. Hence this criminal petition is filed to quash the same.

6. After the settlement of the matter amicably, both the parties have jointly filed the compromise petition before the Court of learned Civil Judge, Dibrugarh in T.S.No.36/2016, wherein, on the basis of the settlement it is also consented that the present petitioner will hand over the keys of Hyundai i10 car, to the respondent No.2 and also both the parties agreed not to institute any case/suits/proceedings etc. relating to the subject matter during the life time of the respondent No.1.

7. It is also submitted that the allegations raised in the FIR has already been settled amicably between the parties in T.S.No.36/2016 and on the basis of the said settlement the Court of learned Civil Judge, Dibrugarh had given a judicial consideration and disposed the said dispute vide order dated 23.07.2018. But, prior to settlement of the said suit the Police authority has submitted charge sheet on the said FIR as a result, the consequence of settlement between the parties could not be brought before the authority to conclude the matter. Now, no issue alive to pursue the instant FIR dated 04.10.2016 and charge sheet dated 30.04.2017 to adjudicate in PRC case No.1822/2017, which is pending before the learned Court of Chief Judicial Magistrate, Nagaon initiated in PRC case No.1822/2017. Accordingly, it is prayed for quashing of the said FIR.

8. It is further submitted by the learned counsel for the petitioner that in view of the criminal justice system as well as view of the various Hon'ble High court, if any alleged issues are not survive due to change of situation and if the cause of action of the issues sufficiently discussed and meted out by the proper from

of law, in that case, the law implementing authority need not required continuing the proceedings and such allegations can be treated as infructuous one having no cause of action.

9. In this context, the learned counsel for the respondent No.1 has submitted that the respondent is not interested to proceed with the case and it is the fact that the Title Suit has already been compromised between the parties. Further, the respondent is not willing to file any affidavit-in-reply in this regard. But, after, an inquiry made by the leaned counsel by the respondent No.1, it is submitted that she is not aware about filing of the FIR against the present petitioner.

10. Accordingly, the learned counsel for the respondent No.1 has also submitted that the matter has been settled amicably between them. Hence, she raised no objections on the prayer made by the petitioner.

11. 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.

12. 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/respondent No.1 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.

13. After hearing the submission made by the learned Advocated of both sides and also after perusing the LCR 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.1 deposed before the Court that they are not willing to proceed with this case further.

14. 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 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.

15. 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.

16. Accordingly, the FIR dated 04.10.2016 in connection with Nagaon P.S. Case No.2545/16 [G.R. No.5770/2017], registered under Sections 420/406/384/506/34 of the IPC, and charge-sheet No.353/2017 dated 30.04.2017, and proceeding in PRC case No.1822/2017, in respect of the

petitioner namely, Monika Borah Gohain, stands set aside and quashed.

17. With above observations, this Criminal petition stands dispose of.

JUDGE

Comparing Assistant