

GAHC010195532022



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

Case No. : Crl.Pet./985/2022

MONI KALITA AND ANR
S/O SRI DHARMESWAR KALITA
R/O VILL- GOSAIPRA, NAHIRA
P.O. NAHIRA, P.S. PALASHBARI
DIST. KAMRUP, ASSAM

2: JOYMUDDIN
S/O BHELADDIN
R/O VILL- NO. 1 BARUAPATHER
P.O. BARUAPATHER

P.S. BOKO
DIST. KAMRUP
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
ORDER

14.08.2023

Heard Mr. A. Ahmed, learned counsel for the petitioners. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State of Assam representing the State respondent.

2. This is an application filed under Section 482 of the Code of Criminal Procedure, 1973 praying for setting aside and quashing the criminal proceeding in PRC No. 1539/2018 arising out of Basistha P.S. Case No. 1308/2018 under Section 279/304(A) of IPC which was registered on the basis of the FIR lodged by the petitioner No. 2 against the petitioner No. 1.
3. This present petition is filed jointly in a background that the petitioner No. 1 and the petitioner No. 2, had settled the matter amicably between them and therefore, this court in exercise of power under Section 482 of Cr.P.C. should quash the criminal prosecution as the offences charged are not compoundable under Section 320 of Cr.P.C.
4. The facts of the case is that the petitioner No. 2 as informant lodged an ejahar dated 08.10.2018 alleging inter alia that on 05.10.2018 at around 03:40 P.M. her sister Bhelokjan Bewa, while trying to cross and walk over the footpath in front of the Dispur Revenue Circle Officer near Basistha Chariali, was hit and injured seriously by the petitioner No. 1 riding a CBZ motorcycle bearing No. AS-01/AV-4830, in a rash and negligent manner while coming from Lakhra towards Khanapara.
5. On receipt of the said ejahar the Basistha Traffic Branch In-Charge made a GDE entry vide GDE No. 211 dated 08.10.2018 and forwarded the same to the Officer-in-Charge of Basistha Police Station to register a case which

was registered as Basistha P.S Case No. 1308/2018 under Sections 279/304(A) IPC and started investigation.

6. After completion of the investigation, submitted the Charge Sheet before the learned CJM, Kamrup (M), Guwahati vide Charge Sheet No. 288/2018 dated 30.10.2018.
7. The learned CJM, Kamrup (M), Guwahati, after taking cognizance in the PRC No. 1539/18, made over the case to the learned Judicial Magistrate First Class, Kamrup (M), Guwahati for disposal and thereafter, learned JMFC, Kamrup (M), Guwahati on receipt of the case records of the PRC No. 1539/18 issued summon to the petitioner No. 1 for appearance on 21.10.19 and accordingly, the petitioner No. 1, appeared before the learned trial Court. Thereafter, the learned trial Court below started the trial and summon was issued to the witness for recording their evidence.
8. Subsequently, the petitioner No. 1 and the petitioner No. 2 have amicably settled their disputes by clearing their misunderstanding and in this regard, both the petitioners had entered into an agreement dated 30.11.2018 which is annexed as Annexure-3 to this petition, wherein the petitioner No. 2 declare to withdraw the criminal proceeding lodged against the petitioner No. 1 and the petitioner No. 1 also agreed to pay compensation for the unavoidable accident.
9. In the aforesaid backdrop, this Court is now to decide whether this is a fit case where this Court can exercise its inherent power under Section 482 of Cr.P.C. to quash the criminal proceeding in PRC No. 1539/2018 arising out of Basistha P.S. Case No. 1308/2018 under Section 279/304(A) of IPC.
10. It is by now settled that a High Court in exercise of its power under

Section 482 of Cr.P.C. can very well quash a criminal proceeding or a criminal complaint under Section 482 of Cr.P.C., but while doing so, the Court is to follow certain principles as enunciated by the Hon'ble Apex Court in ***Gian Singh –Vs- State of Punjab and Another*** reported in ***2012 10 SCC 303***, and in ***State of Madhya Pradesh –Vs- Laxmi Narayan and Others*** reported in ***2019 5 SCC 688***.

11. In the case of State ***of Madhya Pradesh & Laxmi Narayan***, reported in ***AIR 2019 SC 1296***, the Hon'ble Supreme Court has laid down certain guidelines for exercise of powers under Section 482 Cr.P.C., it is submitted that instant case falls within the guidelines laid down by the Hon'ble Supreme Court.
12. For ready reference, paragraph-13 of ***State of Madhya Pradesh & Laxmi Narayan*** (Supra) is extracted herein below:

“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) *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) *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) *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.”.

13. From the materials available on record including the agreement executed between the petitioner No. 1 and the Petitioner No. 2, this Court is of the view that the matter relates to disputes 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 petitioner No. 1 and petitioner No. 2, this is a fit case where the power under Section 482 Cr.P.C. can be exercised as held in ***Laxmi Narayan*** (Supra).
14. Accordingly, this petition is allowed by setting aside and quashing the criminal proceeding in PRC No. 1539/2018 arising out of Basistha P.S. Case No. 1308/2018 under Section 279/304(A) of IPC.

JUDGE

Comparing Assistant