

GAHC010207742022



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

Case No. : Crl.Pet./9/2023

AKTAR ALI AND 3 ORS
S/O FAZAL HAQUE
R/O VILL- AMGURI
P.S. KALGACHIA
DIST. BARPETA, ASSAM

2: ALOM ALI @ SHAHA ALOM
S/O FAZAL HAQUE
R/O VILL- AMGURI
P.S. KALGACHIA
DIST. BARPETA
ASSAM

3: FAZAL HAQUE
S/O LATE KITAB ALI
R/O VILL- AMGURI
P.S. KALGACHIA
DIST. BARPETA
ASSAM

4: NASHER ALI @ NASER ALI
S/O MAIN UDDIN
R/O VILL- AMGURI
P.S. KALGACHIA
DIST. BARPETA
ASSA

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE PP, ASSAM

2: JAMAL UDDIN
S/O LATE JABED ALI @ JAVED ALI

VILL- UDMARI
P.S. KALGACHIA
DIST. BARPETA
ASSAM
PIN-781319

3:JAMELA KHATUN
W/O ABDUL HAMID
D/O JAMAL UDDIN
R/O NUMBER PARA PART-3

P.O. NUMBERPARA
P.S. ABHAYAPURI
DIST. BONGAIGAON

PIN-783392

4:SUNKA KHATUN @ SHONEKA KHATUN
W/O KAMAL ALI
D/O JAMAL UDDIN
VILL- UDMARI
P.O. SHOWPUR
P.S. KALGACHIA
DIST. BARPETA
ASSAM
PIN-78131

Advocate for the Petitioner : MR E AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

08.12.2023

Heard Mr E Ahmed, learned counsel for the petitioners, 1) Aktar Ali @ Aktar Hussain, 2) Alom Ali @ Shaha Alom, 3) Fazal Haque and 4) Nasher Ali @ Naser Ali

2. The petitioners have filed this application under Section 482 of the Code of Criminal Procedure, 1973, (CRPC, for short), seeking quashing and setting aside of the criminal proceeding of PRC No. 2483/2019, pending in the Court of learned SDJM(S),

Barpeta, arising out of Kalgachia PS Case No. 329/2016, under Sections 294/341/325/307/392/354(B)/34 IPC and subsequent Charge Sheet vide No. 130/17, dated 27.06.2017.

3. Heard Mr M P Goswami, learned Additional Public Prosecutor for the respondent No. 1 and Mr T U Laskar, learned counsel for the informant-respondent No. 2 herein, and the victims-respondent Nos. 3 and 4, respectively.

4. The FIR unfolds that on 16.04.2016, at about 07:00 am, the present petitioners out of a dispute, assaulted the respondent No. 3 and the respondent No. 4 and also outraged the modesty of the victims. They also tried to strangle the respondent No. 3.

5. It is submitted on behalf of the petitioners that this case is a result of a misunderstanding between the both parties.

6. It is also submitted on behalf of the petitioners that the respondents are related to them. On the same day of the incident, the respondent Nos. 3 and 4 were forwarded for medical examination, but no injuries were detected. The injury reports are marked as Annexure-3 series. The petitioners are willing to bury their hatchet and live peacefully, after amicably settling their dispute with the respondents. The petitioners have prayed to quash the proceeding captioned above.

7. The respondents have also appeared and they have filed their affidavits. They have annexed the written amicable settlement in the locality presided by Liyakat Ali as Annexure-5. All the respondents have filed notarized affidavits, marked as Annexure-6 and Annexure-7.

8. I have scrutinized the Medico-legal Reports annexed with the affidavits submitted by respondent Nos. 2, 3 and 4. Through their affidavit-in-opposition, the respondents have also submitted that they are willing to bury their hatchet and maintain peace and harmony. As this case was booked under Section 307 IPC, the petitioners have relied on the decision of Hon'ble the Supreme Court in *Narinder Singh & Others –Vs- State of*

Punjab & Another; reported in (2014) 6 SCC 466, wherein it was observed that-

“31. In the present case, FIR No.121 dated 14.7.2010 was registered under [Section 307/324/323/34](#) IPC. Investigation was completed, whereafter challan was presented in the court against the petitioner herein. Charges have also been framed; the case is at the stage of recording of evidence. At this juncture, parties entered into compromise on the basis of which petition under [Section 482](#) of the Code was filed by the petitioners namely the accused persons for quashing of the criminal proceedings under the said FIR. As per the copy of the settlement which was annexed along with the petition, the compromise took place between the parties on 12.7.2013 when respectable members of the Gram Panchayat held a meeting under the Chairmanship of Sarpanch. It is stated that on the intervention of the said persons/ Panchayat, both the parties agreed for compromise and have also decided to live with peace in future with each other. It was argued that since the parties have decided to keep harmony between the parties so that in future they are able to live with peace and love and they are the residents of the same village, the High Court should have accepted the said compromise and quash the proceedings.”

9. Per contra, Mr M P Goswami, learned Additional Public Prosecutor has also relied on the decision of Hon’ble the Supreme Court in *State of Madhya Pradesh –Vs- Kalyan Singh & Ors.*, (2019) 4 SCC 268; decided on 04.01.2019, wherein it has been observed that –

3.1 It is required to be noted that the original accused was facing the criminal proceedings under [Sections 307, 294](#) read with [Section 34](#) of the IPC. It is not in dispute that as per [Section 20](#) of the Cr.PC offences under [Sections 307, 294](#) read with [Section 34](#) of the IPC are non-compoundable. It is also required to be noted that the allegations in the complaint for the offences under [Sections 307, 294](#) read with [Section 34](#) of the IPC are, as such, very

serious. It is alleged that the accused fired twice on the complainant by a countrymade pistol. From the material on record, it appears that one of the accused persons was reported to be a hardcore criminal having criminal antecedents. Be that as it may, the fact remains that the accused was facing the criminal proceedings for the offences under [Sections 307, 294](#) read with [Section 34](#) of the IPC and that the offences under these sections are non-compoundable offences and, looking to the serious allegations against the accused, we are of the opinion that the High Court has committed a grave error in quashing the criminal proceedings for the offences under [Sections 307, 294](#) read with [Section 34](#) of the IPC solely on the ground that the original Complainant and the accused have settled the dispute. At this stage, the decision of this Court in the case of [Gulab Das and Ors. V. State of M.P.](#) (2011) 12 SCALE 625 is required to be referred to. In the said decision, this Court has specifically observed and held that, despite any settlement between the Complainant on the one hand and the accused on the other, the criminal proceedings for the offences under [Section 307](#) of the IPC cannot be quashed, as the offence under [Section 307](#) is a noncompoundable offence. Under the circumstance, the impugned judgment and order passed by the High Court quashing the criminal proceedings against the original Accused for the offences under [Sections 307, 294](#) read with [Section 34](#) of the IPC cannot be sustained and the same deserves to be quashed and set aside.

10. I have considered the submissions at the Bar with circumspection.

11. It is true that the petitioners are booked under Section 307 IPC, but the Medico-legal report marked as Annexure-3-series, depicts that the victims did not sustain injuries. They were forwarded for medical examination immediately after the incident. The ratio of the decision in *Kalyan Singh's case (supra)* is not applicable to this case as the victims in the instant case did not sustain any injuries. This case was also pending at

the stage of evidence although it has been admitted by the petitioners that they are liable for the delay in appearance before the learned SDJM(S), Barpeta. After charge sheet was filed on 27.06.2017, summonses were issued to the petitioners, but except one petitioner, namely, Fazal Haque, the other petitioners failed to appear before the learned SDJM(S), Barpeta, who issued NBWA against the other petitioners. The charge is yet to be framed and the case is pending at the initial stage of trial.

12. I have considered the submission that both the petitioners have amicably settled their dispute and they are willing to live peacefully. The possibility of conviction indeed appears to be remote and bleak. Further proceeding will indeed be an abuse of the process of the Court.

13. I have also taken a pragmatic view.

14. Considering all aspects, I deem it fit to invoke the inherent jurisdiction under Section 482 CrPC and quash the proceeding of PRC Case No. 2483/2019.

15. Further proceeding of PRC No. 2483/2019, arising out of Kalgachia PS Case No. 329/2016, is hereby set aside and quashed.

16. The Criminal Petition is allowed.

JUDGE

Comparing Assistant