

GAHC010226822023



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

Case No. : Crl.Pet./1092/2023

K MONI MOHAN SINGHA @ MONI MOHAN SINGHA
S/OLATE BIDYA NATH SINGHA,
VILL- SUNDARI PART-IV,
P.O. SUNDARI, P.S. KACHUDARAM
DIST. CACHAR, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:KORIBUN NESSA MAZUMDER
W/O LT. SAHAB UDDIN MAZUMDER

VILL- BIDROHIPAR
P.S. KACHUDARAM
DIST. CACHAR
ASSA

Advocate for the Petitioner : MR. A M BARBHUIYA

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

22.11.2023

1. Heard Mr. A. M. Barbhuiya, learned counsel for the petitioner. Also heard Mr. M. P. Goswami, learned Additional Public Prosecutor for the State of Assam and Mr. R. Mazumdar, learned counsel for the respondent No. 2.
2. By this application filed under Section 482 of Cr.P.C. praying for setting aside and quashing the impugned proceeding of PRC Case No. 1018/2023 under Section 376 of IPC arising out of G.R. Case No. 2188/2020 arising out of Kachudaram P.S. Case No. 53/2020, which is presently pending in the Court of learned Additional Chief Judicial Magistrate, Cachar at Silchar.
3. The First Information Report (FIR) is lodged by the informant on 09.05.2020 against the petitioner herein stating inter alia that the informant is a widow belonging to the category of below poverty line. The name of the informant's husband was enlisted in the list of beneficiaries under Pradhan Mantri Awas Yojana (PMAY) in respect of Hatikhal Gaon Panchayat. In order to get allotment of the said PMAY house against the ID No. 1670691, when the informant met the petitioner, he demanded a sum of Rs. 10,000/- and accordingly, the said amount was paid by the informant. Thereafter, the petitioner continued to assure the informant that the PMAY house would be allotted within a short period of time. Despite elapse of sufficient time, the petitioner did not make any arrangement for allotment of the PMAY house. On 29.05.2022, the informant had gone to the house of

the petitioner in order to get information in the matter of allotment of the PMAY house. But the petitioner had forcefully committed rape upon her. The matter was informed to the village elders and it is as per the advice of the village elders, the FIR has been lodged.

4. Mr. Barbhuiya, learned counsel for the petitioner has submitted that on the date of the alleged incident, the petitioner was serving as Gram Rozgar Sahayak (GRS) on contractual basis under Hatikhal Gaon Panchayat. At present, he is posted at Sonabarighat Gaon Panchayat under Sonal Development Block. Mr. Barbhuiya has submitted that the FIR was lodged on wrong premises and there was no such incident of committing rape upon the informant on 09.05.2020. It is further submitted by Mr. Barbhuiya that a village meeting was convened on 29.05.2020 for amicable settlement of the matter by calling the village elders under 20 No. Sundari Gaon Panchayat and in the said meeting, the informant was also present. The matter was discussed in the said meeting and it was decided by the petitioner and the informant to enter into a memorandum of compromise as the FIR was a result of misunderstanding of facts. Mr. Barbhuiya has further referred to Annexure-5, annexed to the application, to submit that the informant has forwarded a letter to the Officer-In-Charge, Kachudaram Police Station stating that the matter of dispute had already been settled amicably between the informant and the petitioner with the active interference of the village elders and relatives and the informant has expressed that she does not want to proceed further with the FIR, earlier lodged by her. An affidavit to that effect has also been executed by the informant on 08.06.2020. Mr. Barbhuiya has submitted that the said affidavit is part of the application as Annxure-6.

5. Mr. Goswami, learned Additional Public Prosecutor has submitted that the Investigating Officer of the case, after completion of investigation, has already submitted a charge sheet under Section 173(2) of Cr.P.C. vide Charge Sheet No. 55/2022 dated 29.10.2022 finding a prima facie case against the petitioner.
6. Mr. Mazumdar, learned counsel appearing for the informant has submitted that the informant has already filed an affidavit in the bail application filed by the petitioner on 06.12.2022.
7. I have perused the statements and averments made in the affidavit. In the said affidavit, the informant has averred that the FIR was lodged against the petitioner but the entire matter between the informant and the petitioner has been amicably settled fully and finally on 29.05.2020. The informant has admitted about submission of the affidavit before the Officer-In-Charge, Kachudaram Police Station seeking dismissal of the FIR as well as swearing of the affidavit dated 08.06.2020.
8. 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 proceeding of PRC Case No. 1018/2023 under Section 376 of IPC arising out of G.R. Case No. 2188/2020 corresponding to Kachudaram P.S. Case No. 53/2020, pending in the Court of learned Additional Chief Judicial Magistrate, Cachar at Silchar.
9. It is well settled legal proposition that any heinous and serious offences like murder or rape, the Court should not quash the proceeding in exercise of its power under Section 482 of Cr.P.C.
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) 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.”.

13. Law was laid down way back by the Hon'ble Apex Court in the case of **Madhavrao Jiwaji Rao Scindia and anr. Vs- Sambhajirao Chandrojirao Angre & ors**, reported in **AIR 1988 SC 709**, that a proceeding may be quashed, if the chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue. This is because otherwise the parties and the witnesses will be dragged to court and process of the Court will be abused for no purpose. When the parties have already entered into compromise, even if they are dragged to court as witnesses, there is every likelihood of their turning back from the allegations and in that event, the learned Court will be left with no other alternative, but to acquit the accused person. In that event, there will be unnecessary engagement of valuable judicial time and so taking a practical view of the matter, it appears to be proper to accept the reality and to put an end to the ongoing litigation.

14 In the case of **Kapil Gupta –Vs- State of NCT of Delhi and**

Another reported in **2022 SCC OnLine SC 1030**, taking note of its earlier decisions, the Hon'ble Apex Court held that though the Court should be slow in quashing the proceedings wherein heinous and serious offences are involved, the High Court is not foreclosed from examining as to whether there exists material for incorporation of such an offence or as to whether there is sufficient evidence which if proved would lead to proving the charge for the offence charged with. It was further held that the High Court has also to take into consideration as to whether the settlement between the parties is going to result into harmony between them which may improve their mutual relationship. It was also further held that while dealing with such an application, the stage of proceeding is also required to be taken note and an application is made at a belated stage wherein the evidence has been led and the matter is at the stage of arguments or judgment, the Court should be slow to exercise the power to quash the proceedings. However, if such an application is made at an initial stage before commencement of trial, the said factor will weigh with the court in exercising its power.

15 Taking note of the aforesaid propositions of law, let this Court now consider the factum of the present case.

16. From the materials available on record including the amicable settlement between the petitioner and respondent No. 2, it is seen that the original dispute is in respect of grant of benefit under the Pradhan Mantri Awas Yojana (PMAY) and the allegation is that the petitioner demanded Rs. 10,000/- (Ten thousand) from the respondent No. 2 for granting such benefit. This Court also perused the material available on record including the charge sheet. From the charge-sheet, it is also seen

that the allegation basically revolved around the grant of house. This Court has also noticed that the victim filed an affidavit even at the stage of consideration of a bail application filed by the petitioner under Section 438 of the Cr.P.C. taking a stand that they have amicably settled the matter and on such consideration, this Court taking note of the amicable settlement between the parties allowed the bail application. Even, immediately after lodging of the F.I.R, the victim intimated the I.O., expressing her desire not to pursue the F.I.R. Thus, in the case in hand, the stand of the victim all throughout is that they have amicably settled the matter and she has no grievance against the accused petitioner, the chances of ultimate conviction are also bleak and the trial has also not yet commenced and no witnesses have been examined. The respondent No. 2 herself is not supporting the prosecution case. Therefore, taking note of the peculiar facts and circumstances of the present case, as discussed hereinabove, in the considered opinion of this Court that this is a fit case where the power under Section 482 Cr.P.C. can be exercised to quash the criminal proceeding in question.

17. Accordingly, this petition is allowed by setting aside and quashing the proceeding of PRC Case No. 1018/2023 under Section 376 of IPC arising out of G.R. Case No. 2188/2020 corresponding to Kachudaram P.S. Case No. 53/2020, pending before the Court of learned Additional Chief Judicial Magistrate, Cachar at Silchar.

JUDGE