

GAHC020002792023



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

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

SHRI. TAMJID ALI
S/O LT. MANJIR ALI, R/O GOPAL NAGAR, DIST- HOJAI, ASSAM- 782435

VERSUS

THE STATE OF NAGALAND AND ANR
KOHIMA NAGALAND

2) SHRI. VISHITO ZHIMO
S/O LT. HEZUEKHE ZHIMO, R/O THILIZU VILLAGE, BLOCK-5,
CHUMOUKEDIMA, NAGALAND-797112
Advocate-NISUKA CHISHI

Advocate for the Petitioner : VINNOKA ACHUMI

Advocate for the Respondent : P.P, NAGALAND
NISUKA CHISHI (R. 2)

**BEFORE
HONBLE MR JUSTICE KARDAK ETE**

ORDER

Date : 27-07-2023

Heard Mr. Vinoka Achumi, learned counsel for the petitioner, and also heard Mr. K. Angami, learned Public Prosecutor for the State of Nagaland, and Mr. Nisuka Chishi, learned counsel for respondent No. 2.

By filing this petition under Section 482, CrPC, 1973 the petitioner has prayed for quashing of FIR No. 217/2015 and Chargesheet No. 50/2016 in GR Case No. 910/2015 under Section 420/409 IPC pending before the learned Chief Judicial Magistrate, Dimapur on the basis of the Compromise Deed dated 29.09.2022.

The genesis of the matter emanates from an FIR dated 15.11.2015 filed by the respondent No. 2 before the Officer-in-Charge of Diphupar Police Station, Dimapur which was registered as Dipuhupar P.S. Case No. 217/2015 under Section 420/409, IPC, 1860. The case has been registered as GR No. 910/2015. The police has submitted Chargesheet dated 03.04.2016.

The allegation by the respondent No. 2 in the FIR is quoted hereinbelow:

*“To,
The Officer-in-Charge
Dpr. Police Station
Dimapur, Nagaland*

Sub: FIR (First Information Report against Shri. Tamjid Ali, R/o Gopal Nagalr, P.S. Hojai, Nagaon, Assam and Saifuddin S/o. Lt. Akhlomiya, R/o. Main road Hojai near Nagaon Bus Stand, Nagaon, Assam.

*Sir,
With due respect, I have the honor to state the following for your kind perusal and necessary action thereof.
That, in the month of February 2014, I entered into an agreement with Mr. Tamjid Ali at Dimapur, who is a business associate, to supply 5000 bags of cement on wholesale rate. According, I paid an advanced amount of Rs. 13,50,000/- (Thirteen Lakhs Fifty Thousand) only, to Mr. Tamjid Ali on execution of an agreement dated 26.06.2014, whereby, Mr. Tamjid Ali agreed to supply 5000 bags of Dalmia Cement within a period of 6 (six) months from the date of execution of the agreement.
That, though the agreement was entered with Mr. Tamjid Ali, the money was jointly received by Mr. Tamjid Ali and Saifuddin who are business partners and who jointly assured me to deliver the goods within a period*

of 6 (six) months.

That, Mr. Tamjid Ali and Saifuddin did not deliver the said goods even after the expiry of 6 (six) months and despite several reminders for delivery of the same, they did not supply the goods citing one reason after another and when I went to Hojai and met Mr. Tamjid Ali and Saifuddin and requested them to deliver the goods, they threatened me by saying that I was in their home town and that they would kill me if I ever come to Hojai again to meet them. Thus, it is now apparent that Mr. Tamjid Ali and Saifuddin has no intention of supplying the said goods and on the contrary I have been threatened of dire consequences in the event I make any demands for the goods or the money which I had already paid in advance.

That, Mr. Tamjid Ali and Saifuddin has malafide intention to cheat me from the very inception and I have been duped of Rs. 13,50,000/- (Thirteen Lakhs Fifty Thousand) which is my hard earned money.

In view of the above facts and circumstances, I request your kind authority to take cognizance of my complaint and register the same and book the accused person Mr. Tamjid Ali and Saifuddin, under Section 417, 406, 503 an/or under relevant sections of law.

Thanking you.

Yours faithfully

Sd/-

VISHITO ZHIMO

S/o Lt. Hezuekhe Zhimo

P/o Thilixu Village, Block-5 Dimapur, Nagaland"

On a mere perusal of the FIR the allegation is that the petitioner has malafide intention to cheat the informant from the very inception and that respondent No. 2 has been duped of ₹13,50,000/- (Thirteen Lakhs Fifty Thousand).

During the pendency of the case, the petitioner and the respondent No. 2 had entered into a Compromise Deed dated 29.09.2022 whereby the parties had amicably settled the matter on mutual understanding.

The learned counsel for the petitioner submits that in view of the nature of the offence alleged and the matter being settled through a Compromise Deed between the petitioner and the respondent No. 2, the continuance of criminal proceedings will be

futile. Therefore, the criminal proceedings in GR Case No. 910/2015 pending before the learned Chief Judicial Magistrate, Dimapur may be quashed.

Mr. K. Angami, learned Public Prosecutor for the State of Nagaland and Mr. Nisuka Chishi, learned counsel for the respondent No. 2 have no objection if this criminal petition is allowed.

Having considered the submissions of the learned counsel for the parties and also on perusal of the materials available on record, this Court finds that the allegation appears to be out of a financial transaction in between the parties and subsequent misunderstanding that may have arisen during the course of their business transaction. The parties on being realized appears to have settled the matter by a compromise deed as referred to herein above. That being the position this Court is of the view that the continuance of the criminal proceedings in the present case will serve no purpose, rather it would be a futile one.

In the case of **State of Madhya Pradesh Versus Laxmi Narayan**, reported in (2019) 5 SCC 688, the Hon'ble Supreme Court after consideration of its earlier decision held as under:

“15. 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:

***15.1.** 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;*

***15.2.** 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;

15.3. *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;*

15.4. *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;*

15.5. *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.”*

In view of the above and the law enunciated by the Hon'ble Supreme Court, this Court is of the opinion that the present criminal petition deserves to be allowed. Accordingly, the criminal proceedings in GR Case No. 910/2015 under Section 420/409 IPC pending before the learned Chief Judicial Magistrate, Dimapur is

hereby set aside and quashed.

In the result, petition is allowed and disposed of.

Sd/-
JUDGE

Comparing Assistant