

GAHC020004682023



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

Case No. : CrI. Pet./23/2023

SHRI PRAFULLA HAZARIKA AND ANR
S/O KENJIA HAZARIKA,
R/O MOHIMO GAON,
DISTRICT GOLAGHAT ASSAM 2: SHRI HOKIVI AWOM

VERSUS

THE STATE OF NAGALAND
REPRESENTED BY PUBLIC PROSECUTOR (P.P),
NAGALAND

Advocate for the Petitioner : S. TEMJEN

Advocate for the Respondent : P.P, NAGALAND

**BEFORE
HON'BLE MR JUSTICE MRIDUL KUMAR KALITA**

ORDER

Date : 13.10.2023

Heard Mr. S. Temjen, learned counsel for the petitioner. Also heard Mr. V. Zhimomi, learned Public Prosecutor for the State of Nagaland.

This application under Section 482 of the Code of Criminal Procedure, 1973 has been jointly filed by the petitioners, namely, 1.

Prafulla Hazarika and 2. Shri Hokivi Awomi praying for quashing of the FIR No. 0098/2020 dated 30.09.2020 on the basis of which Diphupar P.S. Case No. 0098/2020 corresponding to GR Case No. 675/2020 was registered under Section 420 of the Indian Penal Code.

The gist of the case of the petitioners is that on 30.09.2020, the petitioner No. 2, namely, Mr. Shri Hokivi Awomi lodged an FIR before the Officer-in-Charge of Diphupar Police Station, Dimapur, *inter alia*, alleging that the petitioner No. 1, namely, Prafulla Hazarika approached the petitioner No. 2 for selling his EICHER PPRO 5016 vehicle on the ground that he was in an urgent need of money for his medical treatment and, accordingly, an amount of Rs.18,00,000/- (Eighteen Lakhs) was provided to the petitioner No. 1 by the petitioner No. 2 (first informant). However, it was alleged that in the FIR that the petitioner No. 1 has not executed the sale deed nor had he handed over other relevant document of the vehicle and, therefore, the FIR was lodged. On receipt of the said FIR, Diphupar P.S. Case No. 0098/2020 was registered.

It is submitted by learned counsel for the petitioners that the dispute between the parties arose due to some misunderstanding amongst themselves and, later on, it was amicably resolved between themselves and, accordingly, the petitioner No. 2 had filed a withdrawal petition before the Officer-in-Charge of the Diphupar P.S. Case No. 0098/2020 mentioning therein that the matter has already been compromised between them. However, it is submitted by learned counsel for the petitioners that as the offence involved in this case was a non-compoundable offence, the matter could not be compounded. Accordingly, the petitioner No. 1 preferred a criminal

petition praying for quashing of the aforementioned FIR as well as the criminal proceeding drawn on the basis of the said FIR.

However, as on the earlier instant, it was the petitioner No. 1 alone who approached this Court and it was felt that as the matter has been compromised, both the first informant as well as the accused could have approached this Court jointly praying for quashing of the criminal proceeding. The earlier criminal proceeding was withdrawn with liberty to file afresh.

Learned counsel for the petitioners have submitted that in the instant criminal petition both the complainant as well as the accused have jointly approached this Court and the materials produced before this Court including the compromise deed shows that the matter has already been compromised. It is also submitted that the dispute between the parties are of private/personal in nature and, therefore, after reaching a compromise settlement between the parties, it would be futile exercise to continue with the investigation of Diphupar P.S. Case No. 0098/2020. In support of his submission, learned counsel for the petitioners has cited a ruling of Hon'ble Supreme Court of India in “**Manoj Sharma vs. State & Ors.**” reported in “**(2008) 16 SCC 1**” wherein it was observed as follows:-

“6. We have carefully considered the submissions made on behalf of the respective parties and the facts involved in this case, and we are not inclined to accept Mr Singh's contention that the decision in B.S. Joshi case [(2003) 4 SCC 675 : 2003 SCC (Cri) 848 : JT (2003) 3 SC 277 : AIR 2003 SC 1386] requires reconsideration, at least not in the facts of this case. What was decided in B.S. Joshi case [(2003) 4 SCC 675 : 2003 SCC (Cri) 848 : JT (2003) 3 SC 277 : AIR

2003 SC 1386] was the power and authority of the High Court to exercise jurisdiction under Section 482 CrPC or under Article 226 of the Constitution to quash offences which are not compoundable. The law stated in the said case simply indicates the powers of the High Court to quash any criminal proceeding or first information report or complaint whether it be compoundable or not. The ultimate exercise of discretion under Section 482 CrPC or under Article 226 of the Constitution is with the court which has to exercise such jurisdiction in the facts of each case. It has been explained that the said power is in no way limited by the provisions of Section 320 CrPC. We are unable to disagree with such statement of law. In any event, in this case, we are only required to consider whether the High Court had exercised its jurisdiction under Section 482 CrPC legally and correctly.

7. *In view of the nature of the offences set out in the complaint, the High Court did not consider it an appropriate case for exercising its jurisdiction under Article 226 of the Constitution for quashing the same.*

8. *In our view, the High Court's refusal to exercise its jurisdiction under Article 226 of the Constitution for quashing the criminal proceedings cannot be supported. The first information report, which had been lodged by the complainant indicates a dispute between the complainant and the accused which is of a private nature. It is no doubt true that the first information report was the basis of the investigation by the police authorities, but the dispute between the parties remained one of a personal nature. Once the complainant decided not to pursue the matter further, the High Court could have taken a more pragmatic view of the matter. We do not suggest that while exercising its powers under Article 226 of the Constitution the High Court could not have refused to quash the first*

information report, but what we do say is that the matter could have been considered by the High Court with greater pragmatism in the facts of the case.

9. As we have indicated hereinbefore, the exercise of power under Section 482 CrPC or Article 226 of the Constitution is discretionary to be exercised in the facts of each case. In the facts of this case we are of the view that continuing with the criminal proceedings would be an exercise in futility. We, accordingly, allow the appeal and set aside the order of the High Court and quash the criminal proceedings pending before the learned Additional Chief Metropolitan Magistrate, Karkardooma Court, Delhi, in FIR No. 50 of 1997 dated 31-1-1997, PS Vivek Vihar (East Delhi)."

On the other hand, learned Public Prosecutor has produced the case diary of Diphupar P.S. Case No. 0098/2020 and has submitted that though the investigation of the case is pending and the Investigating Officer has recorded the statement of witnesses. It is submitted that on 24.06.2023, the petitioner No. 2 of this case, who is also the first informant who had lodged the FIR against the petitioner No. 1 had approached the Investigating Officer and has informed him that he intends to withdraw the complaint lodged against the petitioner No. 1 and in support of his submissions, the first informant has also submitted a compromise agreement reached between the parties.

I have considered the submissions made by learned counsel for both the parties and perused the materials available on record including the case diary of Diphupar P.S. Case No. 0098/2020 as well as the compromise deed reached between the parties on 17.05.2023. As it appears from the record that the dispute which

was there between the parties was of a personal nature and as they have already settled the matter amicably between them, it would be futile to pursue the matter any further.

In view of the above in the interest of justice, this criminal petition is allowed and the FIR No. 0098/2020 dated 30.09.2020 and proceedings of Diphupar P.S. Case No. 0098/2020 is hereby quashed.

This criminal petition is accordingly disposed of.

Sd/-

JUDGE

Comparing Assistant