



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

Case No. : Crl. Pet. 23/2022

1:SMTI. GANGA RANI BORAH
D/O LT. NAREN BORAH,R/O NAGAON(ASSAM),
P/A SANGTEMLA WARD, MOKOKCHUNG, NAGALAND

VERSUS

1:THE STATE OF NAGALAND AND 2 ORS
NAGALAND, KOHIMA

2:SMTI. TAKOTILA JAMIR
COMPLAINANT
CENTRE COORDINATOR
CHILDLINE 1098
MOKOKCHUNG
NAGALAND

3:SHRI. PRABITRA GOGOI
FATHER OF THE VICTIM SAPANA
R/O LUKHURAKHAN GAON
P.S SONARI
SUB-DIVISION -CHARAIDEO
DISTRICT - CHARAIDEO
ASSAM - 78569

Advocate for the Petitioner : TONGPOK PONGENER

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MRS. JUSTICE MARLI VANKUNG**

ORDER

Date : 09-02-2023

Heard Mr. Tongpok Pongener, learned counsel for the petitioner alongwith Mr. K. Angami, learned Public Prosecutor.

This is an application under Section 482 of the Code of Criminal Procedure, 1973 read with Articles 226 and 227 of the Constitution of India praying for quashing the FIR and criminal proceedings in GR. 61/21, WPs, C/No-02/21, U/S-323 IPC R/w 75 JJ Act, on the ground that the parties have arrived at a compromise settlement.

Brief facts of the case is that the instant minor child (alleged victim), is a distant relative of the petitioner from the petitioner's mother's side of the family. The petitioner being a businesswoman running a shop at Mokokchung and living alone, had brought the minor child to stay with her and to provide her education. In the month of April, 2021 she enrolled her at the Dilong High School, Mokokchung.

That on 07.07.2021 a written FIR was received from one Ms.

Takotila Jamir, Center Co-Ordinator CHILDLINE, 1098 to the effect that she wanted the authority to take action against the petitioner about a child abuse at Sangtemla Ward. On receiving the written FIR of O/C WPS, MKG had registered a case vide MKG WPS Case No. 0002/2021 U/s 323 IPC R/w 75 JJ Act.

On investigation of the case by the case I.O, it was found that the minor child aged 11 years was slapped on her face for possession Rs.20/- in her pocket and that she had taken out the knife near the Gas stove and threatened the minor child with the knife. The child got frightened and jerked wherein she got injury on her left arm. It was also found that during investigation that the minor child was physically abused and on one occasion the petitioner had pushed the minor child near the bath room door which injured the scalp of the minor child. In the process of investigation, the medical examination of the child was conducted and as per the report, the minor child sustained injury on her scalp, injury/scar mark on her left and pain areas on her right arms with no external injury, bruise on the lower lip and swelling on the forehead..

The statement of the minor child was also taken and other witness examined, wherein, a prima facie case under section 323

IPC R/w 75 JJ was found well established against the petitioner and charge sheet was accordingly submitted. Aggrieved, the petitioner has filed the instant Criminal petition.

The learned counsel for the petitioner Mr. Tongpok Pongener submits that the petitioner and the minor child are related from the mother's side and that the incident occurred only because the petitioner was slightly hot tempered. The parents of the minor child and the petitioner have come to an amicable settlement by executing the compromise wherein the complainant in the case alongwith the victim's father have all compromise the offence with the petitioner.

The learned counsel further submits that the offence is of private nature since it is between family members and further the offence is not of a heinous nature since the sentence under section 75 JJ Act is only up to 3 years and fine and has thus prayed for the quashing of the proceedings against the petitioner. In support of the submission the learned counsel has cited the Judgment of the Hon'ble Supreme Court in **Majoj Sharma Vs. State & Others** reported in **(2008) 16 SCC** , **Narinder Singh & Others Vs. State of Punjab & Another** reported in **(2014) 6 SCC 466**, The Judgments of Co-Ordinate Bench of this High Court in **Shri**

Ranghaba Thonger Vs. The State of Nagaland & Anr dated 16.06.2022 in CrI.L.P. 13/2021 and in the case of Shri A.Anyie Konyak Vs. The State of Nagaland & 4 Ors. in CrI. L.P. 7/2021 dated 14.12.2021.

Mr. K. Angami, learned Public Prosecutor on the other hand submits that on reading of the charge sheet submitted against the petitioner, it is seen that the petitioner had abused the minor child who is only of 11 years and section 75 of JJ Act is a Special Act wherein the offence is not compoundable.

He further submits that abusing a child of only 11 years is an offence against the society and is not of a private nature. The learned Public Prosecutor has prayed that a chance may be given for the prosecution witnesses to depose evidence in the court instead of quashing the FIR since Section 75 JJ Act is not mentioned as a compoundable offence. That there is every likelihood of conviction of the petitioner u/S 75 JJ Act for committing an offence against the child and the society. Such acts of crime against a minor child should not be encouraged by allowing a compromise later, since this could be a negative message/impact on the society.

The learned Public Prosecutor in support of his submission has cited in the case of **State of Madhya Pradesh Vs. Laxmi**

Narayan & Others reported in **(2019) 5 SCC 688: High Court of Bombay in Criminal Writ Petition No.4330 of 2019 Tongpok Pongener** in the case of **Rishi Prabha Ranjtkumar Prasad Vs. State of Maharastra & 3 Others** and a judgment of a Co-ordinate bench of this Court in **Shri Mutsanglemba & Anr Vs. The State of Nagaland & 4 Ors.** in case **No. CrI. Pet. 9/2022 dated 06.09.2022**

Having heard the submissions of both the parties, this Court finds that the Apex Court in **Gian Singh Vs. State of Punjab & Anr** reported in **(2012) RCR (CrI) 543** held that while exercising the power under section 482 Cr.P.C,

“the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim’s family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. The criminal cases having overwhelmingly and predominatingly civil flavor stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their

entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and the extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

In the instant case the petitioner has been charged under section 75, Juvenile Justice Care and Protection Act, 2015, which shall be punishable with imprisonment for a term which may extend to 3 (three) years or with fine of one lakh rupees or with both. The allegation is that the petitioner assaulted and abused a child of only 11 years of age who was living with her for education purposes. On perusal of the charge sheet, the case of the prosecution is that the

petitioner is the victim child aged 11 years have been assaulting her by hitting her on her face and wherein she got injury on her left arm and cut injury on scalp & bruise on her lip.

It is seen that the said victim is a child of a tender age of only 11 years and any nature of abuse alleged to be meted upon such a young child cannot be viewed lightly. Such allegations of abuse against a child of just 11 years of age, cannot be considered an offence which is a family dispute or where the wrong is basically private or personal in nature.

It may be noted that the Apex Court in **Gian Singh (Supra)** has noted that the High Court may quash proceedings if the compromise is between the **offender** and the **victim**. However, in the instant case since the victim is a minor, the compromise deed is not executed by her. It is seen that the compromise deed is between the petitioner, parents of the minor child and the complainant, under such circumstances, this court finds it fit that the minor child who is said to be the victim in the case should be given the opportunity, to have her say and depose in the court if so desired, along with the other witnesses.

For the above reasons, I find that it would be in the interest of justice, if the case against the accused petitioner is allowed to

proceed by giving both the parties a fair opportunity to adduce evidence before the trial court.

Accordingly, the application filed in Crl.Pet No.23/2023 stands dismissed and disposed.

Sd/-

JUDGE

Comparing Assistant