

GAHC020005762022



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

**Case No. : CRL.REVN/6/2022**

MR. ABHIJEET PAUL AND ANOTHER

2: MR. MOHD. AMJAD ALI  
S/O LATE ASHWAR MOHD. ALI, H/NO. 46, SUPPLY COLONY, DIST.  
DIMAPUR, NAGALAND

VERSUS

THE STATE OF NAGALAND

**Advocate for the Petitioner** : IMTI LONGJEM  
: ESTHER  
: LHOUSINO  
: KITOKA SUMI  
**Advocate for the Respondent** : K. ANGAMI (P.P.)

**BEFORE**  
**HONBLE MR JUSTICE KARDAK ETE**

**JUDGMENT & ORDER (ORAL)**

**Date : 20-04-2023**

Heard Mr. Imti Longjem, learned counsel for the petitioners and also heard Mr. K. Angami, learned Public Prosecutor.

**2.** The present petition under Section 482, Criminal Procedure

Code, 1973 has been jointly filed by the petitioners namely Mr. Abhijeet Paul and Mr. Mohd. Amjad Ali for quashing of FIR No. 88/2014 dated 11.08.2014 under Section 380, IPC registered at Diphupar Police Station, Dimapur corresponding to GR Case No. 403/2014 before the learned CJM, Dimapur on the basis of the settlement/compromise arrived at between the petitioner nos. 1 and 2.

**3.** The facts in nutshell is that the petitioner no. 1, while employed under Fedility National Information Service, a company engaged for setting up Automated Teller Machines in Dimapur, misappropriated Air Conditioners which he was entrusted for installation in ATMs. The petitioner no. 2, who is a Senior Executive in the said Company lodged an FIR dated 02.08.2014 at Diphupar Police Station in connection with missing Air Conditioners, which was registered, being Diphupar Police Station Case No. 88/2014 under Section 380, IPC. The petitioner no. 1 was arrested on 08.08.2014. On 12.08.2012, the petitioner no. 1, while in custody through his family replaced the stolen Air Conditioners with new sets. Thereafter, he was released on bail. The petitioner no. 2 then submitted a letter dated 13.08.2014 for withdrawal of the FIR before the learned Chief Judicial Magistrate, Dimapur, however, it could not be permitted for withdrawal of the FIR. Pursuant to the said FIR, G.R. Case No. 403/2014 was registered before the Chief Judicial Magistrate, Dimapur and the Charge Sheet was also filed on 19.10.2015 and the petitioner no. 1 and one Mr. Rahul Boidya have been put up for trial for the offence under Section 380 of IPC, 1860.

**4.** In the meantime, on 10.07.2022, a deed of compromise was

entered into between the petitioner nos. 1 and 2. By the said deed of compromise, the petitioner no. 2 declared that he has decided to forgive the petitioner no. 1 and has also agreed to do all such things or acts for amicable settlement of the case. It is also mentioned that the petitioner no. 2 has recovered the items/Air Conditioners and on his own free will decided not to initiate any legal proceedings or to pursue the legal proceedings against the petitioner no. 1.

**5.** The learned counsel for the petitioners submits that in the year 2012, the petitioner no. 1 joined the said company in the State of Nagaland and in early part of 2014 the petitioner no. 1 was promoted to Team Leader and was assigned the task *interalia* of installing Air Conditioners in ATMs. Both the parents of the petitioner no. 1 are heart patients and his father passed away in 2018. During the year 2013-2014, the petitioner no. 1 was having great financial hardships due to the problems faced by his family. In the circumstances, the petitioner no. 1 committed a mistake in not installing the said Air Conditioners entrusted to him by the company.

**6.** The learned counsel for the petitioners submits that since petitioner no. 1, through his family has bought identical sets of Air Conditioners on 12.08.2014 and installed the same in ATMs, and thereafter a compromise deed has been entered into between the petitioner nos. 1 and 2, by resolving the issue amicably. This petition is being filed for quashing of the GR Case No. 403/2014 corresponding to Diphupar PS Case No. 88/2014 pending before the CJM, Dimapur on the basis of the settlement. The learned counsel for the petitioners prays that

the FIR dated 02.08.2014 registered on 11.08.2014 and the GR Case No. 403/2014 pending before the learned CJM, Dimapur may be set aside and quashed.

**7.** Per contra, Mr. K. Angami, learned PP submits that since offence is against the public which is under Section 380 of IPC, 1860 this is not a fit case where this Hon'ble Court may invoke the inherent power under Section 482, CrPC, 1973, merely on the basis of compromise deed.

**8.** I have considered the rival submissions of the parties and also carefully scrutinized the materials available on record.

**9.** The petitioner no. 2 has entered into a compromise deed on 10.07.2022. On perusal of the deed of compromise, the petitioner no. 2 who is the Senior Executive (Operation) of the company clearly stated that the missing Air Conditioners have been recovered already, the issue has been settled amicably between the parties and he has submitted a letter before the learned CJM, Dimapur for withdrawal of the FIR on 13.08.2014. The petitioner no. 2 declared that he has decided to forgive the petitioner no. 1 in good spirit and having recovered the Air Conditioners, therefore, the petitioner no. 2 or for that matter his company will not initiate any legal proceedings against the petitioner no. 1. The petitioner no. 2 further states that he shall endeavour to do all such things or acts that may be required for disposal of GR Case No. 403/2014 and the deed of compromise/settlement have been made on their own free will and is without any threat, coercion, fraud and duress whatsoever.

**10.** By filing this petition jointly by the accused and the

complainant, *i.e.* petitioner nos. 1 and 2, on the basis of the settlement/compromise on their own free will and without there being any threat, coercion, *etc.*, prays for quashing of FIR and GR Case No. 403/2014 which this Court is of the view that this is one of the matters which may be considered for quashing of FIR and the criminal proceeding pending before the Trial court.

**11.** The Hon'ble Apex Court has recognized the need of amicable resolution of disputes in cases where the settlement has been entered into in the case of ***Gian Singh –Vs- State of Punjab*** reported in (2012) 10 SCC 303 which is reproduced herein below:

*"61. 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 proceedings or continuation of criminal proceedings would tantamount to abuse of process of law despite settlement and compromise between the victim and the 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 proceedings."*

**12.** In the case of ***Narinder Singh –Vs- State of Punjab*** reported in (2014) 6 SCC 466, the Hon'ble Supreme Court observed as under:

*"29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings: 29.1 Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and*

*with caution. 29.2 When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:*

*(i) ends of justice, or*

*(ii) to prevent abuse of the process of any court. While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives. 29.3. Such a power is not to be exercised in those prosecutions which involve 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. Similarly, for the offences alleged to have been committed under special statute like the 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.*

*29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves."*

**13.** In the case of ***State of Madhya Pradesh –Vs- Laxmi Narayan & Others*** reported in (2019) 5 SCC 688, the Hon'ble Supreme Court, after consideration of all the earlier decisions held as under:

*"15. Considering the law on the point and the other decisions of this Court on the point, referred to herein above, 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 the 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."*

**14.** The inherent power under Section 482 of CrPC, 1973 is to be exercised to prevent the abuse of process of law and to secure the ends of justice. In the present case, the petitioner no. 2 has agreed for quashing of GR Case No. 403/2014, corresponding to the Diphupar PS Case No. 88/2014 dated 02.08.2014 and has stated that the matter has been settled out of their own free will and as the matter stands settled and so as to prevent the abuse of process of law, this Court is of the considered opinion that this is a fit case to invoke the inherent power under Section 482 of CrPC.

**15.** It is the settled position of law that inherent power of High Court under Section 482, CrPC should be used sparingly and must be exercised carefully and with great caution. And when the courts came to the conclusion that there would be manifest injustice or there would be abuse of the process of the court if such power is not exercised court would quash the proceeding. The Hon'ble Apex Court justified the exercise of the powers under Section 482, CrPC to quash the proceeding to secure the ends of justice in view of the special facts and circumstances of the case, even when the offences were non-compoundable and had laid down that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 of CrPC would not be a bar to exercise power of quashing.

**16.** In the light of the aforesaid law laid down by the Hon'ble Apex Court and in the facts and circumstances of this case, this Court is of the view that notwithstanding the fact that the offence under Section 380 is not compoundable, there should be no impediment in quashing the FIR No. 88/2014 and GR Case No. 403/2014 under Section 380, IPC if the Court is otherwise satisfied with the facts and circumstance of the case so warrants.

**17.** In view of the above, GR Case No. 403/2014 corresponding to the FIR being Diphupar PS Case No. 88/2014 need to be quashed.

**18.** Accordingly, this petition is allowed and the criminal proceeding in GR Case No. 403/2014 corresponding to Diphupar PS Case No./88/2014 pending before the learned CJM, Dimapur is hereby quashed

in respect of the petitioner.

**19.** This petition is accordingly disposed of. However, no order as to cost.

**JUDGE**

**Comparing Assistant**