

GAHC020006622022



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

Case No. : Crl. Pet./28/2022

SHRI. AWANEESH CHANDRA JHA
AGED ABOUT 34 YEARS,
S/O SHRI. DEVENDRA KUMAR JHA,
R/O KISHANGARH MEHRAULI, PLOT NO.98/9,
DELHI, SOUTH DELHI, DELHI - 110030

VERSUS

THE STATE OF NAGALAND AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR,NAGALAND

2:SHRI. KIVIGHO ZHIMOMI

Advocate for the Petitioner : VINNOKA ACHUMI

Advocate for the Respondent : GOVT ADV NL

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT & ORDER

Date : 04-05-2023

The instant criminal petition under Section 482, Code of Criminal Procedure, ['the Code' and/or 'the CrPC', for short] is preferred by the petitioner viz. Awaneesh Chandra Jha, seeking quashment of a First Information Report [FIR] registered as Dimapur Sub-Urban Police Station Case no. 59/2021 [G.R. Case no. 457/2021]; Charge Sheet no. 54/2021, submitted in connection with Dimapur Sub-Urban Police

Station Case no. 59/2021; and the criminal proceeding of G.R. Case no. 457/2021, presently pending before the Court of learned Chief Judicial Magistrate, Dimapur, Nagaland where the petitioner is facing the trial as accused.

2. The facts leading to the institution of the institution of the instant criminal petition can be, exposted briefly, as follows :-

2.1. The respondent no. 2 as the informant had filed a First Information Report [FIR] before Dimapur Sub-Urban Police Station on 28.08.2021 against the present petitioner and another person named, Varun Kumar Gandhi as accused. On receipt of the FIR, the same has been registered vide the General Diary Entry no. 06/2021. Subsequently, the FIR has been registered as Dimapur Sub-Urban Police Station Case no. 59/2021 for the offences under Sections 420/407/34, Indian Penal Code [IPC] by the Officer In-Charge, Dimapur Sub-Urban Police Station on 28.08.2021 and a Sub-Inspector of Police has been entrusted to investigate into the case.

2.2. In the FIR, the respondent no. 2 herein as the informant, has alleged that Mr. Varun Kumar Gandhi representing himself as a Director and an authorized signatory of a registered company named M/s Lake House St Private Limited, approached the informant and persuaded the informant to make investment in the said company, which is claimed to in the business of real estate/property development sector. According to the informant, on being persuaded, he decided to make investment in the said company and to that effect, an agreement dated 03.04.2021 was executed between Mr. Varun Kumar Gandhi as the authorized signatory of the company and the informant. On execution of the agreement, the informant handed over a sum of Rs. 2,50,00,000/- in cash to Mr. Varun Kumar Gandhi as the informant was given assurance that the amount would be repaid with profit within 3 [three] months from the date of execution of the agreement. The informant had alleged that he was given assurance that he would be repaid an amount of Rs. 3.25 crore comprising of the principal amount and profits within 3 [three] months but when neither principal amount was repaid nor any profit was paid within the agreed period of 3 [three]

months, the informant tried to contact the petitioner and the other accused. But none of them had responded to the call of the informant. With such allegation, the respondent no. 2 as the informant had lodged the FIR in question.

2.3. On registration of the case, investigation ensued. The investigating officer of the case after completion of investigation in connection with Dimapur Sub-Urban Police Station Case no. 59/2021, submitted a final form/report under Section 173, CrPC vide Final Report no. 54/2021 on 04.12.2021. In the final form/report, the I.O. of the case has mentioned that on 06.09.2021, the informant-respondent no. 2 had submitted a letter for withdrawal of the FIR stating that the matter had been amicably settled between the parties in the meantime.

3. The learned counsel for the petitioner has submitted that in the meantime, a Memorandum of Understanding had also been entered into between the respondent no. 2-informant and the present petitioner on 08.09.2021 after amicably settling all the disputes and difference existing between them. A copy of the said Memorandum of Understanding dated 08.09.2021 has been annexed as Annexure-D to the instant criminal petition.

4. In the Memorandum of Understanding dated 08.09.2021, it is mentioned that all the payments have been made to the informant-respondent no. 2 and no financial liabilities of any nature is pending between the parties. With the signing of the Memorandum of Understanding, all disputes qua the financial liabilities have been amicably settled and there remains no further claim from the informant-respondent no. 2.

5. It is in the aforesaid backdrop of events, the instant criminal petition with the afore-mentioned prayers, has been instituted.

6. Heard Mr. V. Vinnoka Achumi, learned counsel for the petitioner; Ms. V. Zhimomi, learned Public Prosecutor, Nagaland; and Ms. Vikali Aye, learned counsel for the

respondent no. 2-informant.

7. Ms. Aye, learned counsel representing the respondent no. 2-informant has endorsed to the submissions of Mr. Achumi, learned counsel for the petitioner that the parties have amicably settled the matter and after thorough deliberation, the parties had entered into the Memorandum of Understanding dated 08.09.2021, a copy of which has been appended to the criminal petition as Annexure-D.

8. Ms. Zhimomi, learned Public Prosecutor, Nagaland for the respondent no. 1 has submitted that considering the nature of the offences in respect of which the entire case has been registered; the inherent power available under Section 482, CrPC and the precedents available in this regard, it would be in the interest of the parties the dispute can be given quietus since the parties have entered into a compromise agreement after amicably settling all their disputes and differences.

9. The power under Section 482 of the Code envisages three circumstances under which the inherent jurisdiction can be exercised viz. [i] to give effect to an order under the Code; [ii] to prevent abuse of the process of court; and [iii] to otherwise secure the ends of justice. Inherent jurisdiction under the Section though wide has to be exercised sparingly, carefully and with necessary caution. In exercise of the power the Court would be justified to quash any proceeding only if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. The inherent power should not be exercised to stifle a legitimate prosecution.

10. The scope of the inherent powers of the High Court available under Section 482, CrPC to quash criminal proceedings for offences which are non-compoundable in nature but in respect of which the contesting parties have arrived at amicable settlement, have been discussed elaborately in a number of decisions of the Supreme Court as well as of this Court.

11. In *Gian Singh vs. State of Punjab*, reported in [2012] 10 SCC 303, the Supreme Court has observed and held as under :-

“61. The position that emerges from the above discussion can be summarised thus : the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, 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 a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour 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 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 the wrongdoer and whether to secure the ends of justice, it is appropriate that the 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.”

12. After considering the decision in Gian Singh [supra], the Supreme Court in the case of Narinder Singh vs. State of Punjab, reported in [2014] 6 SCC 466, has observed in the similar manner and the relevant parts of the said judgment are extracted hereunder :-

“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.

29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual alone. 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 proving 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/delicate parts of the body, nature of weapons used, etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility

of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the latter case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7. While deciding whether to exercise its power under [Section 482](#) of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come to a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.”

13. In *Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Kamur and others vs. the State Of Gujarat and another*, reported in [2017] 9 SCC 641, a three-judge bench of the

Supreme Court has summarized the broad principles as under :

“16. The broad principles which emerge from the precedents on the subject, may be summarized in the following propositions :

16.1 Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

16.2 The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

16.3 In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

16.4 While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.

16.5 The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.

16.6 In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have

settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

16.7 As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned.

16.8 Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

16.9 In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

16.10 There is yet an exception to the principle set out in propositions 16.8 and 16.9 above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.”

14. In the case of State of Madhya Pradesh vs. Laxmi Narayan, reported in [2019] 5 SCC 688, the Supreme Court has further observed as under

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“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.”

15. Similar observations are made in *Shiji @ Pappu & others vs. Radhika & another*, reported in [2011] 10 SCC 705 and *Yogendra Yadav & others vs. State of Jharkhand & another*, reported in [2014] 9 SCC 653.

16. By order dated 10.11.2022, this Court, in the interim, stayed the further proceedings of G.R. Case no. 457/2021, pending before the Court of learned Chief Judicial Magistrate, Dimapur. The case records of G.R. Case no. 457/2021 were also called for by the said order. On perusal of the case records of G.R. Case no. 457/2021, it is noticed that the criminal proceedings i.e. G.R. Case no. 457/2021 is yet to attain finality despite submission of the final form/report by the I.O. of the case on 04.12.2021 with the letter of withdrawal dated 06.09.2021 as Annexure-J thereto.

17. From the above conspectus of facts, it has emerged that the parties herein have decided to settle the issues which arose between them and which led to the institution of the FIR in respect of Dimapur Sub-Urban Police Station Case no. 59/2021. In view of the aforesaid fact situation obtaining in the present case, as alluded in the proceeding paragraphs, and in the light of the guidelines that can be culled out from decisions of the Supreme Court as regards the powers of this court available under Section 482, CrPC, this Court is of the considered view that this is a case where the inherent power of the Court available under Section 482, CrPC can be exercised for the ends of justice. The parties herein have settled their disputes amicably by entering into the Memorandum of Understanding dated 08.09.2021. Both the parties have categorically asserted to the effect that the disputes and differences that arose between them, have been amicably settled by putting their grievances against each other into the backburner. Instead of allowing the proceedings of G.R. Case no.

457/2021, arising out of Dimapur Sub-Urban Police Station Case no. 59/2021, which is presently pending before the Court of learned Chief Judicial Magistrate, Dimapur, to continue any further where the inevitable conclusion in the backdrop of above fact situation will be the acquittal of the petitioner at the end of the trial, the interests of justice will be best subserved if Dimapur Sub-Urban Police Station Case no. 59/2021 and the proceedings of G.R. Case no. 457/2021 pending against the petitioner is quashed and set aside in order to enable the petitioner and the respondent no. 2 to give a quietus to all the disputes and differences that arose between them earlier. Accordingly, Dimapur Sub-Urban Police Station Case no. 59/2021, and the proceedings of G.R. Case no. 457/2021, arising therefrom and presently pending in the Court of learned Chief Judicial Magistrate, are quashed and set aside. Resultantly, the consequential orders passed in G.R. Case no. 457/2021, are also set aside.

18. Resultantly, the instant criminal petition is allowed. LCR to be returned forthwith. No Cost.

Sd/-
JUDGE

Comparing Assistant