



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

Case No. : Crl.Petn./1/2024

Rikchol Lombi and Anr
S/o Late Bomnik Lombi, permanent resident of Lombi Chekar village, PO Tirbin,
Leparada District, AP presently residing at Donyi Polo Colony, PO Itanagar,
Papumpare District, AP

2: Becky Taro Camdir
S/o. Mr. Taro Teki, Village Pech Laptop, P.O/P.S.: Sagalee, Dist: Papumpare
Arunachal Pradesh presently residing at Ganga Village, Itanagar, P.O/P.S.:
Chimpu, District: Papumpare, Arunachal Pradesh.

VERSUS

The State of AP
represented by PP of AP

Advocates for the petitioners: V. Jamoh, M. Doji, B. Padung, B. Dulom, S. Tsering

Advocates for the respondent: Mr. G. Tado, learned Addl. P.P. (A.P)

BEFORE
HONBLE MR. JUSTICE KARDAK ETE

JUDGMENT & ORDER (Oral)

Date : 08-05-2024

Heard Mr. V. Jamoh, learned counsel for the petitioner. Also heard Mr. G.

Tado, learned Addl. Public Prosecutor for the State of Arunachal Pradesh.

2. By filing this application jointly under Section 482 of the Cr.PC, 1973, the petitioners have prayed for quashing of the criminal proceedings in G.R. case No. 182 of 2022 under Sections 445/323/506 Para-I IPC, 1860, corresponding to Itanagar P.S. Case No. 66/ 2022 pending before the Chief Judicial Magistrate, Capital Complex, Yupia, on the basis of compromise between them.

3. The case set up by the prosecution is that on 01.03.2022 a written FIR was received from one Shri Rikchol Lombi of Donyi Polo RWD Colony, Itanagar, to the effect that at around 5.30 AM one Shri Taro Biki of Ganga village has barged into the rented house of the informant located at Donyi Polo near RWD colony, Itanagar, and assaulted him by wooden chair while the informant was sleeping in his room. As result of which he suffered severe injury to his elbow. Accordingly, a case was registered being Itanagar P.S. Cas No. 66/2022 under Sections 448/323/427/506 IPC. On completion of the investigation, a charge-sheet was laid under Sections 448/323/427/506, IPC against the accused/petitioner no. 2. The learned Chief Judicial Magistrate has framed the charges against the accused/petitioner no. 2 under Sections 323/455/506 Para-I, IPC, 1860 by altering the Section 448 IPC to section 455, IPC.

4. The case is pending trial before the learned Chief Judicial Magistrate, Capital Complex, Yupia. 2 (two) prosecution witnesses, namely, Shri Rikchol Lombi, the petitioner no. 1 herein and one Smti Yani Gadi Lombi, the wife of petitioner no. 1, out of 4 (four) prosecution witnesses, have been examined. The present petition has been filed jointly by the petitioners for quashing of the criminal proceedings (Supra) on the ground that the matter has been settled

between them as they are old friends and does not want to pursue the matter.

5. Mr. V. Jamoh, learned counsel for the petitioner submits that in the year 2020, when both the petitioners became close friends during the nationwide lockdown due to Covid-19 pandemic as both their family were staying in the same rented building. During the said period, the petitioner no. 1 owed some meagre amount to the petitioner no. 2 on account of playing cards between them. The petitioner no. 2 has also helped the petitioner no. 1 while shifting to the present rented house by the petitioner no. 2 as they were good friends.

6. Mr. Jamoh, learned counsel submits that the present matter arose due to sudden demand of money by the petitioner no. 2 to repay the amount with interest, as according to him, he was facing financial crisis. Since the petitioner no. 2 was in a drunken mood, the petitioner no. 1 asked him to come on some other day in fresh mood. However, the petitioner no. 2 came to the house of the petitioner no. 1 at 5.30 am in the morning by breaking the door and started assaulting the petitioner no. 2. Having no alternative, the petitioner no. 1 had to lodge a complaint against the petitioner no. 2 before the Police. He submits that after registration of the case, the petitioner no. 2 was arrested and released on bail after fulfilling the formalities as the offences were all bailable offences. He submits that though the charge-sheet has been filed against the petitioner no. 2 under sections 448/323/427/506 IPC against the petitioner no. 2 on 29.06.2022, the learned Chief Judicial Magistrate, Capital Complex, Yupia has altered the charge to 455/323/506 Para-I IPC. The petitioner no. 1 and his wife Smti Yani Gadi Lombi appeared before the learned Court of the Chief Judicial Magistrate and their statements have been recorded.

7. Mr. Jamoh, learned counsel submits that during the pendency, the parties have settled the matter by way of mutual settlement agreement on 18.12.2023 that the petitioner no. 2 shall not repeat such action against the petitioner no. 1 in near future or against any other person. The petitioner no. 2 had apologised to the petitioner no. 1 and his wife and agreed to lead a responsible and respectable life and would take care of his family members and petitioner no. 1 shall withdraw the aforesaid G.R. case. The petitioners are family relatives and stay in the same building. The parties have entered into the settlement on their free will, without any undue influence and in sound state of mind. He submits that except Section 455, rest are compoundable offences and since Section 455 IPC is not compoundable in nature, it is not compoundable under Section 320 of the Cr.PC. Therefore, he submits that the G.R. case No. 182 of 2022 pending before the learned Chief Judicial Magistrate, Capital Complex, Yupia may be quashed by invoking Section 482 Cr.PC by this Court.

8. Mr. G. Tado, learned Additional Public Prosecutor submits that as per the MLC, the injury is of simple nature. Since the parties have settled the matter as they are family relatives and stay in the same building and have decided to live peacefully and lead a responsible and respectful life, this Court may pass appropriate order as deem fit in accordance with law.

9. I have considered the submissions of the learned counsels for the parties and perused the records of the case.

10. The petitioner no. 1 had lodged an F.I.R. before the Officer-in-Charge of the Police Station Itanagar on 01.03.2022, to the effect that the petitioner no. 2, at around 5.30 am, had barged into the rented house of the petitioner no. 2 and

assaulted him with wooden chair, while the petitioner no. 1 was sleeping in his room which resulted in an injury to his elbow. Accordingly, a case was registered being Itanagar P.S. Case No. 66 of 2022, under Sections 448/323/427/506 IPC. The Charge-sheet was filed on 29.06.2022 under Sections 448/323/427/506 IPC against the petitioner no. 2. The learned Chief Judicial Magistrate, Capital Complex, Yupia has framed the charges by altering the Sections to 455/323/506-Para-I IPC. Section 455 is a non-compoundable offence.

11. On perusal of the record, it appears that as per the MLC, the nature of injury caused to the petitioner no. 1 is simple injury. It is also noticed that out of 4 (four) prosecution witnesses, 2 (two) prosecution witnesses, namely, the petitioner no. 1 and his wife have been examined and recorded their statements before the Court.

12. During the pendency of the criminal proceedings, it is noticed that the petitioners have entered into settlement on 18.12.2023. Since their families are relatives and are staying in the same building and the petitioner no. 2 had apologised to the petitioner no. 1 and his wife and would lead a responsible and respectable life by taking care of his family members, they have decided not to pursue the matter. The agreement has been entered into with free will, without any undue influence and in a sound state of mind.

13. On consideration of the matter, this Court finds that the case has arisen out of petty issue and the petitioner no. 2 appears to have acted under the influence of alcohol. Be that as it may, the parties have settled the matter during the pendency of the criminal proceedings. It is stated at the Bar that in fact the petitioners were students and are good friends and now they are living

peacefully with their family members and maintaining cordial relation with each other.

14. Having considered above, this Court is of the view that it would be unfair or contrary to the interest of justice to allow continuation with the criminal proceedings (supra) which would amount to abuse of the process of law since the parties have settled the matter. More so, the chances of conviction appears to be bleak and remote. Thus, the criminal proceedings above deserved quashment by invoking the inherent power of this Court under Section 482 of the Cr.P.C., 1973.

15. The Hon'ble Supreme Court has enunciated the law on quashment of criminal proceedings, chargesheet and FIR under section 482, Cr.PC, in the case of **State of Madhya Pradesh Vrs. Laxmi Narayan**, reported in **(2019) 5 SCC 688**, which is reproduced herein below:-

“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 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.”

16. In the case of In the case of **Kapil Gupta Vrs. NCT of Delhi, 2022 SCC Online SC 1030**, the Hon'ble Supreme Court has held, inter alia, that the court

has to take into consideration as to whether settlement between the parties is going to result into harmony between them which may improve their mutual relationship.

17. On the careful consideration of the case at hand, as taken note above, both the petitioners are friends and are living peacefully. Both have entered into settlement on their own volition to main cordial relationship and harmony between them and the society at large. That apart, the matter appears to have been emanated out of petty issue. The injury caused is simple in nature as per MLC. Thus, this court is of the considered view that this is fit case where the inherent power of this court under section 482 Cr.PC deserve to be exercised.

18. In view of the discussion made hereinabove and law laid down by the Hon'ble Supreme Court referred to herein above, I am of the considered view that the present case is one of the cases where the inherent power of this Court under Section 482 of the Cr.PC, 1973 is fit to be invoked.

19. Accordingly, the criminal proceedings of G.R. case No. 182 of 2022 under Sections 445/323/506 Para-I, IPC, 1860 corresponding to Itanagar P.S. Case No. 66/ 2022 pending before the Chief Judicial Magistrate, Capital Complex, Yupia, is hereby quashed.

20. In the result, the criminal petition is allowed and disposed of.

JUDGE

Comparing Assistant