

GAHC040003902024



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

Case No. : Crl.Petn./38/2024

Togam Gara
aged about 33 years, D/o Marto Gara, R/o TT Marg, Near Post Office, Itanagar,
PO/PS Itanagar Papum Pare District, AP.

2: Yanga Ramsing Mara
Aged about 27 years, D/o Shri Tapak Ramsing Mara, Permanent R/o Taliha, P.O/P.S
Taliha, Upper Subansiri District Arunachal Pradesh

VERSUS

THE STATE OF AP
through the PP of AP

Advocate for the Petitioner : Adam Tatak

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MR. JUSTICE KARDAK ETE

JUDGMENT

Date : 03-06-2024

Heard Ms A. Talom, learned counsel for the petitioners. Also
heard Ms L. Hage, learned Additional Public Prosecutor for the
State.

2. By filing this application jointly under Section 482 of the Cr.P.C, 1973, the petitioners have prayed for quashing of the criminal proceedings of G.R. Case No. 588/2022 under Section 380 of the IPC, 1860 corresponding to Itanagar P.S. Case No. 285/2021, pending before the learned Chief Judicial Magistrate, Yupia, on the basis of compromise.

3. The present criminal proceedings emanate from the FIR lodged by the petitioner No.1 on 02.07.2021 before the Officer-in-Charge, Itanagar Police Station, stating that she had lost her ATM card of Canara Bank, Itanagar Branch, bearing Saving Account No.110000190926 on 19.06.2021. She thought that he had misplaced the card somewhere else. However, when she visited the Bank on 02.07.2021, it came to her knowledge that someone else had withdrawn an amount of Rs. 20,000/-(Rupees Twenty Thousand only) through her Canara Bank ATM card. It is stated that on the request of the informant, Bank officials had checked the CCTV footage and it was found that one of her friends, namely, Ms Yanga Ramising Mara, had withdrawn the money from her account. Ms Yanga Ramising Mara, is one of her friends who regularly visits her house and alleged that she had stolen her ATM card and committed the crime.

4. On the receipt of the said FIR, a case was registered being Itanagar P.S. Case No. 285/2021, under Section 379 IPC, 1860. After

completion of the investigation, charge- sheet has been laid before the court under section 379 IPC on 03.09.2021, against the petitioner No.2. However, the learned trial court has framed the charge under Section 380 of the IPC, 1860 against the petitioner No.2.

5. Ms A. Talom, learned counsel for the petitioners, submits that the petitioner No.1 and petitioner No.2 are close relatives being the maternal aunt and niece. The petitioner No. 1 has lodged the FIR after having been found that the petitioner No. 2 has withdrawn the money from the account of Petitioner No. 2 through her ATM card without knowledge of her and due to some misunderstanding between the petitioner No.1 and petitioner No.2. In fact, the petitioner No. 1 has no grudge or grievance against the Petitioner No. 2. Considering that the petitioner No.1 is the aunt of petitioner No.2 and on the intervention of the family members, they have decided to settle the misunderstanding. Accordingly, vide Deed of Settlement dated 18.11.2023, they have entered into settlement for peaceful and cordial relation.

6. Ms A. Talom, the learned counsel, submits that in view of the settlement entered into between the parties the chances of conviction are bleak and remote. Therefore, she submits that criminal proceedings may be quashed.

7. Ms L. Hage, the learned Additional Public Prosecutor, fairly submits that petitioners have already settled the matter by executing

a deed of settlement. Though the charge has been framed against the petitioner No.2, in view of such settlement the chance of conviction is remote and therefore, if the proceeding is allowed to be continued, the same would be an abuse of process of the court.

8. I have considered the submissions of learned counsel for the parties and also examined the materials available on records.

9. Record reveals that the charge sheet has been filed under section 379 of IPC, 1860 and the learned Trial court has altered the charge and framed the charge under Section 380 of IPC, 1860. The petitioner No.2 recorded her statement under Section 161 Cr.P.C, indicating that the petitioner No.2 had withdrawn the amount by using the ATM card of the petitioner No.1. The petitioner No.2 had stated that she had taken ATM card of the Petitioner No.1, from her hand bag which was kept in her bedroom and had withdrawn the amount as she has misplaced here bag. It is obvious that if a person withdraws money from the Bank account using the ATM card of others without the knowledge of the holder, it would amounts to theft. However, being relatives if parties agreed to settle the matter to maintain cordial relation, same deserves to be accepted.

10. The petitioner No.1 and petitioner No.2, who are relatives, being maternal aunt and niece entered into a settlement vide Deed of Settlement dated 18.11.2023 and have decided to live peaceful and maintain cordial relationship.

11. Quashment of criminal proceedings of non compoundable offences on the basis of the compromise under section 482 of CR.P.C. has been enunciated by the Hon'ble Supreme Court. After consideration of earlier decisions, the Hon'ble Supreme Court in the case of State ***of Madhya Pradesh & Laxmi Narayan***, reported in ***2019 (5) SCC 688***, has held which is reproduced herein under:

“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 307IPC 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. "

12. In the present case, the petitioner No.1/informant and the petitioner No.2/accused have jointly filed this present application and prays for quashing of the criminal proceeding of G.R. Case No. 588/2021. Both the petitioners are relatives being maternal aunt and niece. Instant case is not a case where unscrupulous offenders have attempted to have escape the criminal liabilities by securing a compromise through brute force, threats, bribes or other such unethical and illegal means. The settlement has not been struck post conviction. As noted above, though the petitioner No.2 had admitted to have taken the ATM card of the petitioner No.1, being the relative it cannot be strictly said that the petitioner No.2 had stolen the ATM card of the petitioner No.1 as they are relatives and it is alleged to have been due to misplacement of the bag or purse of the petitioner No.2.

13. Inherent power of this Court under Section 482 of the Cr.P.C is to secure ends of justice. This Court is not oblivious to the fact that the power under Section 482 of the Cr.P.C has to be used sparingly but at the same time it is to be noted that the rigid and specious justice may also be lead to grave injustice.

14. In the facts of the case, I am of the view that even after settlement between the parties, if the criminal proceeding is allowed to continue, apart from chances of conviction being bleak and remote, it would cause extreme injustice to the petitioner No.2.

15. Having regard to the facts and circumstances of the present case and considering that the parties have resolved their dispute between them by executing a settlement deed, which would help them to maintain peaceful and cordial relationship as they are relatives and in view of the principle of law laid down by the Hon'ble Supreme Court, I am of the considered view that this is one of the cases where the inherent power of this Court under Section 482 of the Cr.P.C., is fit to be invoked.

16. Accordingly, the criminal proceedings of G.R. Case No. 588/2022 under Section 380 of the IPC, 1860 corresponding to Itanagar P.S. Case No. 285/2021, pending before the learned Chief Judicial Magistrate, Yupia, is hereby quashed.

17. The criminal petition stands allowed and disposed of.

JUDGE

Comparing Assistant