

GAHC040004102024



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

Case No. : Crl.Petn./40/2024

Tame Kaha and 2 Ors
Son of Shri Tame Takio, permanent resident of Upper Karsingsa, PO and PS
Banderdewa, Papumpare District, Arunachal Pradesh 79112

2: Tame Niya
Age:
Occupation :
Son of Shri Tame Yayang
permanent resident of Upper Karsingsa
PO and PS Banderdewa
Papumpare District
Arunachal Pradesh 79112

3: Nabam Solo
Age:
Occupation :
Son of Shri Nabam Killing
permanent resident of Village Langdang
PO and PS Sagalee
Papumpare District
Arunachal Pradesh

VERSUS

The State of AP
represented by the PP

Advocate for the Petitioner : Tania Kipa

Advocate for the Respondent : P P of AP

**BEFORE
HONBLE MRS. JUSTICE MARLI VANKUNG**

ORDER

Date : 25.07.2024

Heard Mr. T. Kipa, learned counsel for the petitioners along with Ms. T. Jini, learned Additional Public Prosecutor for the State respondent.

2. The instant petition is filed under Section 482 of the Criminal Procedure Code for the Court to invoke its inherent power and quash the criminal proceedings pending before the Chief Judicial Magistrate, Complex, Yupia District, Papum Pare, on the basis of the Mutual Settlement Deed executed by both the parties dated 06.02.2023.

3. The learned counsel for the petitioners submitted that the accused (petitioner No.1), was charged under Sections 323, 342, 506, 341/34 IPC in GR Case No. 187/2021, that all the sections are compoundable offences under Section 320 Cr.P.C. After the registration of the FIR in Banderdwa Police Station vide BDW P.S Case No. 06/2021 under Sections 323, 342, 506, 341/34 IPC, the family members of the instant petitioner No. 1 (accused), petitioner No. 2 (the co-accused) and petitioner No. 3 (victim/complainant) along with the petitioners had mutually settled the misunderstanding on 06.02.2024, by conducting the Nyile as per the Nyishi Customary practices, in the presence of the family elders of all the petitioners.

4. The brief facts of the case, as narrated by the learned counsel for the petitioners is that the wife of the petitioner No. 1 (accused) and the wife of the petitioner No. 3 (victim/ complainant) are sisters. There was an allegation against the petitioner No. 3 by the petitioner No. 1 that the petitioner No. 3 (victim/complainant) had committed rape to the wife of petitioner No.1, which

the petitioner No. 1 learnt from his wife. In this regard, on 12th March, 2021, the petitioner No. 3 (victim/complainant) visited the resident of the petitioner No. 1 (accused) to explain the allegation regarding the said illicit relationship. After the explanation, the petitioner No. 1 threatened the petitioner No. 3 with dire consequences, if the petitioner No. 3 repeated the incident with his wife. Subsequently, due to his fear, the petitioner No. 3 lodged the FIR against the petitioner No. 1 (accused) and against petitioner No. 2, without any reason just to weaken the allegation of the said illicit relationship.

5. The learned counsel submits that the petitioner No. 3 (victim) had lodged the FIR dated 16.03.2021, alleging that the petitioner No. 1 along with the petitioner No. 2 had physically assaulted him and removed his clothes, when they went to visit petitioner No. 1 on 12.03.2021 at 9:00 AM and that they had beaten him black and blue and confined him in their house from where he was rescued by the other family members at around 3:00 PM. The learned counsel submits that the misunderstanding and dispute is between family members and the petitioners have now come to an amicable settlement and have duly executed a Mutual Settlement Deed, by settling and resolving their differences as per Nyishi Customary Law and Practices. The parties vide the Mutual Settlement Deed have mutually agreed to settle the dispute and to live happily and maintain cordial relationship amongst themselves as good relatives. The parties have agreed that in future, the petitioner No. 3 will not repeat the incident of illicit relationship with the wife of the petitioner No. 1 and the petitioner No. 1 will not threaten the petitioner Nos. 3 nor will the parties repeat the incident. That if the petitioner No. 3 repeat the illicit relationship, then the petitioner No. 1 can take action according to the Nyishi Customary Law and Practices.

6. The learned counsel further submits that the Deed of Settlement was executed on 6th February, 2023 and the offences under which the petitioner No. 1 is charged are all compoundable offences, however even though the offences are all compoundable under Section 320 Cr.P.C, however, the case against the petitioner No. 1 (accused) is still pending, since the records and file could not be located when they tried to approach the concerned Trial Court for acquittal of the petitioner No. 1/accused. The learned counsel submits that there is urgency in the matter, since the petitioner No. 1 has applied for various jobs, wherein he is required to submit police verification report and the pending criminal case is hampering his chance to secure the proper job.

7. The learned counsel thus submitted that the Court may invoke its inherent powers under Section 482 Cr.P.C and quashed the FIR and proceedings of the case against the petitioner No. 1 in the connected GR Case No. 187/2021 and quashing of the Charge-sheet No. 51/2021 dated 16.11.2021. He further submits that the Mutual Settlement Deed was executed and registered before the Executed Magistrate, Banderdewa vide Serial No. BDWA/Ex-19/2024 dated 22/02/2024 arising out of BDW PS Case No. 06/2021 under Sections 323/342/506/341, 34 IPC. The learned counsel for the petitioner, in support of his submission has cited the following cases, wherein the High Court of Himachal Pradesh had exercised their inherent powers under Section 482 Cr.P.C in offences which were all compoundable under Section 320 Cr.P.C. The learned counsel for the petitioners has cited the decision of the High Court of Himachal Pradesh in ***Madan Lal & Ors. Vs. State of Himachal Pradesh & Ors.***, reported in ***2018 SCC OnLine HP 1599***, ***Ramesh Kumar & Ors. Vs. State of H.P. & Ors.***, reported in ***2017 SCC OnLine HP 740*** and the decision of a Coordinate Bench of this Court in ***Rido Pana & Ors. Vs. State of A.P.***,

reported in **2022 SCC OnLine Gau 962.**

8. Ms. T. Jini, learned Additional Public Prosecutor has strongly objected to the application made by the petitioner under Section 482 Cr.P.C. The learned Additional Public Prosecutor submitted that since the petitioner No. 1 (accused) is charged under Sections 323/342/506/341, 34 IPC, all the sections are compoundable offences under Section 320 Cr.P.C., which can be compounded with the permission of the concerned court, therefore, the petitioners can approach the concerned Magistrate as provided under Section 320 Cr.P.C. The learned Addl. Public Prosecutor has also produced the information received from the concerned IO that the case has been charge sheeted vide BDW/PS/C.S No. 51/2021 dated 26/11/2021, but case file could not be traced out. The learned Additional Public Prosecutor submits that the case under Section 482 Cr.P.C. is to be invoked by this Court only when the offences are in connection with non-bailable offence. In support of her submission, the learned counsel has cited the decision of the Apex Court in **Gian Singh Vs. State of Punjab & Anr.**, reported in **2013 1 SCC (Cri) 160**, wherein it was held that the power under 482 Cr.P.C is not to be resorted to if there is specific provision in the Code for the redress of the grievance of an aggrieved party. That it should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

9. I have heard the submissions made by the learned counsels for both the parties.

10. It is seen that the facts as narrated, is not disputed and that the petitioners in the case are related to each other through marriage, since the wife of the petitioner No. 1 (accused) and the wife of the petitioner No. 3 (victim/complainant) are sisters. The nature of the allegation is that the wife of

petitioner No. 1 (accused) and the petitioner No. 3 (victim/complainant) are said to have an illicit relationship. Because of which, the petitioner No. 1 had threatened petitioner No. 3 and thus, petitioner No. 3 (victim/complainant) is said to have filed the FIR in fear just to weaken the allegation of the said illicit relationship against petitioner No. 1 & petitioner No. 2, wherein petitioner No. 1 (accused) was charged under Sections 323/342/506/341, 34 IPC which are all compoundable offences. That the issue was then settled between themselves as per the Nyishi Customary Law and Practices in the presence of the elders of the family members and accordingly, had also executed the said Mutual Settlement Deed, which was also registered before the executed Magistrate vide 06.02.2023.

11. In view of the above, this court finds that though Section 320 (2) provides that the compoundable offences which can be compounded with the permission of the concerned court however, in the present case, it is seen that the learned counsel for the petitioner has submitted that the files of the case could not be traced out when the concerned court was approached and it is seen that the Mutual Settlement Agreement was executed and signed by the parties on 6th February, 2023 and the case is still pending against the petitioner No. 1. It has been explained by the learned counsel for the petitioners that the reason why the matter even though appeared to be very simple, could not be disposed of till date, is because the file and documents could not be located when they had approached the concerned Court. This Court finds that the Apex Court in ***Gian Singh Vs. State of Punjab & Anr. (Supra)*** held at para Nos. 50, 51 & 52 as follows:-

“50. In different situations, the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by

the High Court before it exercises inherent power under Section 482 on either of the twin objectives, (i) to prevent abuse of the process of any court or (ii) to secure the ends of justice, is a sine qua non.

51. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. Ex debito justitiae is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection.

52. It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a straitjacket formula regulating the exercise of inherent powers under Section 82. No precise and inflexible guidelines can also be provided."

12. Thus, considering the nature of the dispute between both the parties and wherein, the parties have already settled the dispute as per their Customary Law duly witnessed by the relatives of the family, this court finds that to insist that the petitioners should now make an attempt to approach the concerned

Trial Court to accept their compounding of the offence as provided under Section 320 (2) Cr.P.C, could amount to undue harassment and would also be a waste of the previous time of the Court, when the offences under which the petitioner No. 1 is charged with all compoundable offences under sections 323,342,506,341/34 IPC.

13. A perusal of the Mutual Settlement Deed does not cast any doubt that the parties, accused and the victim, have truly settled their misunderstanding and had also make an undertaking that such type of offence will not be repeated in future.

14. In view of the above, this Court find it fit to invoke its inherent power under Section 482 Cr.P.C, having due regard to the nature of the offence committed by the petitioner and to prevent any abuse of process of any Court and to secure the ends of justice, hereby quash the criminal proceedings pending before the Chief Judicial Magistrate, Complex, Yupia District, Papum Pare on the basis of the Mutual Settlement Deed executed by both the parties dated 06.02.2023.

15. Accordingly, Crl.Petn. 40 (AP) 2024 stands allowed and disposed of.

JUDGE

Comparing Assistant