

GAHC040006332024



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

Case No. : Crl.Petn./64/2024

Shri Ratul @ Taro Liyak and 3 Ors
Son of Shri Golung Liyak, a resident of G Sector, Naharlagun, PO and PS
Naharlagun, Papumpare District, Arunachal Pradesh 2: Smti Chumch Liyak
Age:
Occupation :

3: Shri Soyang Welly
Age:
Occupation :

4: Techhi Tade @ Tachang Tade
Age:
Occupation

VERSUS

The State of AP
represented through the PP of AP

Advocate for the Petitioner : Adam Tatak

Advocate for the Respondent : P P of AP

B E F O R E
HON'BLE MR. JUSTICE KARDAK ETE

ORDER

12.08.2024

Heard Mr. T. Gyatso, learned counsel for the petitioners. Also heard Ms. L. Hage, learned Addl. P.P. for the State respondent.

2. This is an application under Section 482 of the Cr.P.C, 1973, jointly filed by the petitioners, for quashing of the criminal proceedings in G.R. Case No. 144/2021 under Section 323/341/326/354 IPC, 1860, pending before the Chief Judicial Magistrate, Yupia, on the basis of settlement between the petitioners.

3. The case set up by the prosecution is that on 07.03.2021, a written FIR was filed by Smti. Chumch Liyak (petitioner no. 2 herein), wife of Sri Ratul @ Taro Liyak (petitioner no. 1 herein), to the effect that on 06.03.2021 at about 9.30 P.M. while she and her husband were celebrating the birthday of their daughter, three persons, namely, Doyung welly (petitioner No 3 herein), Techhi Takar and Techhi Tade (petitioner No. 4 herein) had beaten her husband with bottle glass and bat stick, as a result of which husband has sustained grievous injury on his head and become unconscious.

4. Upon receipt of the FIR, a case was registered being Naharlagun Police Station Case No. 40/2021, under Section 341/326/34 IPC. On completion of the investigation, the police has laid a charge-sheet on 30.03.2021 against the petitioner nos. 3 and 4. No chargesheet has been filed against shri Techhi Takar. Thereafter, the learned trial Court has framed the charges against the petitioner no.3 under Section 326 IPC and against the petitioner no. 4 under section 323/354/324 of IPC, 1860 on 01.03.2022. The case is at the evidence stage.

5. It is contended that during the pendency of the case the petitioners have settled the matter amicably between them by entering into mutual agreement

on 13.12.2021. As per the local Nyishi Customary Laws, they are related to each other.

6. Mr. T.Gyasto, learned counsel for the petitioners, submits that the incident occurred due to parking dispute of their vehicles. The petitioner no. 1, who is staying in the first floor of the same building, after celebrating his daughter's birthday had entered into the rented room of petitioner No.4 where the petitioner nos. 3 and 4 and one Shri Techhi Takar were having some snacks, at 10 pm and started assaulting them. Having no option the petitioner No.3 and petitioner No. 1 had to involved in sudden fight.

7. He submits that there is no ingredients of section 323/326/354 as there is no grievous injury caused to the petitioner no.1 and the petitioner no.2 was not present at the time of incident. He further submits that out of the three accused persons, one, namely, shri Techhi Takar has been discharged. Be that as it may, Mr. T. Gyatso, learned counsel, submits that the accused persons and the victim have entered into a mutual agreement having realised that the parties are relatives and to maintain cordial relationship amongst them. It has also been decided that the expenses incurred by petitioner no.1 on his medical treatment is to be born by the petitioner No. 3 and 4 and by now have born the expenses. The continuation of the proceedings would be futile as there is no chance of conviction, therefore, continuation of criminal proceedings would be an abuse of process of law. That apart, there is no grievous injury caused by the petitioner nos. 3 and 4, and the matter has arisen simply out of a dispute regarding the parking of vehicles, which can be treated as petty offences. Therefore, he submits that this Court may quash the criminal proceedings in question.

8. Ms. L. Hage, learned Addl. P.P. for the State, while referring to the materials on record, submits that as per the charge-sheet, the injury caused

appears to be grievous, however, there is no medical report available in the record to show that the injuries were grievous. She submits that on perusal of the mutual agreement dated 13.12.2021, by which the petitioner have amicably settled the matter between them before the framing of charges, shows that the parties are related to each other and decided to settle the matter and also to bear the medical expenses incurred by the petitioner no.1, therefore, this Court may consider on its facts and law and pass an appropriate order as may deem fit and proper.

9. I have considered the submissions of the learned counsel for the parties and also perused the scanned copy of the Trial court record.

10. On consideration of the record, it is seen that the case appears to have emanate from a fight between the petitioner no.1 and the petitioner nos. 3 and 4 and one Shri Techhi Takar (who has been discharged) due to dispute regarding the parking of vehicles. The petitioners are stated to be residing in the same building. The petitioner no.1(victim), who is residing in the first floor had entered into the rented room of the petitioner nos. 4, after celebrating the birthday party of his daughter and on having been seen that the vehicles of the petitioner nos.3, 4 and others were parked haphazardly which obstructed the vehicles of his guests who have attended the birthday party.

11. It appears that the petitioner nos. 1, 3 and 4 have an argument with regard to the parking of their vehicles, which resultant into fight. In the process, the petitioner no.1 received with injury which according to the opinion of the doctor is grievous in nature. The petitioner no.2 had filed an FIR and after receipt of the FIR, a case was registered as mentioned above, initially under Section 341/326/34 IPC. After completion of the investigation, the charge-sheet was laid, under Section 341/326/34 against the petitioner no. 3 and 4. No

charge-sheet has been filed against third accused, namely one Shri Techhi Takar. Thereafter, the learned trial Court has framed the charges against the petitioner no. 3 and 4 under Section 323/324/326/354 IPC on 01.03.2021.

12. It is noticed that the victim, informant and the accused (petitioners herein) have entered into a mutual agreement on 13.12.2021, having realised that a dispute mistakenly occurred between the parties, wherein, they have unintentionally involved into a physical fight without knowing that they are family relatives. They have settled the matter and decided to maintain cordial relationship amongst them. It is also seen that the petitioner nos.3 and 4 have assured to bear the medical expenses incurred by the petitioner no.1.

13. Having considered that the parties have settled the matter so as to maintain cordial relationship by entering into a mutual settlement before the framing of charges by the learned trial Court, I am of the view that the continuation of the present proceedings would not serve any purpose rather it would be a wastage of the precious time of the Court, as the chances of conviction is too bleak and remote. That apart, it is also stated that the injury caused has been cured and there is no any indication that the injury caused would have any future complication.

14. The principle of law regarding compounding of non-compoundable offence and quashing of criminal proceedings by exercising power under section 482, Cr.PC, 1973, has been enunciated by the Hon'ble Supreme Court in the case of **State of Madhya Pradesh Vs. Laxmi Narayan and Ors.** 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 (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 impart 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. In the present case, having considered the materials available on the records and in the light of the law enunciated by the Hon'ble Supreme Court, I am of the considered view that since the matter has been settled between the petitioners so as to maintain cordial relationship being a family relatives, the chances of conviction are remote and bleak and the continuation of the criminal proceedings in the present case would be sheer abuse of the process of law. Considered above, I am of the view that the present case is one of the cases where the inherent power of this court under Section 482 of Cr.P.C is fit to be exercised.

16. Accordingly, the criminal proceeding of G.R. Case No. 144/2021 under Section 323/341/326/354 IPC, 1860 is hereby quashed.

17. Criminal petition stands allowed and disposed of.

JUDGE

Comparing Assistant