

GAHC040005972024



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

Case No. : Crl.Petn./58/2024

Nanda Konwer and 2 Ors
Wife of Shri C B Konwer, resident of ALC Line DUDA Complex, Tezu, PO and PS
Tezu, Lohit District, Arunachal Pradesh

2: Ganga Maya Sah
Age:
Occupation :

3: Suraj Moran
Age:
Occupation

VERSUS

The State of AP
represented by the PP of AP

Advocate for the Petitioner : T T Tara

Advocate for the Respondent : P P of AP

**BEFORE
HONBLE MR. JUSTICE BUDI HABUNG**

ORDER

Date : 24.06.2024

Heard Mr. J. Jini, learned counsel for the petitioners. Also heard Ms. L. Hage, learned Additional Public Prosecutor for the State respondent.

2. This is a joint petition filed under Section 482 of Cr.P.C by 3 (three) petitioners praying for quashing of Tezu P.S. Case No. 85/2014, under Section 380/34 of IPC, the charge-sheet No. 45/2014 dated 07.11.2014 and the G. R. Case No. 85/2014 under Sections 380/34 of IPC.

3. The fact of the case in brief is that on 27.09.2014, the petitioner No. 1 submitted a missing complaint before the O.C. PS, Tezu stating therein that on 25.09.2014 her ATM-cum-Debit Card against her SBI Saving Account bearing No. 11874111921 of Hayuliang Branch is missing from her home. And despite of her all effort made she could not find out her said ATM Card. She further stated that after missing of ATM-cum-Debit Card, she received 3(three) withdrawal message in her mobile phone amounting to Rs. 30,000/- (Rupees Thirty thousand) withdrawn through Tezu SBI ATM near thana road on 25.09.2014 at around 06:07 PM, 06:08 PM and the last transaction was at 06:10 PM.

4. Basing on the above missing complaint a case was registered being Tezu

P.S. Case No. 85/2014 under Section 380/34 IPC and investigated into. On completion of investigation, the I.O submitted the case into charge-sheet against the petitioner Nos. 2 & 3 under Section 380/34 of IPC.

5. The petitioner No. 1 is the informant; the petitioner No. 2 is the accused No. 1 and the petitioner No. 3 is the co-accused No. 2 in G. R. Case No. 85/2014 arising out of Tezu P.S. Case No. 85/2024 under Sections 380/34 of IPC.

6. It is submitted that the petitioner No. 1/informant and the petitioner No. 2 (accused No. 1) are blood sisters, and the petitioner No. 3 (co-accused No. 2) is a friend of the petitioner No. 1 and 2. During the year 2014, the petitioner No. 2 (accused No. 1) had faced with some financial crisis and out of medical emergency for which she needed some money, the petitioner No. 2 has alleged to have withdrawn the amounts from the ATM Card of the petitioner No.1 through petitioner No.3.

7. Mr. J. Jini, the learned counsel for the petitioners further submitted that however, during the pendency of the investigation of the said case, the petitioner Nos. 1, 2 & 3 had already settled the matter amicably by executing a deed of mutual agreement on 07.03.2014. And as per the said deed of mutual agreement, the petitioner No.1 had lodged missing complaint of her ATM Card due to some miscommunication and misunderstanding between her and her sister petitioner No. 2 resulting registration of case against the petitioner No.2.

However, since the matter was subsequently amicably settled between the parties by executing a deed of agreement, the petitioner No. 1 /informant wanted to withdraw the case registered against the petitioner Nos. 2 & 3. And accordingly made a request before the IO of the case as well as before the court. However, as the offence registered against the petitioners Nos. 2 & 3 are non-compoundable offence and beyond the power of the learned Court, the case could not be compounded. Hence, the petitioners filed this criminal petition praying for quashing and setting aside the above aforementioned G. R. Case No. 85/2014 under Section 380/34 of IPC.

8. The learned counsel for the petitioners submits that although the petitioner No. 1 has lodged a missing complaint of her ATM Card before the Tezu police station due to some miscommunication and misunderstanding, but subsequently, she had recovered the same along with the money withdrawn from her ATM. And since she has already recovered and received back her lost items, the petitioner No. 1 has no any further grievance against the petitioner No. 2 and the petitioner No. 3. Moreover, the petitioner No. 2 being the younger sister of the petitioner No. 1 and the petitioner No. 3 being the family relative of the petitioner Nos. 1 & 2, the petitioner No. 1 does not want to pursue the case further against the petitioner Nos. 2 & 3 before the Court of the learned Chief Judicial Magistrate, Tezu. Therefore, the petitioner No. 1 wants to withdraw the aforesaid G. R. Case No. 85/2014 under Section 380/34 of IPC.

9. Mr. Jini, learned counsel for the petitioners further submits that even if, the offence punishable under section 380 of IPC have been alleged to have

committed by the petitioner No.2 and 3, the same is an offence against the individual person affecting only the private property of the petitioner No. 1 and not against the society at large. And since, in the instant case, the complaint against the petitioner No.2 and 3 was lodged due to some miscommunication and misunderstanding between the parties and subsequently, the petitioner No. 1 received back her missing ATM Card along with the money alleged to have withdrawn, therefore, the petitioner No. 1 did not want to pursue the matter any further. Under such circumstances, the further proceeding of the case against the accused/petitioner No. 2 and the co-accused/petitioner No. 3 before the learned Court of Chief Judicial Magistrate, Tezu would be futile exercise and it will amount to abuse of the process of law and cause unnecessary harassment to all the petitioners. Hence, prays for setting aside and quashing of the G.R. Case No. 85/2014 arising out of the Tezu P.S. Case No. 85/2014 under Section 380/34 of IPC.

10. Ms. L. Hage, learned Additional Public Prosecutor submits that since the missing report of ATM Card of the petitioner No. 1 was lodged against the petitioner No. 2, who is her own younger sister due to some miscommunication and misunderstanding resulting the registration of the instant FIR under Section 380/34 of IPC, and since the matter has already been settled between the parties amicably, under circumstances the further proceeding of the case would be a futile exercise. It would also cause an unnecessary harassment to the petitioners. Moreover, as the missing of the ATM Card and recovery of the same along with the money alleged to have withdrawn in the instant case only affects the petitioner No.1 by petitioners No.2 & 3, the said offence did not affect the

society at large. Under the facts and circumstances of the case and in view of the case having mutually compromised and settled amicably between the parties, she has no objection, if the present petition is allowed.

11. Upon consideration of the records and hearing the parties, it appears that the matter relates to missing of ATM Card of the petitioner No. 1 and subsequent withdrawn of money by the petitioner Nos. 2, for which, the case was registered resulting into submission of the charge-sheet against the petitioner Nos. 2 & 3 under Section 380/34 of IPC. It also appears that the petitioner No. 1/informant and the petitioner No. 2/the alleged accused person are blood sisters and the said missing complaint was lodged due to some miscommunication and misunderstanding between the two sisters. The learned counsel for the parties submitted that the above case involves with missing and subsequent recovery of the said ATM Card of the petitioner No. 1 affects only the petitioner Nos. 1, 2 & 3 and same does not affect the society at large. It is also seen that the parties have amicably settled the matter; under the circumstances, the further proceeding of the case for trial would be a futile exercise. It is the further case of the petitioners that the petitioner No.1/complainant having settled the matter does not want to pursue the matter any further. Ms. L. Hage, learned Additional Public Prosecutor has conceded the above submission of the learned counsel for the petitioners and has no objection if the prayer of the petitioners is allowed. Under the circumstances, it appears that the continuation of the criminal case before the trial Court would only result in hardship to the parties and waste of the precious judicial time of the court and also loss of exchequer to the State. In view of the above, I find a

logic and sufficient force in the submission of the learned counsel for the parties.

12. Further, in such circumstances, it is now well settled that even though the offence alleged against the accused is not compoundable offence, the higher Court viz., the High Court or the Apex Court in exercise of their inherent/special power may intersect the pending criminal proceedings. In this regard, this Court may gainfully place a reliance on the principle of law enunciated by the Hon'ble Apex Court in the case of ***Ram Gopal vs. The State of Madhya Pradesh*** reported in ***2021 SCC online SC 384***. In view of the above referred decision and since, the case has amicably been settled amongst the parties, interse, this Court is of the considered opinion that the pending criminal proceeding in G.R. Case No. 85/2014 arising out of Tezu P.S. Case No. 85/2014 under Section 380/34 of IPC and the Charge-Sheet No. 45/2014 dated 07.11.2014 needs to be quashed.

13. Accordingly, the G. R. Case No. 85/2014 arising out of Tezu P.S. Case No. 85/2014 under Section 380/34 of IPC pending in the learned Court of the Chief Judicial Magistrate, Tezu against the accused/petitioners Nos. 2 & 3, namely; **Smti Ganga Maya Sah & Shri Suraj Moran** is hereby quashed and set aside. As a result, the accused/petitioner Nos. 2 & 3, namely, **Smti Ganga Maya Sah & Shri Suraj Moran** be discharged.

With the above observation, this criminal petition stands allowed and

disposed of.

Send back the trial Court record immediately.

JUDGE

Comparing Assistant