



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

Case No. : Crl.Petn./60/2024

Ainul Hoque and Anr
Son of Ismile Ali, resident of Nadika Village, PO and PS Bhipuria, Lakhimpur
District, Assam

2: Sandeep Singh

Age:

Occupation:

S/o. Shri Bhag Singh, resident of VPO Dhaliapa, PO-Dhawara & PS-Dehra,
District Kangra, Himachal Pradesh, presently residing at M.T. Driver. 31 BN
ITBP, Yupia.

VERSUS

The State of AP
represented by the PP of AP

Advocate for the Petitioner : Pritam Taffo, M. Karbak, E. Menjo

Advocate for the Respondent : P P of AP

**BEFORE
HONBLE MR. JUSTICE KARDAK ETE**

ORDER

Date : 05-06-2024

Heard Mr. P. Taffo, learned counsel for the petitioners. Also heard Mr. T. Ete, learned Additional Public Prosecutor for the State of Arunachal Pradesh.

2. This is an application under Section 482 of the Criminal Procedure Code, 1973, jointly filed by the petitioners, praying for quashment of F.I.R. being Doimukh P.S. Case No. 78/2023, under Sections 279/304(A)/337 IPC, on the basis of settlement between the parties.

3. The case emanates from the fact that on 09.12.2023 at around 4-5 pm one ITBP Truck bearing registration No. CH01G12240 driven by the Head Constable, *Sandeep Singh*, petitioner no. 2 herein, was coming from the Khola camp side, while entering into main gate of ITBP camp at Yupia, a motorcycle bearing registration No. AR-01H-5338, hit the truck from behind at a very high speed, as a result of collision, the rider of the bike namely *Najimul Hoque* succumbed to his injuries and the pillion rider *Licha Obi* sustained minor injuries on his body. An F.I.R. was lodged by the brother of the deceased before the Doimukh Police Station, which has been registered as Doimukh P.S. Case No. 78/2023, under Sections 279/337/304(A) IPC.

4. It is contended that the petitioner no. 1 had filed the F.I.R. out of emotional outburst and anger as his beloved brother *Najimul Hoque* had lost his precious life due to the accident. Later, the petitioner no. 1 came to know that the fault was on the part of his deceased brother as he was riding the

motorcycle at a very high speed without driving license and wearing helmet. The petitioner no. 1 has forgiven the petitioner no. 2 and agreed to resolve the matter amicably and executed an agreement between them on 13.05.2024. It is contended that the petitioner no. 1 has no grievances against the petitioner no. 2.

5. It is further contended that the petitioner no. 2 is a Para-Military Force Personnel, who is serving the nation. Therefore, if the present case is allowed to proceed further, it would cause immense prejudice on the service of the petitioner no. 2. Therefore, the parties have jointly prayed for quashing the above Doimukh P.S. Case No. 78/2023, under Sections 279/337/304(A) IPC, on the basis of the agreement as well as the facts narrated, hereinabove.

6. Mr. T. Ete, learned Additional Public Prosecutor, while referring to the statement of the pillion rider, *Licha Obi*, submits that in fact, the deceased was riding the bike on a high speed without driving license and wearing helmet and had lost his control and hit the truck from behind. The post-mortem report also indicates that the cause of death is accidental in nature. Having submitted above, Mr. Ete fairly submits that the F.I.R. may be quashed by invoking the inherent power of this Court.

7. I have considered the submissions of the learned counsels appearing for the parties and perused the Case Diary.

8. This application, as noted above, is for quashing of the F.I.R., which has been registered as Doimukh P.S. Case No. 78/2023, under Sections 279/337/304(A) IPC. The informant, the petitioner no. 1 herein, has after

proper enquiry found that it was the fault of his deceased brother, who was riding the bike in a rash and negligent manner without having driving license and wearing helmet. The informant had filed the F.I.R. in a moment of emotional outburst, anger and distress due to sudden death of his brother in the accident.

9. It is noted that the petitioner no. 2, who was driving the ITBP truck, is a Para-Military Force personnel, who is serving the nation. Records reveal that the deceased brother of the petitioner no. 1 was riding the bike in a rash and negligent manner without having driving license and wearing helmet and hit the truck driven the petitioner no. 2 from behind.

10. The petitioners have entered into a Deed of Settlement on 13.05.2024, by settling the matter considering the actual cause of the accident as well as the petitioner no. 2 being a Para-Military Force personnel, who is serving the nation.

11. 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 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.”

12. In the present case, as noted above, the records reveal that the no fault can be attributed to the petitioner no. 2 as it is clearly indicated that the deceased brother of the petitioner no. 1 was riding the bike in a rash and negligent manner without having driving license and wearing helmet. The Post-mortem report also indicates the cause of death as accidental in nature. The petitioner no. 2 is a Para-military Force personnel, who is serving the nation. The parties have entered into a settlement on the basis of the facts narrated, hereinabove.

13. Having considered the matter in its entirety, this Court is of the view that the continuance of investigation of Doimukh P.S. Case No. 78/2023, under Sections 279/304(A)/337 IPC shall not serve any purpose as the petitioners have entered into an agreement on the basis of the attending facts and circumstances narrated, hereinabove.

14. In view of the discussion made above and law laid down by the Hon'ble

Supreme Court, referred to hereinabove, 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 for quashing the F.I.R.

15. Accordingly, Doimukh P.S. Case No. 78/2023, under Sections 279/304(A)/337 IPC is hereby quashed.

16. The Criminal petition stands allowed and disposed of.

JUDGE

Comparing Assistant