

GAHC040006472024



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

Case No. : Crl.Petn./69/2024

Taba Saha and Anr
Son of Shri Taba Sopin, resident of Ganga Village, Po and PS Chimpu, Papumpare
District, Arunachal Pradesh 2: Teli Taning
Age:
Occupation

VERSUS

The State of AP
represented by the PP of AP

Advocate for the Petitioner : Uttam Deka
Advocate for the Respondent : P P of AP

BEFORE
HONBLE MRS. JUSTICE MARLI VANKUNG

ORDER

Date : 24-07-2024

Heard Mr. C. Modi, learned counsel for the petitioners along with Ms. L. Hage, learned Additional Public Prosecutor for the State respondent.

This is an application filed under Section 482 of the Code of Criminal Procedure for quashing of the FIR dated 30.09.2022 registered at Chimpu PS Case No. 46/2022 under Sections 307/341/506 IPC corresponding to Session Case No. 32/2023. The petitioner No. 1 is the accused in the said case and the

petitioner No. 2 is the victim/complainant. The petition is filed jointly by both of them for quashing the criminal proceeding being Session Case No. 32/2023.

Brief background of the instant case leading to the instant application is that an FIR was lodged by the complainant/petitioner No. 2 before the Chimpu Police Station on 30.09.2022 to the effect that on 29.09.2022, the petitioner/accused who was well known to him and a friend, were playing cards together with other friends, after which, on their way back to the house of the accused/petitioner No. 1, the petitioner No. 1 who was slightly intoxicated and the victim, had a heated argument over a small issue, consequently in the heat of the moment, the petitioner No. 1 ran to his house and took a local dao with which he struck the face of the victim/complainant causing cut injury to his face. The victim was taken to RK Mission Hospital for treatment and thereafter, the FIR was filed and registered as Chimpu PS Case No. 46/2022 under Sections 307/341/506 IPC against the petitioner No. 1. After due investigation, the case I.O submitted the charge sheet and the case was committed before the Sessions Court for trial. In the charge sheet, the opinion of the Doctor was that the victim/complainant had suffered simple injury. During the time of investigations, the petitioners along with their relatives had come to a mutual settlement through the Kebang (customary Court) and the matter was amicably settled and compounded by both the parties on 17.05.2024. A deed of mutual case settlement agreement was executed between the accused and the complainant before the notary, duly witnessed by the members of the Gaon Buras village and also signed by the Mediators.

The learned counsel for the petitioners submits that the petitioners are related being clan brothers and have no enmity. That the misunderstanding and fight had erupted since the accused was in an intoxicated state. He further

submits that since the parties have amicably settled their dispute in the customary Court, neither of the parties are interested to pursue the case before the learned Sessions Court. The learned counsel also submits that though the charge sheet has been filed under Section 307 IPC, no grievous injury was caused to the complainant/victim since the accused had no intention of causing any serious harm to the complaint/victim. The Doctor has certified that the injury sustained by the victim is of simple nature. He submits that since the parties have compromise the case between themselves and if the criminal trial continued before the Court of learned Sessions Judge, there would be no chance of conviction since the complainant does not wish to perused or take steps for prosecution of the accused under Sections 307/341/506. The learned counsel submits that to continue with the proceedings of the case would be a futile exercise defeating the due process of law. He therefore prayed that the instant FIR and the proceeding of the case before the learned Trial Court be quashed. In support of his submission, the learned Trial Court has relied on the judgment of the Apex Court in ***Narinder Singh Vs. State of Punjab***, reported in ***(2014) 6 SCC 466*** and the judgment of a Coordinate Bench of this Court in ***Higio Tatung & 2 Ors. Vs. State of AP***, Case No. CrI.Petn No. 168/2023 dated 14.05.2024, wherein the FIR and the proceeding against the accused persons were quashed even though the accused were charged under Section 307 IPC, which is an offence of serious nature and not compoundable under Section 320 Cr.P.C.

The learned Additional Public Prosecutor, on the other hand submits that Section 307 IPC is not a compoundable offence and therefore, objected to the quashing of the FIR and the proceeding before the learned Session Judge, Yupia.

Having heard the submissions made by the learned counsels for both the parties, it is seen that though the accused person/petitioner no.1 is charged under Section 307 IPC, for striking the face of the victim/petitioners no.2 with a dao, the nature of the injury sustained is found to be simple injury. It is also seen that both the petitioners were friends belonging to the same clan and were playing cards together when they got into an argument wherein the accused in an intoxicated state had stuck the petitioner no.2/complainant with a dao. The matter has been amicably settled in the Customary Court duly witnessed by the members of the Gaon Buras of their village as per the customary law.

On perusal of the Mutual Case Settlement Deed signed before the Public notary, both the parties have agreed that they will stand by the mutual agreement if the Court summons them in connection with the said case and that the parties prefer the harmonious solution. It is noted that a Coordinate Bench of this Court in ***Higio Tatung & 2 Ors. Vs. State of AP (Supra)*** by referring to the judgment of the Apex Court in ***State of Madhya Pradesh Vs. Laxmi Narayan & Others***, reported in ***(2019) 5 SCC 688*** and the judgment of the Apex Court in ***Kapil Gupta Vs. State of NCT of Delhi and another***, reported in ***2022 SCC online 1030*** had also invoked its inherent power under Section 482 Cr.P.C and quashed the proceeding of the case before the learned Session Judge. The Apex Court in ***Laxmi Narayan & Others (Supra)*** held that:-

"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 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."

The Apex Court in **Kapil Gupta (Supra)** also held that:-

"13. It can thus be seen that this Court has clearly held that though the Court should be slow in quashing the proceedings wherein heinous and serious offences are involved, the High Court is not foreclosed from examining as to whether there exists material for incorporation of such an offence or as to whether there is sufficient evidence which if proved would lead to proving the charge for the offence charged with. The Court has also to take into consideration as to whether the settlement between the parties is going to result into harmony between them which may improve their mutual relationship.

14. The Court has further held that it is also relevant to consider as to what is stage of the proceedings. It has been observed that if an application is

made at a belated stage wherein the evidence has been led and the matter is at the stage of arguments or judgment, the Court should be slow to exercise the power to quash the proceedings. However, if such an application is made at an initial stage before commencement of trial, the said factor will weigh with the court in exercising its power.”

In view of the above decisions of the Apex Court and the decision of a Coordinate Bench of this court, this Court finds that though Section 307 IPC is incorporated in the charges against the instant accused/petitioner No. 1, considering the facts and circumstances of the case, where the petitioners where have preferred to settle the matter between themselves before the customary Court, this Court is of the considered view that no useful purpose would be served in allowing the criminal proceedings to continue and that continuation of the criminal proceedings would be an abuse of the process of law, therefore, finds it appropriate to invoke its inherent power under section 482 Cr.P.C and quash the FIR dated 30.09.2022 registered at Chimpu PS Case No. 46/2022 under Sections 307/341/506 IPC and the corresponding proceedings before the learned Session Judge, Yupia in Session Case No. 32/2023.

Crl. Petition. No. 69 (AP) of 2024 accordingly stands allowed and disposed of.

JUDGE

Comparing Assistant