

GAHC040007092024



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

Case No. : Crl.Petn./82/2024

Martin Ngomle and 3 Ors
Son of Late Jigmar Ngomle, permanent resident of Hime Village, PO and PS
Likabali, Lower Siang District, Arunachal Pradesh

2: Rikter alias Rikki Nyickor
Age:
Occupation :
Son of Shri Tarik Nyickor
permanent resident of Hime Village
PO and PS Likabali
Lower Siang District
Arunachal Pradesh

3: Jigam Nake
Age:
Occupation :
Son of Shri Moji Nake
permanent resident of Hime Village
PO and PS Likabali
Lower Siang District
Arunachal Pradesh

4: Jabo Ngomle
Age:
Occupation :
Son of Late Rija Ngomle
permanent resident of Balisori Village
PO and PS Likabali
Lower Siang District
Arunachal Pradesh

VERSUS

The State of AP
represented by the PP of AP

Advocate for the Petitioner : Duge Soki, Eho Menjo, Elina Perme

Advocate for the Respondent : P P of AP,

BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE

ORDER

Date : 18-09-2024

Heard Ms. E. Perme, learned counsel for the petitioners. Also heard Mr. T. Ete, learned Additional Public Prosecutor for the State/respondent No. 1.

2. By filing this petition under Section 482 of the Cr.P.C, 1973 (now repealed), the petitioners have jointly prayed for quashment of the Criminal proceedings of G.R. case No. 239/2020 under Sections 143/148/149/324 of the IPC, 1860 (now repealed), which is pending before the Chief Judicial Magistrate, Pasighat against the petitioners No. 1, 2 and 3, on the basis of settlement entered between the parties.

3. The case set up by the prosecution is that on 14.04.2019, at 1500 hours, a written complaint was received from the petitioner No. 4 to the effect that on 13.04.2019, he went to new Hime village, from his native village to visit his paternal uncle at around 12 noon and when he could not find him at his home, he went around Hime village to find him. As he reached the village, he saw a mob exchanging hot verbal argument and

he saw all the episode and tried to persuade as the villagers of Hime village are his clan members but none had paid any heed to him. While he was standing beside the mob, the petitioners Nos. 1, 2 and 3 and one *Shri Komni Nada* and others attacked him on his head with lethal weapon, with an intention to kill him without any provocation.

4. On receipt of the FIR, a case was registered being Likabali P.S. Case 15/2019, under Sections 143/148/149/324 IPC. On completion of the investigation, the Police has filed the Charge-sheet against the petitioner Nos. 1, 2 & 3 and name of one *Shir Komni Nada* has been dropped, as he was found to be not involved in the case.

5. Perusal of the records, goes to show that on 11.04.2019, during the Assembly Election-2019, the polling of 20-Sogum Polling Station was proceeding as per the authority of the Election Commission, Government of India, but some supporters of BJP political party alleged to have broken the EVM machine of the said Polling Station. Therefore, the re-poll of 20-Sogum Polling Station was demanded to be refixed. On 13.04.2019, the political supporters of BJP party consisting of near about 40 (forty) supporters led by a contesting candidate of the BJP political party arrived at Hime village to visit the party supporters. At the time, the Model Code of Conduct (MCC) was in currency, wherein, the Election Commission had directed to avoid any campaign by the political parties. The supporters of People's Party of Arunachal stopped them at the entry point of Hime village and asked them not to enter the village for conducting any election campaign. Thereafter, some argument followed by pulling and pushing

was created in between both the parties, wherein, one *Shri Jabo Ngomle*, a supporter of BJP party had sustained simple injury.

6. It is noticed that during the pendency of investigation, the parties have entered into a family settlement as the complainant and accused(s) are relatives by way of mutual agreement. The mutual agreement was signed between the petitioners under the Chairmanship of one *Shri Jarcham Ngomle*, Head Gaon Bura, on 05.01.2020, whereby, the petitioners being close family relatives have decided to settle the matter mutually by way of Galo customary law.

7. Ms. E. Perme, learned counsel for the petitioners submits that after settlement of the matter, when the petitioners were living peacefully by maintaining a cordial relationship, being close family relatives, the petitioner Nos. 2 & 3 have received summons from the Hon'ble Court for appearance as the Police has already filed a Charge-sheet against the petitioner Nos. 1, 2 & 3. She submits that having received the summons, as the parties have already settled the matters before filing of the Charge-sheet, again the petitioners on 24.05.2024 have entered in to a further settlement, which has been duly registered. Therefore, she submits that since the parties have already settled the matter twice, one before filing the Charge-sheet and another post Charge-sheet by the Police, the chances of conviction are bleak. She further submits that the injury is of simple nature as per the Injury Report by the Medical Officer and as such, she prays for quashing of the criminal proceedings against the petitioner Nos. 1, 2 & 3.

8. Mr. T. Ete, learned Additional Public Prosecutor in his usual fairness submits that since parties have already entered into settlement between them and the Injury Report shows the nature of injury as simple, this Court may pass appropriate orders in the interest of justice.

9. Considered the submissions of the learned counsels appearing for both the sides.

10. On consideration of the materials available on record, it appears that the incident of alleged attack had arisen due to political rivalries during the Assembly and the Parliamentary Election in the year 2019. It appears that both the supporters of rival political parties have engaged in the incident and in the process, one person has sustained simple injury.

11. It is also taken note that after filing of the F.I.R., the parties have entered into a settlement on 05.01.2020 under the guidance of Head Gaon Bura of the village and the petitioners are close family relatives and thereafter, they have maintained a cordial relationship amongst themselves.

12. The Charge-sheet clearly indicates that there was an argument between the supporters of rival political parties followed by pulling and pushing between the supporters of the political parties and in the process one person sustained a simple injury.

13. Having considered the attending facts in the present case, this Court is of the view that since the parties have settled the matter, which has arisen purely out of Election related issue between the rival political

parties and considering that though in the process one person has sustained simple injury, the parties have settled the matter and are maintaining cordial relationship, it would be unfair or contrary to the interest of justice to allow continuation of the criminal proceedings which would amount to abuse of the process of law as there is unlikelihood of conviction of petitioner Nos. 1, 2 & 3.

14. 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 hereinbelow:-

“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 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.”

15. In the light of the law laid down by the Hon'ble Supreme Court referred to hereinabove and the materials available on record, which indicates of petty offences which has arisen on account of election related matter as well as petitioners are maintaining cordial relationship, 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.P.C., 1973 is fit to be invoked.

16. Accordingly, the Criminal proceedings of G.R. case No. 239/2020 under Sections 143/148/149/324 of the IPC, pending before the learned Chief Judicial Magistrate, Pasighat against the petitioners No. 1, 2 and 3, is hereby set aside and quashed.

17. In the result, the criminal petition is allowed and disposed of.

JUDGE

Comparing Assistant