

GAHC040007772024



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

Case No. : Crl.Petn./90/2024

Yomdo Tadu and Anr
Son of Late Yomdo Taya, resident of Leya Village, PO and PS Nyapin, Kurung
Kumey District, Arunachal Pradesh

2: Yomdo Changriang
Age:
Occupation :
Son of Yomdo Eka
Resident of Leya Village
PO and PS Nyapin
Kurung Kumey District
Arunachal Pradesh

VERSUS

The State of AP
represented by the PP of AP

Advocate for the Petitioner : Khoda Tari,

Advocate for the Respondent : P P of AP,

**BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE**

ORDER

Date : 27.09.2024

Heard Mr. K. Tari, learned counsel for the petitioners. Also heard Ms. T. Jini, learned Additional Public Prosecutor for the State.

2. By filing this petition jointly, under Section 482 of the Code of Criminal Procedure, the petitioners have prayed for quashment of the Criminal proceedings arising out of Nyapin Police Station Case No. 02/2019, under Section 435 IPC, corresponding to G.R. Case No. 255/2019, pending before the learned Judicial Magistrate First Class, Koloriang, Kurung Kumey District, on the basis of settlement entered between the parties.

3. The case set up by the prosecution, in brief, is that on 12.04.2019, at 1430 hours, a written complaint was received from the petitioner No. 2/complainant, stating that a written complaint was lodged on 11.04.2019 alleging that at about 1930 hours his Bajaj Pulsar (150 CC) Motorcycle bearing registration Number -A/F Chassis No. MD2A11CY9JRF46010 and Engine No. DHYRJF74156 has been burnt down by the petitioner No. 1 in his absence as he was on election duty.

4. On receipt of the aforesaid written complaint, a case was registered being Nyapin Police Station Case No. 02/2019, under Section 435 IPC. On completion of the investigation, the Police has filed the Charge-sheet against the petitioner No. 1, under Section 435 IPC, which is pending trial before the Court of the learned Judicial Magistrate First Class (JMFC),

Koloriang.

5. Mr. K. Tari, learned counsel for the petitioners submits that Section 435 IPC is bailable, however, the same is non-compoundable. He submits that as per the Charge-sheet, the I.O. has clearly stated that it has been presumed that the petitioner No. 1 had burnt down the Motorcycle and thereafter, fled away from the scene. Therefore, the Charge-sheet has been filed on mere presumption, without there being any materials against the petitioner No. 1. He further submits that during the pendency of the trial, both the petitioners had entered into an agreement being cousin brothers on 17.04.2024 and they have decided to maintain harmonious relationship in future. That apart, being cousin brothers, the petitioner No. 1 has compensated the petitioner No. 2 by providing a brand-new Motorcycle to the petitioner No. 2.

6. Ms. T. Jini, learned Additional Public Prosecutor in her usual fairness submits that in view of the nature of offence alleged and the agreement entered into by the petitioners being cousin brothers, she has no serious objection if the present petition is allowed.

7. I have considered the submissions of the learned counsels appearing for both the sides and also perused the Trial Court Record (TCR).

8. On consideration of the materials available on record including the Charge-sheet, it appears that the Police has not been able to establish a *prima-facie* case against the petitioner No. 1 as it is reflected that the Charge-sheet has been filed against the petitioner No. 1 on presumption

of burning the Motorcycle of the petitioner No. 2, without there being any evidence collected during the investigation. That apart, during the pendency of the trial, the petitioners have entered into an agreement being cousin brothers and a new Motorcycle has also been provided by the petitioner No. 1 to the petitioner No. 2. The petitioners have entered into a mutual settlement without there being any coercion and the offence alleged is also not serious or heinous in nature.

9. Having considered the materials placed on record and considering that the parties have settled the matter for maintaining harmonious brotherhood relationship between them, I am of the considered view that no useful purpose shall be served in permitting the continuation of the criminal proceedings, rather would be an abuse of the process of law, as the parties have settled the matter and the chances of conviction appear to be remote. I am also of the view that the materials placed on record, does not *prima-facie* appear to have made out any offence against the petitioner No. 1, under Section 435 IPC.

10. The Hon'ble Supreme Court has enunciated the law on quashment of criminal proceedings, chargesheet and FIR under section 482, Cr.P.C., 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.”

11. In the light of the law laid down by the Hon’ble Supreme Court referred to hereinabove and in view of the discussions made 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.P.C., 1973 is fit to be invoked.

12. Accordingly, the Criminal proceedings, arising out of Nyapin Police Station Case No. 02/2019, under Section 435 IPC of G.R. Case No. 255/2019, pending before the learned Judicial Magistrate First Class, Koloriang, Kurung Kumey District, is hereby set aside and quashed.

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

JUDGE

Comparing Assistant