

GAHC040008072024



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

Case No. : Crl.Petn./93/2024

Tilling Tabyo and 2 Ors
Son of Late Tilling Hogo, resident of PTC Banderdewa, District Papumpare,
Arunachal Pradesh.
2: Jaimashi Sangha
Age:
Occupation :

3: Taka Nuya
Age:
Occupation

VERSUS

The State of AP
represented by the PP of AP

Advocate for the Petitioner : Y Dagiam

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MR. JUSTICE BUDI HABUNG

ORDER

Date : 26-06-2024

Heard Ms. Y. Dagiam, learned counsel for the petitioners. Also heard Ms. T. Jini, learned Additional PP for the State of AP.

2. This is a joint petition filed under section 482 of the Code of Criminal Procedure, 1973 by the petitioners; three in numbers, praying for quashing and setting aside the GR case no. 639/2023 arising out of BDW PS case no. 32/2023 under section 380 of Indian Penal Code pending before the Court of Judicial Magistrate First Class, Yupia.

3. The brief fact of the case is that on 12.08.2023, the petitioner No. 1/informant lodged a missing complaint stating therein that on 04.08.2023, at around 2 AM to 3 AM some unknown miscreants entered illegally into his premises where his building is under construction and had stolen away some items including gas cylinder, water pump motor, road cutting machine, mobile handset and prayed for taking necessary action. Basing on the above missing complaint, a case was registered being BDW PS case no. 32/2023 under section 380 IPC and investigated into.

4. It is submitted that during the course of investigation, the lost articles were recovered and thereafter, the same were handed over back to the informant, and after completion of the investigation, the case has been submitted into chargesheet against the petitioner Nos. 2 and 3 for offence under section 380 IPC.

5. It is submitted that in the meantime, the case has been amicably settled between the parties by executing a settlement agreement on 22.06.2024. The said settlement agreement amongst others contained that the petitioner Nos. 2 and 3 who are the accused persons in the above GR case no. 639/2023 had returned the lost articles belonging to the petitioner no. 1. The petitioner Nos. 2 and 3 have also adequately compensated for the articles which could not be

recovered like; the water pump and the road cutting machine. On receipt of the above lost articles, the petitioner no. 1 had forgiven the petitioner Nos. 2 and 3, and since he had no further grievance against the petitioner Nos. 2 and 3, the petitioner no. 1 has agreed to withdraw the case against the petitioner Nos. 2 and 3.

6. Accordingly, the petitioner no. 1 approached the learned Trial Court and expressed that since the matter has been amicably settled between the parties, and since he has no further grievance against the petitioner Nos. 2 and 3, he may be allowed to withdraw the case. However, by an order dated 05.06.2024, the learned Court of Judicial Magistrate First Class, Yupia observed that as the offences against the accused persons (petitioner Nos. 2 and 3) under section 380 of IPC is non-compoundable in nature, the informant/ petitioner No. 1 has been advised to approach the higher court for consideration. Hence, the petitioner has filed this Criminal petition praying for quashing and setting aside the aforementioned GR case no. 639/2023 under section 380 IPC.

7. The learned counsel for the petitioners submits that although the petitioner no. 1 had lodged the missing complaint for his lost of articles before the BDW PS, but subsequently, he had recovered and received back the said articles, and since the petitioner no. 1 has already recovered and received his lost articles back, and having being adequately compensated for the articles which could not be recovered, the petitioner no. 1 has no further grievance against the petitioner Nos. 2 and 3, and as such, he does not want to pursue the case against the petitioner Nos. 2 and 3, pending before the learned Court of Judicial Magistrate First Class, Yupia. Therefore, the petitioner no. 1 prays for allowing him to withdraw the aforesaid GR case no. 639/2023 under section 380

IPC.

8. Ms. Y. Dagiam, learned counsel for the petitioners further submits that even assuming the alleged offence under section 380 IPC has been committed by the petitioner Nos. 2 and 3, the same is an offence against the individual person affecting only the private property of petitioner No. 1, and the same is not against the society at large. And, since, in the instant case the missing complaint was lodged against the petitioner Nos. 2 and 3 for missing of certain household articles, but subsequently the same has been received back by the petitioner No. 1 and he has also been adequately compensated for the articles which could not be recovered back. Therefore, the petitioner No. 1 having received back his lost articles has no further grievance against the petitioner Nos. 2 and 3 and therefore, he does not want to pursue the matter any further. Under such circumstances, the further proceeding of the case against the accused persons/petitioner Nos. 2 and 3, before the learned Court of Judicial Magistrate First Class, Yupia would be a futile exercise and it would amount to abuse of the process of law, thereby causing unnecessary harassment to all the petitioners. Hence, prays for setting aside and quashing of the GR case no. 693/2023 arising out of BDW PS case no. 32/2023 under section 380 IPC.

9. Ms. T. Jini, learned Additional PP for the State submits that since the articles alleged to have been missing has been received back by the petitioner no. 1/informant and the matter has already been amicably settled between the parties, under such circumstances, further proceeding of the case before the learned court of Judicial Magistrate First Class, Yupia would be a futile exercise and it would also cause unnecessary harassment to the petitioner Nos. 2 and 3. Moreover, the missing of the household articles and subsequent recovery in the

instant case affects only the petitioner no. 1 and the said offence did not affect the society at large, as the case has been mutually compromised and settled amicably between the parties, she has no objection if the present petition is allowed.

10. Upon consideration of the records and hearing the parties, it appears that the matter relates to the missing of household articles of the petitioner No. 1 and subsequent recovery of the same resulting in registration of the case and submission of chargesheet against the petitioner Nos. 2 and 3 for offence under section 380 of IPC. It also appears that the petitioner No. 1/informant and the petitioner Nos. 2 and 3 have amicably settled the matter by executing a deed of agreement dated 22.06.2024. Since the matter was settled, the petitioner No. 1 having recovered and being compensated for his lost articles has forgiven the petitioner Nos. 2 and 3 with a view to maintain cordial relationship between the parties and to maintain peaceful co-existence in the localities and thus, the petitioner No. 1 approached the Trial Court and expressed that since the matter has already been settled, he does not wish to pursue the matter. However, as the offences registered against the accused persons/ petitioner Nos. 2 and 3 is non-compoundable offence in nature, the learned court of Judicial Magistrate First Class, Yupia advised the petitioner No. 1 to approach the higher court as the same was beyond the power of the Judicial Magistrate Court and accordingly, by giving an opportunity to the petitioner No. 1 to approach the High Court, the case was adjourned.

11. It is the case of the petitioners that since the matter has been amicably settled between the parties and the aggrieved/ petitioner No. 1 having no further grievance against the petitioner Nos. 2 and 3, he does not want to

pursue the matter any further. In such circumstances further proceeding of the case against the accused persons would be a futile exercise and an abuse of the process of law.

12. Ms. T. Jini, learned Additional PP has conceded the above submission made by the learned counsel for the petitioners and she has no objection if the prayer of the petitioners is allowed.

13. Under the circumstances, it appears that the continuation of the criminal case against the accused persons/ petitioner Nos. 2 and 3 before the learned court of Judicial Magistrate First Class, Yupia, would only result in hardship to the parties and a waste of the precious judicial time of the Court and loss of exchequer of the State. In view of the above, I find the submission of the learned counsel for the parties having sufficient force with sound logic. Further in such circumstances, it is well settled that even though the offences lodged against the accused persons 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.

14. 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. State of Madhya Pradesh* reported in (2021) SCC Online SC 384.

15. In view of the above referred decision and considering that the matter has been amicably settled amongst the parties *interse* this Court is of the considered opinion that the pending of the criminal proceeding in GR case no. 639/2023 arising out of BDW PS case no. 32/2023 under section 380 IPC need to be quashed.

16. Accordingly, the said GR case no. 639/2023 arising out of BDW PS case no. 32/2023 under section 380 IPC pending before the learned Court of Judicial Magistrate First Class, Yupia against the accused persons/ petitioner nos. 2 and 3 namely, Shri. Jaimashi Sangha and Shri. Taka Nuya is hereby quashed and set aside.

17. As a result, the accused persons namely, Shri. Jaimashi Sangha and Shri. Taka Nuya are directed to be discharged.

18. With the above observations, this criminal petition stands allowed and disposed of.

JUDGE

Comparing Assistant