

GAHC040010402024



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

Case No. : Crl.Petn./119/2024

Smti Nyayir Loya Tao and 2 Ors
Wife of Shri Karbom Tao, resident of Modi Building, Niti Vihar, PO Itanagar, PS Niti
Vihar, PO Itanagar, PS Niti Vihar, Papumpare District, Arunachal Pradesh 2:
Karbom Tao
Age:
Occupation :

3: Bomge Tao
Age:
Occupation

VERSUS

The State of AP
represented by the PP of AP

Advocate for the Petitioner : Teto Taba

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 19.08.2024

- 1.** Heard Mr. T. Taba, learned counsel for the petitioners. Also heard Mr. J. Tsering, learned Public Prosecutor for the State respondent.
- 2.** This application under Section 528 of BNSS, 2023 has been preferred

by the petitioners, namely, No.1 Smti Nyayir Loya Tao, No.2 Shri Karbon Tao, and No.3 Mr. Bomge Tao, praying for quashing and setting aside of proceeding of G.R. Case No. 728/2021 of Itanagar P.S. Case No. 355/2021 under Section 448/323 of the Indian Penal Code, pending before the Court of learned Chief Judicial Magistrate, Capital Complex, District-Papumpare.

3. The facts relevant for consideration of this Criminal Petition, in brief, are as follows:

i. That on 11.08.2021, one Karbom Tao, (petitioner No.2), had filed an FIR before the Officer-in-Charge of Itanagar Police Station, *inter-alia*, alleging that on that day at about 17.30 hours, Smti Nyayir Loya and Smti Kipi Loya Tassar came to the house of the informant and tried to forcibly take away the daughter of the informant and when resistance was offered, the said Smti Nyayir Loya (petitioner No.1) assaulted the informant, causing injury on her person.

ii. On receipt of this said FIR, Itanagar P.S. Case No. 355/2021 was registered under Section 448/325/34 of the Indian Penal Code and investigation was initiated.

iii. Ultimately, on completion of the investigation, charge sheet was laid against the petitioner No. 1 Smti Nyayir Loya Tao under Section 448/323 of the Indian Penal Code.

4. Mr. T. Taba, learned counsel for the petitioner has submitted that the Trial Court has issued summons to the petitioner No. 1. However, in the meanwhile, there has been an amicable settlement reached between the parties and therefore, this instant Criminal Petition has been filed jointly by the accused (i.e., the petitioner No. 1) and the informant-victim (the

petitioner Nos. 2 and 3) for quashing the G.R. Case No. 728/ 2021.

- 5.** Learned counsel for the petitioner has submitted that though, the offences under both the provisions of law under which charge sheet has been laid, i.e., under Section 448/323 of the Indian Penal Code are compoundable offences, however, the petitioner Nos. 1 and 2 are the government servants and they may have to appear before the Trial Court on more than one occasion to file an application for compounding the offence. Therefore, they have approached this Court for quashing the proceeding of G.R. Case No. 728/2021.
- 6.** On the other hand, learned Public Prosecutor has submitted that in the instant case, as both the offences against which charge sheet has been laid are compoundable in nature, there is no impediment for the petitioners to approach the Trial Court and file an application for compounding the offence. Hence, this is not a fit case where he held powers of the Court under Section 528 of BNSS, 2023. He invoked for quashing of the proceeding of G.R. Case No. 728/2021.
- 7.** I have considered the submissions made by the learned counsel for both the sides and have perused the materials available on record.
- 8.** It appears that the offences involved in this case are under Sections 448/323 of the Indian Penal Code and both are compoundable offence under Section 320(1) of the Code of Criminal Procedure, 1973 and the said offences are also made compoundable under Section 359 of the BNSS, 2023. There is no impediment for the petitioners, mainly the petitioner No.2 & 3, who are the victim/informant of the case, to approach the Trial Court and file an application under Section 320(1) of the Code of Criminal Procedure, 1973 for compounding of the offences in this case

against the petitioner No. 1.

- 9.** The apprehension shown by the learned counsel for the petitioners that the petitioners may have to appear before the Trial Court on several occasions does not seem to have any basis.
- 10.** This case is a case where the appropriate provision for compounding the offence against the petitioner No. 1 appears to be under Section 320 of the Code of Criminal Procedure, 1973.
- 11.** Hence, this is not a case where the powers of this Court under Section 528 of the BNSS, 2023 may be invoked for quashing of the proceedings.
- 12.** In view of above, this Criminal Petition is disposed of with an observation that the petitioner Nos. 2 & 3, who are the victim/ informant of this case, may approach the Trial Court and may file an application for compounding of the offence against petitioner No. 1 and as the offences are compoundable in nature, if such an application is filed, the Trial Court shall order compounding of offence against petitioner No. 2.
- 13.** With an above observation, this Criminal Petition is disposed of.

JUDGE

Comparing Assistant