

GAHC040010492024



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

Case No. : Crl.Petn./122/2024

Kipa ago and Anr

Son of Shri Kipa Taya, permanent resident of DFO Colony, Banderdewa, PO and PS
Banderdewa, Papumpare District, Arunachal Pradesh 791123

2: Smti Kipa Yako

Age:

Occupation

VERSUS

The State of AP

represented by the PP of AP

Advocate for the Petitioner : Tania Kipa

Advocate for the Respondent : P P of AP

**BEFORE
HONBLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

Date : 19.08.2024

Heard Mr. T. Kipa, learned counsel for the petitioners. Also heard Ms. L. Hage, learned Additional Public Prosecutor for the State of Arunachal Pradesh.

2. This is an application under Section 482 of Cr.P.C, 1973, praying for quashing of G. R. Case No. 448/2022 under Section 498A/323 of Indian Penal Code, pending before the Court of learned Chief Judicial Magistrate, Capital Complex, Yupia.

3. The facts relevant for consideration of the instant criminal petition, in brief, are as follows:

(i) That on 31.05.2022, the petitioner No. 2 had lodged an FIR against her husband, namely, Shri Kipa Ago (petitioner No. 1), before the Officer-In-Charge of Women Police Station Itanagar, *inter alia*, alleging that she has been subjected to torture both physical and mental by the petitioner No. 2 i.e., her husband.

(ii) On receipt of the said FIR, the Itanagar Women P.S. Case No. 66/2022 was registered under Section 498A/323 of Indian Penal

Code and investigation was initiated. On completion of the investigation, charge-sheet was laid against the petitioner No. 1 under Section 498A/323 of Indian Penal Code.

(iii) Now by filing this joint application both the informant as well as the accused i.e., husband and wife have approached this Court for quashing of the aforesaid case on the ground that they have reached a mutual settlement by executing a deed of settlement on 16.08.2022 and thereafter, have been residing peacefully with each other since last 2(two) years.

4. Mr. T. Kipa, the learned counsel for the petitioners have submitted that the petitioner No. 2 had also filed a case under Protection of Women from Domestic Violence Act against her husband. However, after reaching mutual settlement, the said case has also been withdrawn. The learned counsel for the petitioner has submitted that the petitioners have 5(five) children out of their wedlock and they are residing with them now and for sake of peaceful matrimonial life, the pending criminal case against the husband is required to be quashed in view of the mutual settlement arrived at between the parties.

5. Mr. Kipa, learned counsel for the petitioners has also submitted that this Court would be well within its power under Section 482 of Cr.P.C to quash the criminal proceeding, wherein, the husband and wife have already reached mutual settlement between them and it would be futile to

proceed with the criminal case pending against the husband.

6. Ms. L. Hage, learned Additional Public Prosecutor has submitted that this criminal petition has been filed by the petitioners under Section 482 of Cr.P.C, 1973. However, after coming into force of BNSS (Bharatiya Nagarik Suraksha Sanhita) the correct provision ought to have been 528 of BNS, however, it is also submitted at the bar that this question has also been referred to a larger Bench as to which Act would be applicable if the application is filed after coming into force of BNSS, 2023.

7. Since, apparently it appears that Section 531 of BNSS, 2023 provides that since any trial, etc is pending immediately before the date on which the Sanhita comes into force, such trial may be disposed of or continued in accordance with the provisions of the Code of Criminal Procedure, 1973. Hence, the present application is treated to be an application under Section 482 of Cr.P.C.

8. In the instant case, both the petitioners are husband and wife in relationship and they have mutually settled their disputes and also executed a mutual settlement deed to that effect on 16.08.2022. A copy of the same deed is also annexed along with the petition.

9. Under above circumstances, this Court is of considered view that it would be futile to proceed with the G.R. Case No. 448/2022, in view of the matrimonial dispute between the parties and also mutual settlement

arrived at between the parties. This Court therefore, allow the criminal petition and quashes the proceedings of G.R. Case No. 448/2022, which is pending before the Court of learned Chief Judicial Magistrate First Class, Capital Complex, Yupia.

10. In view of above, the criminal petition accordingly disposed of.

JUDGE

Comparing Assistant