



IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM & ARUNACHAL PRADESH)
ITANAGAR PERMANENT BENCH (NAHARLAGUN)

Criminal Petition No.101(AP)2022

1. Mr. Hemmar Diyum,
S/o Lt. Nyisen Diyum, aged about 42 years,
Permanent Resident of Village Kombo Tarsu Village,
PO/PS-Aalo, District-West Siang, Arunachal Pradesh.
2. Mr. Kenjir Ngomdir,
S/o Token Ngomdir, aged about 35 years,
Resident of Beye Village,
PO/PS-Aalo, District-West Siang, Arunachal Pradesh.
3. Mr. Gamnya Bagra,
S/o Tumgam Bagra, aged about 47 years,
Resident of LipuBagraVillage,
PO/PS-Aalo, District-West Siang, Arunachal Pradesh.

Petitioners

– VERSUS –

1. The State of Arunachal Pradesh represented by the Public Prosecutor, State of Arunachal Pradesh.

..... Respondent.

Advocate for the Petitioners: Mr. J. Jini
Advocate for the Respondent: Ms. T. Jini

:::BEFORE:::
HON'BLE MR. JUSTICE KARDAK ETE

JUDGMENT & ORDER (ORAL)

05.01.2024

Heard Mr. J. Jini, learned counsel for the petitioners. And also heard Ms. T. Jini, learned Addl. Public Prosecutor for the State of Arunachal Pradesh.

2. This is an application jointly filed under Section 482 of the Code of Criminal Procedure, 1973 praying for quashment of the criminal proceedings in GR Case No.21/2020, under Sections 409/471/468/420/34 of the IPC, 1860, pending before the Court of Chief Judicial Magistrate, Aalo, on the basis of the settlement arrived at amongst the parties.

3. The prosecution case emanates from the complaint dated 21.02.2020 filed by the petitioner No.1 before the Officer-in-Charge, Police Station, Aalo, stating that pursuant to the NIT dated 04.11.2019, the petitioner No.1 and the petitioner No.2 had participated in the tender process for construction of *Taru MIP at Kombo village (West Siang)* by submitting their bid documents. It is alleged that the petitioner No.2 had submitted a copy of the forged affidavit with regard to the legal status of the bidders by changing the date of issue of the non-judicial stamp paper. The non-judicial stamp paper on which the affidavit for legal status of the bidders was actually issued on 12.12.2019, and it was forged and shown to be issued on 13.11.2019. On such a complaint, the FIR was initially registered against the petitioner No.2, being Aalo P.S. Case No.12/2020 under Sections 471/468/420 of the IPC.

4. On completion of the investigation, a charge-sheet dated 06.05.2021 was filed

under Sections 420/468/471 of the IPC, 1860 against the petitioner No.2 and under Section 409 of the IPC, 1860 against the petitioner No.3 and section 34, IPC against both.

5. Mr. J. Jini, learned counsel for the petitioners submit that on realizing their mistake of over writing in the affidavit with regard to the legal status of the bidders, the petitioner Nos. 1 & 2 had settled the matter by entering into a deed of settlement on 06.09.2022. Initially, the work of *Taru MIP at Kombo village (West Siang)* was awarded to the petitioner No.1, but he has surrendered it and the work was subsequently awarded to some other firm, namely, M/s Bali Diyum, which has already been completed. While not admitting that they have forged the document as alleged, the parties have realized and accepted that the date of issuance of non judicial stamp paper on which an affidavit for legal status of the bidders was submitted by the petitioner No.2, was of over writing, for which, the petitioner No. 2 accepts his mistake. In any case, the issue has been settled between the parties. Thereafter, by an another deed of settlement dated 04.01.2024, the petitioner Nos.1, 2 & 3 have entered a deed of settlement finally by conclusively settling the matter. Therefore, Mr. Jini submits that the continuation of the criminal proceedings will be futile one as the chances of conviction are bleak and remote. Thus, the criminal proceedings may be quashed.

6. Ms. T. Jini, learned Addl. Public Prosecutor, on the other hand, submits that since the offence charged with under Section 409 of the IPC, 1860 is punishable with imprisonment for life or either description for a term which may extend to 10 (ten) years which is serious in nature, the criminal proceeding in the present case cannot be quashed.

7. Ms. Jini has placed and relied on a judgment of the Hon'ble Supreme Court in the case ***State of Madhya Pradesh -vrs- Laxmi Narayan & Ors.,*** reported in ***(2019) 5 SCC 688***, particularly, paragraph 15.3, to show that the power under Section 482 of the Cr.P.C is not to be exercised for the offences under special

statutes like the Prevention of Corruption Act or the offences committed by the public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender. She submits that in the present case, the petitioner No. 3 is a public servant, against whom an offence under Section 409 IPC is charged with. Ms. Jini further submits that the offences charged with are not private in nature nor can be said to be a commercial transaction, though it may involve the award of contract issued pursuant to the NIT dated 04.11.2019.

8. I have considered the rival submissions advanced by the learned counsel appearing for the parties and perused the materials available on record.

9. It is noticed that the date of issuance of non-judicial stamp paper on which the affidavit for legal status of the bidders submitted by the petitioner No.2 was interpolated. The non-judicial stamp paper on which the affidavit for legal status of the bidders was actually issued on 12.12.2019, and it was shown to have been issued on 13.11.2019.

10. Pursuant to NIT dated 04.11.2019, the work of *Taru MIP at Kombo village (West Siang)* was awarded to the petitioner No.1. The petitioner No.1 has surrendered the said work and subsequently the work was awarded to some other firm, namely: M/s Bali Diyum, the work which has reportedly been completed by now. The petitioner No. 2 has realized and accepted that the date of issuance of non-judicial stamp paper on which an affidavit for legal status of the bidders was submitted by the petitioner No.2, was of over writing, for which the offence of forgery could be charged with. However, since the parties have accepted that it was a case of over writing on the said document and settled the matter between the parties, this Court is of the considered view that the matter may not be of serious nature.

11. It is seen that the petitioner Nos. 1 & 2 had settled the matter by entering into a deed of settlement on 06.09.2022. Thereafter, by another deed of

settlement dated 04.01.2024, the petitioner Nos.1, 2 & 3 have entered a deed of settlement finally by conclusively settling the matter. In view of the settlement of the matter by the parties and considering that the matter is of less serious in nature, this Court is of the considered view that present case is one of the cases where the inherent power of this Court under section 482 of Cr.P.C, 1973 could be invoked as the chances of conviction are far too bleak and remote and the continuance of such proceedings in the present case would be futile and abuse of process of law.

12. Quashment of criminal proceedings of non-compoundable offences on the basis of compromise by the parties under section 482 of Cr.P.C, 1973, has been enunciated by the Hon'ble Supreme Court in the case of ***State of Madhya Pradesh -vrs- Laxmi Narayan & Ors.***, reported in ***(2019) 5 SCC 688***, to which this Court would profitably refer to, the relevant paragraphs are reproduced herein under:-

“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 (supra) 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.”

13. Having regards to the facts and circumstances of the present case and considering that the petitioners have entered into and executed deed of agreement and compromised the matter and in view of the law enunciated by the Hon’ble Supreme Court, this Court is of the considered view that the present case is one of the cases where the inherent power of this court under section 482 of Cr.P.C, 1973 is fit to be invoked.

14. Consequently, the criminal proceedings in GR case No. 21/20 under Sections 409/471/468/420/34 of the IPC, 1860, pending before the Court of Chief Judicial Magistrate, Aalo, is hereby quashed.

15. The Criminal petition stands allowed and disposed of, accordingly.

JUDGE