

GAHC040012452023



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

Case No. : Crl.Petn./168/2023

Higio Tatung (Accused) and 2 Ors.
S/o Higio Bel,
Village Tachipu,
PO and PS Palin,
District Kra-Daadi,
Arunachal Pradesh.
PH-8415025368

2: Tana Domin (Victim)
Age:
Occupation :
S/o Tana Bado,
Village Midpu-I,
PO and PS Doimukh,
District Papum Pare,
Arunachal Pradesh.

3: Tana Bado (Complainant)
Age:
Occupation :
S/o Tana Epo,
Village Midpu-I,
PO and PS Doimukh,
District Papum Pare,
Arunachal Pradesh,

VERSUS

THE STATE OF AP
represented through learned Public Prosecutor.

Advocate for the Petitioner : Reken Ingo

Advocate for the Respondent : L. Hage, Addl.P P of AP

**BEFORE
HONBLE MR. JUSTICE KARDAK ETE**

ORDER

Date : 14-05-2024

Heard Mr. R. Ingo, learned counsel for the petitioners and Ms. L. Hage, learned Additional Public Prosecutor for the State of Arunachal Pradesh.

2. This is an application, jointly filed by the petitioners, under Section 482 of CrPC, 1973 for quashment of criminal proceedings being Sessions Case No. 37/2016, under Sections 341/427/ 307/326 of IPC corresponding to Doimukh P.S. Case No. 06/2015 on the ground of settlement amongst the petitioners.

3. The petitioner No. 1 is the accused; the petitioner No. 2 is the victim and petitioner No. 3 is the informant.

4. An FIR was lodged by the petitioner No. 3, who is the father of the petitioner No. 2, stating that the petitioner No. 1, a resident of Rono village, has physically assaulted his son, petitioner No. 2, with local Dao on 23.02.2015 at around 02.00 hours at Rono village without any reason. It is also alleged that the petitioner No. 1 has blocked the car of his son and attempted to murder the petitioner No. 2 with a Dao as a result his son sustained grievous injuries and admitted to State Hospital, Naharlagun.

5. Pursuant to said FIR, a case was registered being Doimikh P.S. Case No. 06/2015 under Sections 341/427/307/326 of IPC. On completion of the investigation, a charge-sheet has been laid. Thereafter, charges have been framed against the petitioner No. 1. The stage of Trial is evidence. During the

pendency of the Trial, the petitioner No. 1 and 2 (accused and the victim) have entered into a settlement vide, dated 26.12.2018. Thereafter, vide another settlement, dated 31.08.2013, by way of compromise and settlement in the line of customary practice, the petitioners have finally settled the matters amongst them.

6. Mr. R. Ingo, learned counsel for the petitioners submits that due to misinformation, the petitioner No. 3, has lodged the FIR. However, since the parties are clan brothers having no enmity and the petitioner No. 1 and petitioner No. 2 being aged about 25 and 26 years, respectively, as well as the incident happened during the Nyokum festival, the parties have realised and settled the matter amicably to have a cordial relationship amongst themselves. He further submits that though the charge-sheet has been filed under Section 307 of the IPC, no materials against the accused i.e. the petitioner No. 1. He submits that since the parties have settled the matter and now the petitioners are living peacefully, the continuance of criminal proceedings in the present case would be an abuse of process of law. There is a bleak chance of conviction. Therefore, he prays for quashing of the criminal proceedings being Sessions Case No. 37/2016 pending before the learned Sessions Judge, Yupia.

7. Ms. L. Hage, learned Additional Public Prosecutor submits that this Court may exercise the inherent power under Section 482 of CrPC if the matter is settled amongst the parties. Having submitted that, the learned Additional Public Prosecutor stated that if the offence alleged is heinous and serious, the proceedings cannot be quashed, even if there is a compromise between the parties.

8. Considered the submissions of learned counsel appearing for the parties and also perused the Trial Court Record.

9. Record reveals that the petitioner No. 1 and the petitioner No. 2 were involved in a scuffle in the wee hours of 23.02.2015. The incident occurred when the petitioner No. 2 was returning after attending the local Nyokum festival at Rono ground, Doimukh. On completion of the investigation, the police filed the charge-sheet against the petitioner No. 1 under Sections 341/427/307/326 of IPC. Thereafter, charges have been framed against the petitioner No. 1 and Trial had begun. As on today, 4 (four) numbers of prosecution witnesses have been examined.

10. During the pendency of the criminal proceedings, on two occasions, the parties have entered into an agreement by settling the matter, initially between the petitioner No. 1 and petitioner No. 2 and thereafter, amongst the petitioners, vide dated 26.12.2018 and 31.08.2023.

11. It is noticed that the petitioner No. 1 and petitioner No. 2, who are the accused and the victim were in their youthful age of 25 and 26 years, respectively, at the time of incident. It is also noticed that the petitioner No. 2 was returning after attending the Nyokum festival. While celebrating the festival, certain local drinks used to be taken to cheer up the festive occasions. Records reveals that the petitioner No. 2 (victim) was little high on account of festival. The incident had happened at the wee hours on 23.02.2015. The parties have settled the matter without there being any pressure and with sound state of mind. Being a clan brothers, the petitioners have decided to maintain cordial relationship in near future and are accordingly, maintaining.

12. The quashment of the criminal proceedings on the basis compromise under Section 482 of CrPC has been laid down by the Hon'ble Supreme Court in the case of the **State of Madhya Pradesh Vs. Laxmi Narayan & Others** reported in **(2019) 5 SSC 688**, which is reproduced herein below:

"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 impart 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. In the case of ***Kapil Gupta Vs. State of NCT of Delhi and another*** reported in **2022 SCC online 1030**, the Hon'ble Supreme Court has held which is reproduced herein below.

"13. It can thus be seen that this Court has clearly held that though the Court should be slow in quashing the proceedings wherein heinous and serious offences are involved, the High Court is not foreclosed from examining as to whether there exists material for incorporation of such an offence or as to whether there is sufficient evidence which if proved would lead to proving the charge for the offence charged with. The Court has also to take into consideration as to whether the settlement between the parties is going to result into harmony between them which may improve their mutual relationship.

14. The Court has further held that it is also relevant to consider as to what is stage of the proceedings. It has been observed that if an application is made at a belated stage wherein the evidence has been led and the matter is at the stage of arguments or judgment, the Court should be slow to exercise the power to quash the proceedings. However, if such an application is made at an initial stage before commencement of trial, the said factor will weigh with the court in exercising its power."

14. In the present case, though Section 307 IPC is incorporated, there is no sufficient materials or evidence which if proved would lead to proving the charge for the said offence. The settlement, in my view would result into harmony amongst them and would improve their mutual relationship as the petitioner are clan brothers.

15. On consideration of the matter in its entirety and considering the fact that the petitioners are clan brothers and settled the matter amongst themselves and decided to maintain cordial relationship in near future and also in view of the observations and law laid down by the Hon'ble Supreme Court, I am of the considered view that the present matter is one of the matters wherein power of this Court under Section 482 CrPC, can be invoked.

16. Consequently, the criminal proceedings of Sessions Case No. 37/2016, under Sections 341/427/307/326 of IPC corresponding to Doimukh P.S. Case No. 06/2015, pending before the learned Sessions Judge, Yupia, is hereby quashed.

17. Accordingly, this criminal petition stands allowed and disposed of.

JUDGE

Comparing Assistant