



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

Case No. : Crl.Petn./179/2023

Giokar Nilling and 2 Ors.
S/o Shri Tagio Nilling, village Jeke, PO/PS Daporijo, Dist Upper Subansiri, A.P 2:
Giodap Nilling
Age:
Occupation :

3: Tala Jeke Marbom
Age:
Occupation

VERSUS

THE STATE OF AP
through the Public Prosecutor

Advocate for the Petitioner : L Kurdu

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MR. JUSTICE KARDAK ETE

JUDGMENT & ORDER(ORAL)

18.03.2024

Heard Mr. L. Kurdu, learned counsel for the petitioners and Mr. T. Ete, learned Additional Public Prosecutor for the State.

2. This is an application jointly filed by the petitioners under Section 482 of

the Cr.P.C, 1973 seeking quashment of the Criminal Proceedings being G.R. Case No. 33/2019 under Sections 341/326/34 IPC, arising out of Daporijo P.S. Case No. 20/2019 pending before the Chief Judicial Magistrate, Daporijo, on the basis of the settlement between the petitioners.

3. The petitioners No. 1 & 2 are the accused and the petitioner No. 3 is the informant/victim.

4. The case, in brief, is that an FIR was lodged on 12.04.2019 against the petitioner No. 1 & 2 by petitioner No. 3 alleging that on 10.04.2019, the informant had gone to Jeke village to cast vote in the election and stayed at the house of the one Shri Niapung Jeke. On 11.04.20019 a group of people attacked the house of Niapung Jeke. Thereafter, he tried to proceed to his village Boging and to find out whether his family members had come from Daporijo. The moment he stepped out of the house and proceeded to a small distance, two persons came rushing towards him and attacked him with stick and rod without any provocation and tried to kill him resultantly got injured severely. On the intervention of some other persons, he was saved from death. Thereafter, both the petitioner No. 1 & 2 surrendered before the Police Station, Daporijo on 03.06.2019 and were released on bail.

5. On the receipt of the FIR, a case being Daporijo P. S. Case No. 20/2019 was registered and on completion of the investigation, charge-sheet No. 18/2019 under Sections 341/326/506/34 IPC was submitted on 13.07.2019 and numbered as in G.R. Case No. 33/2019. The learned Chief Judicial Magistrate, Daporijo has framed the charges under Sections 326/341/34 IPC, against the petitioners No. 1 & 2

6. Mr. L. Kurdu, learned counsel for the petitioners submits that the dispute being purely family/clan matter, the parties have settled their differences amicably and entered into settlement deed on 04.10.2022, which has been

executed before the learned Executive Magistrate, Naharlagun. Learned counsel for the petitioners submits that in view of the settlement between the parties and differences had arisen due to family/clan disputes 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 submits that the criminal proceeding being G.R. case No. 33/2019, pending before the learned Chief Judicial Magistrate, Daporijo, may be quashed.

7. Mr. T. Ete, learned counsel Additional Public Prosecutor for the State, submits that although there exists materials against the petitioner no. 1 & 2 as recorded and submitted in the charge-sheet, since the matter have been settled between the petitioners, they being the same clan members and to maintain cordial relationship and for the interest of the family/clan members, the continuance of the proceedings may be abuse of the process of law. Therefore, he submits that this Court may pass appropriate order taking into consideration of the facts and circumstances in the present matter.

8. Due consideration has been extended to the submissions of the learned counsel for the parties and have considered the materials available on record.

9. The case against the petitioner No. 1 & 2 was pursuant to the lodging of FIR by the petitioner No. 3 who is the informant/victim. The FIR was registered and charge-sheet was laid by the Investigating Officer under Sections 341/326/34 IPC. Accordingly, charges have been framed by the Chief Judicial Magistrate, Daporijo under Sections 341/326/34 IPC against the petitioner No. 1 & 2. It is also seen that out of total prosecution 15 witnesses, 9 prosecution witnesses have been examined.

10. During the pendency of the trial of the case, the petitioners on 04.10.2022 have entered into a settlement deed, being the same clan members and at the

instance of the society by showing remorse and decided to have better relationship between them. It is also seen that the disputes are purely private in nature relating to land dispute between the petitioners which appears to have been further fuelled by the election related differences during the time of voting in the Assembly and Parliamentary Election.

11. It is noted that initially case was registered under Section 307 of the IPC. However, charge sheeted under sections 341/326/506/34 IPC and the charges have been framed under Sections 341/326/34 IPC by the learned Trial Court. Though the Section 326 IPC, an offence of grievous hurt, materials as recorded in the charge-sheet appears to be attracted, since the petitioners have decided to and settled the matter for better relationship in the society being a clan members, I am of the view that the interest of the parties would be served by accepting the settlement between the petitioners as the dispute emanates from the election related differences by raking up the land dispute that have been with the members of the society. Since the matter has been settled between the petitioners, I am of the view that the chances of conviction are remote and allowing such proceedings would be an abuse of the process of law.

12. In the case of the **State of Madhya Pradesh Vs. Laxmi Narayan & Others** reported in **(2019) 5 SSC 688**, the Hon'ble Supreme Court has held 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. Coming back to the present case, on consideration of the materials on record, offence under Section 307 IPC was registered initially, however, no charge-sheet has been laid under the said section. The charge-sheet against the petitioner No. 1 & 2 has been filed under Sections 341/506/326/34 IPC. The Trial Court has framed the charges against the petitioner No. 1 & 2 under Section 341/326/34 IPC, dropping the Section 506 of IPC. As noted above, there exists materials against the petitioner No. 1 & 2 which may attracts Section 326 of IPC. However, since the petitioners have entered into a settlement for the peaceful co-existence of the clan members as well as in the interest of the society at large and considering the offence not being heinous in nature and

purely appears to have arisen due to election related dispute with regard to choice of candidates and thereafter raking up the land dispute, I am of the considered view that continuance of criminal proceedings before the learned Chief Judicial Magistrate, Daporijo would be an abuse of the process of law. The dispute having predominantly the private in nature, arising out of family/clan dispute and the parties have resolved the entire disputes amongst themselves by amicable settlement.

15. In view of the discussions made hereinabove and considering the fact that the petitioners are clan members and the matter emanates from an election related differences of their choice of candidate and they have entered into settlement and same would result into harmony between them which would improve their mutual relationship 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 Section 482 CrPC, can be invoked.

16. Consequently, the criminal proceeding being G.R. Case No. 33/2019 under Section 341/326/34 IPC, 1960 pending before the learned Judicial Magistrate Deporijo is hereby quashed.

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

JUDGE

Comparing Assistant