

GAHC040013752024



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

Case No. : Crl.Petn./176/2024

Jomak Gamno and 2 Ors
Son of Late Bugar Gamno, permanent resident of Village Millang, PO and PS
Mariyang, Upper Siang District, Arunachal Pradesh.

2: Toma Ayom
Age:
Occupation :
Son of Shri Tembu Ayom
permanent resident of Village Millang
PO and PS Mariyang
Upper Siang District
Arunachal Pradesh.

3: Barot Modi
Age:
Occupation :
Son of Kut Modi
permanent resident of Village Millang
PO and PS Mariyang
Upper Siang District
Arunachal Pradesh

VERSUS

The State of AP
represented by the PP of AP

Advocate for the Petitioner : Orin Modi, Noni Nobeng, Pura Khongkhung, Jobang Modi

Advocate for the Respondent : P P of AP,

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

Date : 21.10.2024

Heard Mr. O. Modi, learned counsel for the petitioners. Also heard Mr. T Ete, learned Additional PP, Arunachal Pradesh.

2. This is an application filed under Section 528 of the BNSS, 2023 praying for setting aside and quashing the FIR dated 20.10.2023 registered as MRG P.S. Case No. 11/2023 under Section 380/34 of the IPC corresponding with G.R. Case No. 38/2023 pending for trial before the Court of learned JMFC, Yingkiong.
3. In the F.I.R. it is alleged that on 16.10.2023, the petitioner Nos. 1 & 2 along with others illegally entered into the granary house of the petitioner No. 3 and had stolen away grain (rice), 42 kg approximately in quantity. Accordingly, the petitioner No. 3 lodged the FIR in question.
4. This present petition is jointly filed by the informant and the accused person. The petitioner Nos. 1 & 2 in the present application are the accused named in the FIR and the petitioner No. 3 is the informant.
5. The present petition is filed in a backdrop that the complainant and the accused had settled the matter amicably between them and therefore, this court in exercise of power under Section 528 of BNSS should quash the criminal prosecution as the offences charged are not compoundable under

the provision of BNSS.

6. It is on record that after the registration of the FIR, the case was investigated by the Investigating Officer and Charge Sheet was laid against the petitioner Nos. 1 & 2 vide Charge Sheet No. 03/2024 dated 03.05.2024 corresponding to MRG P.S. Case No. 11/2023 under Section 380/34 of the IPC.
7. It is also on record that prior to filing of the charge sheet, the petitioners have mutually settled the matter on 22.10.2023 in presence of the Gaon Bura of the village, which is annexed to the petition as annexure A. Annexure A reflects that the informant was imposed with penalty of Rs. 2500/- in a village meeting for allegedly spreading pig disease. However, when the aforesaid amount was not paid, the rice alleged to have been stolen was taken from the granary in lieu of the penalty. The compromise deed further reveals that the petitioners have amicably settled their disputes.
8. The power under Section 528 of BNSS, 2023 is an inherent power and such inherent power can be exercised to quash a criminal proceeding or a criminal complaint but while doing so the court is to follow certain principles. Such power can be exercised, amongst others, when the offences alleged are overwhelmingly and predominantly civil in character or when such dispute arises out of matrimonial relationship or family disputes and the parties have resolved the entire disputes amongst themselves. While exercising such directory power it is to be seen that such offences if compromised shall not affect the society at large.

9. Coming to the case in hand, from the materials available on record including the charge sheet, the statement of witnesses and the compromise settlement show that it cannot be per se said to be an offence under Section 380 IPC as recorded hereinabove. In the considered opinion of this court, as the parties have amicably resolved the disputes and that the offence do not involve any heinous or serious offence and also that if the offences are allowed to be compounded that will have no serious impact on the society, the power under Section 528 of BNSS can be exercised in the given facts of the present case. The record also reveals that the accused persons were not absconding and the settlement is arrived in a customary way involving the entire society belonging to the petitioners i.e. accused and informant.
10. In the aforesaid backdrop, this court is of the view that this is a fit case where the power under Section 528 of BNSS, 2023 can be exercised to set aside and quash the criminal prosecution in question on being amicably settled.
11. Accordingly, this petition is allowed by setting aside and quashing the criminal proceeding being FIR dated 20.10.2023 registered being MRG P.S. Case No. 11/2023 under Section 380/34 of the IPC corresponding with G.R. Case No. 38/2023 pending for trial before the Court of learned JMFC, Yingkiong.

JUDGE

Comparing Assistant