

GAHC040014022024



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

Case No. : Crl.Petn./182/2024

Dawa Choden Atjepu and Anr
Daughter of Shri Phurpa Monpa, a permanent resident of Village Thembang, PO and
PS Dirang, West Kameng District, Arunachal Pradesh. 2: Chorten Norbu @
Chorten Norbu Ngangmu
Age:
Occupation :
Son of Shri Chong Norbu
a permanent resident of Village Boha
PO and PS Kalaktang
West Kameng District
Arunachal Pradesh

VERSUS

The State of AP
represented by the PP of AP

Advocate for the Petitioner : T T Tara, Pondit Ronya, Kirmani Lollen, Terji Kamchi, Taba
Tokur, Khoda Apa, Gamken Bam

Advocate for the Respondent : P P of AP,

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

24.10.2024

Heard Mr. TT Tara, learned counsel for the petitioners. Also heard Mr. G
Tado, 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 Rupa PS case No. 12/2024 under Section 376(1)/354-A/506 IPC and Charge Sheet No. 04/2024 dated 03.09.2024 under Section 376(1)/354-A/506/313/511 IPC pending before the Court of learned District and Sessions Judge, Bomdila as GR case No. 65/2024.
3. In the F.I.R. it is disclosed that the petitioner No. 1 and the petitioner No. 2 were in a relationship and the petitioner No. 1 became pregnant. Subsequently, when the petitioner No. 2 refused to marry petitioner No. 1, the petitioner No.1 lodged the FIR in question.
4. This present petition is jointly filed by the informant and the accused person, who were now husband and wife and got married under Monpa Customary Law.
5. From the reading of the FIR, which was lodged by the petitioner No. 1, it is seen that the fundamental allegation is that both the petitioners were having a long standing affairs and the petitioner No. 1 became pregnant. However, the petitioner No.2 refused to marry her and accordingly the FIR was lodged. It is also on record that in the meantime they got married and are staying together as husband and wife.
6. 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.
7. 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 No. 2 vide Charge Sheet No. 04/2024 dated 03.09.2024 corresponding to Rupa P.S. Case No. 12/2024 under Section 376(1)/354-A/506/313/511 of the IPC.

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. In view of the aforesaid, in the considered opinion of this court it cannot be said any offence under Section 376 IPC is made out inasmuch as much as since marriage has already been solemnised there cannot be any reason to say that there was cheating on the part of the petitioner No.2 also. Therefore, in the considered opinion of this court, as the parties have amicably resolved the disputes 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.
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 Rupa PS case No. 12/2024 under Section 376(1)/354-A/506 IPC and Charge Sheet No. 04/2024 dated 03.09.2024 under Section 376(1)/354-A/506/313/511 IPC pending before the Court of learned District and Sessions Judge, Bomdila as GR case No. 65/2024.

JUDGE

Comparing Assistant