

GAHC040015042023



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

Case No. : Crl.Petn./201/2023

Tadar Hagai and 2 Anr.

S/o Late Tadar Tajik, village Yallang, PO/PS Sagalee, District Papum Pare, Arunachal Pradesh. Phone No. 918798901140 2: Rajendra Adav

Age:

Occupation :

3: Techhi Sania

Age:

Occupation

VERSUS

THE STATE OF AP

represented through the Public Prosecutor, Government of Arunachal Pradesh.

Advocate for the Petitioner : Mr. J. Jini

Advocate for the Respondent : Ms. T. Jini, Addl. P P of AP

:::BEFORE:::

HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing: 24.01.2024

Date of Judgment & Order : 02.02.2024

JUDGMENT & ORDER (CAV)

Heard Mr. J. Jini, learned counsel for the petitioners. Also heard Ms. T. Jini, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 482 of the Code of Criminal Procedure, 1973 praying for quashing and setting aside the Charge-Sheet No. 05/2016, dated 21.10.2016, under Section 341/324 of the Indian Penal Code, arising out of Sangalee P.S. Case No. 12/2016, dated 14.09.2016, which is presently pending before the Court of learned Judicial Magistrate First Class, Yupia, District Papum Pare, Arunachal Pradesh, as G.R. Case No. 663/2016.

3. The present petition is jointly filed by the petitioner No. 1, who is the alleged accused; petitioner No. 2, who is the victim of this case; and the petitioner No. 3, who is the informant of this case. The F.I.R. dated 14.09.2016 was lodged by petitioner No. 3 alleging *inter alia* that on the same day, at about 10.00 hours, while the T.K & Sons Enterprise Excavator Operator- Shri Rajendra Adav (petitioner No. 2) was excavating on TAH (Trans Arunachal Highway) near Rach Village, one Shri Tadar Hagai (petitioner No. 1) of Chumbang Village arrived at the working site and stopped the excavation work and assaulted the Excavator Operator- Shri Rajendar Adav, who sustained injury. On receipt of the said F.I.R., the Officer-In-Charge of the Sagalee Police Station registered a

criminal case against the petitioner No. 1 under Sagalee P.S. Case No. 12/2016, under Sections 341/323 of the Indian Penal Code.

4. On completion of the investigation, the Charge-Sheet was filed under Sections 341/324 of the Indian Penal Code against the alleged accused/petitioner No. 1. Accordingly, the criminal case, i.e. G.R. Case No. 663/2016, was registered and charge was also accordingly framed against the petitioner No. 1 and at present, the case is pending at the stage of evidence before the learned Judicial Magistrate First Class, Yupia, Papum Pare District, Arunachal Pradesh.

5. It is submitted by the learned counsel for the petitioners, Mr. J. Jini, that on 14.09.2016, the petitioner No. 1, along with his family and kids, were travelling towards Nirjuli and meanwhile, on reaching near Rach Village, one excavator was disposing mud and accordingly, he requested the Excavator Operator to stop his work for a while for his safe passage. But unfortunately, while crossing the road, suddenly the mud of the excavator fall on the car and thereby damaged the car of the petitioner No. 1. Thereafter, when the petitioner No. 1 approached the operator of the excavator for being negligent, an argument broke out between them leading to a scuffle. During that scuffle, the petitioner No. 2 was injured by blunt side of the dao of the petitioner No. 1. Accordingly, the F.I.R. was lodged by the petitioner No. 3 against the petitioner No. 1 and subsequently, the petitioner No. 1 was arrested in connection with the present case and later on he was released on bail.

6. It is further submitted that though the Charge-Sheet was filed on 21.10.2016, however till date, the case is at the stage of evidence and none of the prosecution witness were examined by the learned Court below. In the meantime, the victim, complainant and the accused settled their dispute amicably and in pursuant to the said settlement agreement, both the petitioner Nos. 2 & 3 are not interested to pursue the case further and hence, the present joint petition is filed praying for quashing the criminal proceeding as well as the Charge-Sheet filed against the petitioner No. 1, which is still pending before the Court of learned Judicial Magistrate First Class, Yupia. All the 3 (three) petitioners accordingly executed the mutual settlement agreement on 26.09.2023 and resolved their differences and they have no more enmity or grievances amongst each other.

7. As the case is Charge-Sheet under Section 324 of the Indian Penal Code, which is non-compoundable offence under the provision of Section 320 Cr.P.C., and hence, the present petition is filed jointly by all the petitioners praying for setting aside and quashing the criminal proceeding by exercising the power under Section 482 Cr.P.C. He further submitted that the complaint filed by the complainant is purely private in nature and it has no social implications and even if the case proceeded further, the chance of conviction of accused petitioner No. 1 is very remote and bleak, rather the proceeding will unnecessarily consume the time of the learned Court below.

8. Accordingly, it is submitted by the learned counsel for the petitioners, Mr. J. Jini, that as all the parties have mutually settled their dispute, which is also a

private in nature and the petitioner Nos. 2 & 3 are not interested to proceed with the case in pursuant to the deed of mutual settlement agreement, the chance of conviction is also very remote and bleak even if the proceeding is allowed to be continued. Accordingly, it is prayed for setting aside and quashing of the criminal proceeding by exercising the power under Section 482 Cr.P.C.

9. In support of his submissions, the learned counsel for the petitioners further relied on a decision of Hon'ble Apex Court passed in **Criminal Appeal No. 1488 of 2012 (Ramgopal & Anr. Vs. The State of Madhya Pradesh)** and also another decision of this Court passed in **Criminal Petn. No. 45/2022 (Sorang Tania & Ors Vs. State of A.P.)**.

10. On the other hand, Ms. T. Jini, learned Additional Public Prosecutor, has submitted that though it is claimed by the petitioners that the matter has already been settled amongst them and in pursuant to the said mutual settlement, they also executed a mutual settlement agreement, but through bare eye also, it can be seen that the signature put by the petitioner No. 3, i.e. the complainant, in affidavit filed in this case and the signature put in the mutual settlement agreement as well as in the signature put by him in the F.I.R. are different. Further she submitted that the doubt also arises regarding the veracity of the petitioners' case as the F.I.R. was lodged in the year 2016 and after completion of the investigation, the Charge-Sheet was filed in the year 2016, but the matter was compromised and the deed of mutual settlement agreement was executed only in the year 2023. But there is no explanation as to why the parties waited for long 7 (seven) years to compromise the matter if

there were no differences between them and the matter was already settled. Further she submitted that there was a dispute between the 2 (two) persons, but it cannot be denied that the victim was operating the excavator which was using for construction of a Highway and thus, even if it is a dispute between 2 (two) private persons, but it is seen that the victim was engaged for the public work construction of highway.

11. In regards to the judgments relied by the learned counsel for the petitioners, the learned Additional Public Prosecutor submitted that the judgment of the Hon'ble Apex Court was passed at the appellate stage and the appellants were acquitted by invoking the power under Article 142 of the Constitution of India, which is not applicable in the present case. Accordingly, she submitted that the reasonable doubt arises regarding the execution of the mutual settlement agreement and it is also disputed as to why after a gap of long 7 (seven) years, the settlement was executed. She further submitted that the Excavator Operators are the persons generally engaged from outside of the State and from the address, which is recorded by the I.O., it is seen that the petitioner No. 2/victim is from Jharkhand and not from the State of Arunachal Pradesh. So, it is also not acceptable that a person would come to Arunachal Pradesh from a far distant place like Jharkhand. Accordingly, the learned Additional Public Prosecutor submitted that it is not at all a fit case to set aside and quash the criminal proceeding pending before the Court of learned Judicial Magistrate First Class, Yupia and accordingly prayed for dismissal of the same.

12. After hearing the submissions made by the learned counsels for both

sides, I have perused the case record and the other relevant documents.

13. It is seen that the F.I.R. was lodged on 14.09.2016 with an allegation that the present accused/petitioner No. 1 assaulted the Excavator Operator, i.e. the petitioner No. 2, with a sharp object causing injury to his person while he was operating the excavator. However, it is the case of the petitioners that the petitioner No. 1 asked the Excavator Operator, i.e. the petitioner No. 2, to stop for his safe passage, but unfortunately, while crossing the road, suddenly the mud of the excavator fall on the car thereby damaged the car of the petitioner No. 1. Thereafter, the petitioner No. 1 approached the victim/petitioner No. 2 and in that process, there was a scuffle between them and the petitioner No. 2 sustained minor injury with the blunt side of the dao of the petitioner No. 1. Accordingly, the F.I.R. was lodged and thereafter, within a very short period, the Charge-Sheet was also filed, i.e. on 21.10.2016, vide Charge-Sheet No. 05/2016, under Sections 341/324 of the India Penal Code. But surprisingly, the charge was framed at a very later stage and the settlement was took place after a long gap of long 7 (seven) years. Accordingly, the learned Additional Public Prosecutor has rightly raised objection that why both the accused as well as the victim and the complainant took such a long time to come to a settlement if the matter was amicably settled between the parties after the incident. Further, the other point raised by the learned Additional Public Prosecutor regarding the identity of the person who put their signatures on the deed of compromise is also cannot outrightly be rejected. It is seen that the signature of the complainant- Shri Tech Sania, site in-charge of M/S T.K Sons & Enterprises, seems to be more or less similar with signature made in the deed of settlement

as well as in the affidavit sworn by him. But it is seen that the signature which he put in the F.I.R. is totally different, which can be seen even through bare eye. Further, there is no other signature of the victim/petitioner No. 2- Shri Rajendra Adav and it is also the admitted fact that the person belongs to Jharkhand and he is not a local person of Arunachal Pradesh. It also cannot be denied that the said Rajendra Adav was engaged as an Excavator Operator during the relevant period of time, who was engaged in the construction of highway and thus, the reasonable doubt arises as to whether the person from Jharkhand will come put his signature in the deed of settlement after a long gap of 7 (seven) years that too in Arunachal Pradesh. In this context, a judgment of the Hon'ble Apex Court can be relied on, which was passed in **Criminal Appeal No. 1217/2022 (Kapil Gupta Vs. State of NCT of Delhi & Anr.)**, wherein in paragraph No. 14 of the said judgment, it has been held as under:

"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. Here in the instant case also, it is seen that the F.I.R. was lodged in the year 2016 and the Charge-Sheet was filed in the year 2016 itself, but the settlement was executed after long gap of 7 (seven) years, i.e. in the year 2023, after framing of the charge. The stage of proceeding etc. may not be the sole ground for dismissing the petition under Section 482 Cr.P.C., but it may be

relevant in such a situation wherein the reasonable doubt arises as to why the parties remain silent for long 7 (seven) years to settle the matter if the case was settled after the incident.

15. In view of the discussions made above and also considering the other aspects of this case, I find that this is not a fit case to quash the criminal proceeding as well as the FIR and the Charge-Sheet against the petitioner No. 1 exercising power under Section 482 Cr.P.C., even if both the parties entered into a settlement agreement.

16. In the result, I find no merit in this criminal petition and accordingly, the same stands dismissed.

JUDGE

Comparing Assistant