

GAHC040015072023



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

Case No. : Crl.Petn./203/2023

Tarak Mama and Anr.
S/o Shri Tarak Tare, resident of Village Lower Tubung, PO and PS Balijan, District
Papum Pare, Arunachal Pradesh, Mobile No. 918132915010

2: Kirdak Jini
Age:
Occupation

VERSUS

THE STATE OF AP
represented by Public Prosecutor.

Advocate for the Petitioner : N Rama

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MR. JUSTICE BUDI HABUNG

ORDER

Date : 21.06.2024

Heard Mr. N. Rama, learned counsel for the petitioner. Also heard Ms. T. Jini, learned Additional Public Prosecutor for the State respondent.

2. This is a joint petition filed under Section 482 of Cr.P.C. The petitioner No.1 **Shri Tarak Mama** is the accused and the petitioner No.2 **Shri Kirdak Jini** is the informant in Naharlagun P.S. Case No. 42/2022 under Section 380/457 of IPC. They filed this petition with the following prayers:

- (i) to quash and set aside the FIR dated 22.04.2024 registered as Naharlagun P.S. Case No. 42/2022 under Section 380/457 of IPC.
- (ii) to quash and set aside the Criminal Proceeding in G.R. Case No. 306/2022 arising out of Naharlagun P.S. Case No. 42/2022 pending before the Court of the learned Chief Judicial Magistrate, Yupia.

3. The fact of the case in brief is that on 22.04.2022, the petitioner No.2/informant lodged a written FIR before the Officer-In-Charge Naharlagun Police Station against the petitioner No. 1/ accused stating therein that from 15.04.2022 to 21.04.2022, he and his wife were out of station from their rented house at Naharlagun. On reaching back, the lock of main door of the room was found broken from outside. On checking the house, his one laptop and two empty gas cylinders were found stolen away by some unknown person. Then they checked the CCTV footage of the landlord and found one male person with long hair was seen taking away the said missing articles on 15.04.2022 at about 9:30 PM.

4. Basing on the above written FIR, a case was registered being Naharlagun

P.S. Case No. 42/2022 under Section 457/380 of IPC and investigated into. During the course of investigation, the accused was identified and arrested, on interrogation he has admitted that he took the Laptop and Gas Cylinders of the petitioner No. 2. Admittedly, the petitioner No. 1/accused is a drug addict and took the articles of petitioner No. 2 to fulfill his needs. However, the stolen articles were subsequently recovered and returned to the petitioner No.2. On completion of investigation, the Investigating Officer found prima facie case against the accused and submitted the case into charge-sheet against the accused/petitioner No. 1 for offence under Section 457/380 of IPC.

5. However, in the meantime, while the case was still under investigation, the petitioner No. 1/ alleged accused and the petitioner No.2/informant had entered into a mutual settlement-cum-agreement on 03.05.2023. The said mutual settlement was done in view of the fact that all the stolen properties were recovered and handed over to the informant/petitioner No. 2. This was done as the offence was committed by the person who is struggling to recover from his drug addiction and with a view to give him an opportunity to reform himself and also to maintain peace and tranquility between the parties in the localities.

6. It is submitted that the mutual settlement of the case between the parties was informed to the IO of the case. However, after completion of investigation, the Investigating Officer of the case has already submitted the case into charge-sheet before the learned Court of the Chief Judicial Magistrate, Yupia and the trial of the case has also begun by framing charge against the

accused/petitioner No. 1.

7. Mr. N. Rama, learned counsel for the petitioner submits that after receipt of his all-stolen properties back and having forgiven the accused/petitioner No. 1, the petitioner No. 2/informant expressed that since he does not have any further grievances against the accused /petitioner No. 1, he did not want to pursue the matter before the Court any longer, therefore, he had executed a deed of mutual settlement with the petitioner No. 1. Hence, he made a prayer before the Trial court for withdrawal of the case. However, as the offences charge-sheeted against the accused/petitioner No. 1 involves with non-compoundable case the same being not within the power of the trial Court, the said prayer was not considered. Hence, this petition.

8. Mr. Rama, learned counsel for the petitioner further submits that the offence has been committed against the individual person affecting only the private property of Petitioner No.2. The said properties have been duly returned to the owner Respondent No-2 in good condition. Hence, the petitioner No.2 has forgiven the petitioner No.1; and as the petitioner did not have any further grievance against the petitioner No.1, the parties had executed a deed of mutual settlement. Thus, the offence alleged against the accused only affects the informant and the same did not affects the society at large. Therefore, the petitioner No. 2 did not want to pursue the matter considering that the petitioner No.1 is a drug addict and with a view to give him an opportunity to reform himself and also to maintain peace and tranquility in the localities. Under

such circumstances, the further proceeding of the case against the accused/petitioner No. 1 would be futile exercise and it will amount to an abuse of the process of law. Hence, prays for setting aside and quashing of the G.R. Case No. 306/2022 arising out of Naharlagun P.S. Case No. 42/2022.

9. Ms. T. Jini, learned Additional Public Prosecutor submits that since the FIR was lodged regarding the lost of Laptop and Gas cylinders of the petitioner No. 2 and subsequently, the same was recovered and handed over to the informant/petitioner No. 2 in good condition; and as the informant/petitioner No. 2 has already forgiven the accused/petitioner No. 1 giving him an opportunity to reform himself and that the informant having received back his properties does not have any further grievances against the accused/petitioner No. 1 and did not wants to pursue the matter, the further proceeding of the case, in such circumstances would be a futile exercise. Moreover, as the loss and recovery of the property in the instant case only affects the petitioner No.2, the said offence did not affect the society at large. Under the facts and circumstances of the case and in view of the case having mutually compromised and settled between the parties, she has no objection if the present petition is allowed in order to maintain peace and tranquility in the said locality.

11. Upon consideration of the records and hearing the parties, it appears that the matter relates to the lost of Laptop and Gas cylinders of the informant/petitioner No.2 for which he lodged an FIR. Accordingly, a case was registered and investigated into. During the course of investigation, the said lost

properties were recovered from the possession of the accused/petitioner No.2 the same was dully handed over and returned to the petitioner No. 2. The learned counsel for the parties submits that the above case involved with the lost and subsequent recovery of the private properties of the petitioner No.2 affects only the petitioner No.1 and petitioner No.2 and the same does not affect the society at large; and since the parties have mutually settled the matter, the further proceedings of the case for trial would be a futile exercise. It is the further case of the petitioners that the aggrieved party has already forgiven the alleged accused /petitioner No.1 and he does not want to pursue the matter any further. The learned Additional Public Prosecutor has supported the above submission of the learned counsel for the petitioners. Under the circumstances, it appears that the continuation of the criminal case before the trial court would only result in hardship to the parties and waste of the precious judicial time and also loss of exchequer to the State. In view of the above, I find sufficient force in the submission of the learned counsel for the parties.

12. Further, in such circumstances, it is now well settled that even though the offence alleged against the accused is not compoundable offence, the higher Court viz., the High Court or the Apex Court in exercise of their inherent/special power may intersect the pending criminal proceedings. In this regard, this Court may gainfully place a reliance on the principle of law enunciated by the Hon'ble Apex Court in the case of ***Ram Gopal vs. The State of Madhya Pradesh*** reported in ***2021 SCC online SC 384***. In view of the above referred decision and since, the case has amicably been settled amongst the parties, interse this Court is of the considered opinion that the pending criminal proceeding in G.R.

Case No. 306/2022 arising out of Naharlagun P.S. Case No. 42/2022 under Section 380/457 of IPC and the Charge-Sheet No. 60/2022 dated 10.05.2022 needs to be quashed.

13. Accordingly, the FIR dated 20.02.2024 registered as G.R. Case No. 306/2022 arising out of Naharlagun P.S. Case No. 42/2022 under Section 380/457 of IPC pending in the learned Court of the Chief Judicial Magistrate, Yupia against the accused/petitioner No. 1, namely; **Shri Tarak Mama** is hereby quashed and set aside. As a result, the accused, namely, **Shri Tarak Mama** be discharged.

With the above observation, this criminal petitioner stands allowed and disposed of.

LCR be returned immediately.

JUDGE

Comparing Assistant