

GAHC040017122024

2024:GAU-AP:1089



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

Case No. : Crl.Petn./214/2024

Nykum Chuna Tap and 4 Ors

Son of Mr Tap Tapum, permanent resident of Village Restarting, Tarak Lengdi Circle,
PO and PS Palin, Kra Daadi District, Arunachal Pradesh and presently residing at
Senki view Colony near Shiv Madnir, Itanagar, PO Itanagar, PS Mob-II, Itanagar,
Papum Pare District, Arunachal Pradesh.

2: Ms Jui Negia

Age:

Occupation :

Daughter of Raju Negia

presently residing at near VKV School

Chimpu

Itanagar

PO RK Mission

PS Chimpu

Papum Pare District

Arunachal Pradesh.

3: Tasar Blange

Age:

Occupation :

Son of Mr Gela Blange

permanent resident of Village Lachung Yangje

PO and PS Seppa

East Kameng District

Arunachal Pradesh and presently residing at A Sector

Naharlagun

PO and PS Naharlagun

Papum Pare District

Arunachal Pradesh.

4: Shiva Blange

Age:

Occupation :

Son of Mr Tassang Blange
permanent resident of Village Lachung Yangje
PO and PS Seppa
East Kameng District
Arunachal Pradesh and presently residing at Vivek Vihar
Near BJP Office
Itanagar
PO and PS Itanagar
Papum Pare District
Arunachal Pradesh.

5: Mangkho Blange
Age:
Occupation :
Son of Mr Kobing Blange
permanent resident of Village Lachung Yangje
PO and PS Seppa
East Kameng District
Arunachal Pradesh and presently residing at Industrial Colony
Chandra Nagar
Itanagar
PO and PS Itanagar
Papum Pare District
Arunachal Pradesh

VERSUS

The State of AP
represented by the PP of AP

Advocate for the Petitioner : Vijay Jamoh, Bakar Dulom, B Padung, Mr. A. Gamre

Advocate for the Respondent : Ms. L. Hage, learned Addl. P P of AP

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

JUDGMENT & ORDER (ORAL)

Date of hearing : 10.12.2024

Date of Judgment & Order: 10.12.2024

Heard Mr. Bharat Padung, learned counsel for the petitioners. Also heard Ms. Hage Laxmi, learned Addl. P.P., appearing on behalf of the respondent State of Arunachal Pradesh.

2. The petitioners, herein, have jointly preferred this criminal petition, praying for quashing of the First Information Report(FIR), dated 11.08.2023, registered as Niti Vihar P.S. Case No. 35/2023, under Sections 323/341/448/34 of the Indian Penal Code along with the charge sheet being charge sheet No. 36/2023, dated 20.08.2023, submitted by the I.O. in G.R. Case No. 632/2023, pending before the Court of learned Chief Judicial Magistrate, Capital Complex, Yupia.

3. The petitioner No. 1, herein, had lodged an First Information Report(FIR) against the petitioners No. 3, 4 & 5, alleging therein, that they had assaulted him in his house on 11.08.2023. It was further highlighted in the said First Information Report(FIR) that it was the petitioner No. 3 who had brought the petitioners No. 4 & 5 to attack the petitioner No. 1. The police on completion of the investigation; proceeded to lay the charge-sheet in the matter being charge sheet No. 36/2023, dated 20.08.2023, and the petitioners No. 3, 4 & 5, were arrayed as accused in the said proceeding. As per the projection made by the I.O. in the said charge

sheet; on 11.08.2023, the petitioner No. 1 along with his father had appeared before the Niti Vihar Police Station with an injury to his nose and reported that he was beaten by the petitioners No. 3, 4 & 5 on 11.08.2023, at about 5.30AM at his residence. The petitioners No. 3, 4 & 5 were arrested on 12.08.2023 and the sections against which they were so charged being bailable in nature; they were released on bail. The charge-sheet also proceeds to project that the injuries suffered by the petitioner No. 1 were simple in nature. The charge-sheet further projects that during investigation of the case; it was revealed that the petitioner No. 1 and the petitioner No. 3 were friends and on 10.08.2023, at around 21.30 hours, they had gone to the house of the petitioner No. 2 for a get together and had partied therein, till midnight. The petitioner No. 3 was drunk and they had gone for a ride towards Bank Tiniali along with petitioner No. 2. It is projected that during the ride; the petitioner No. 3 had inappropriately touched the petitioner No. 2 due to which both had an argument inside the car and a fight had also broken out between the petitioners No. 1 & 3, respectively. It is, basing on the said incident, that the petitioner No. 3 along with his cousins i.e. petitioners No. 4 & 5, had gone to the house of the petitioner No. 1 on 11.08.2023 and assaulted him, leading to lodging of the said First Information Report(FIR). Accordingly, charge-sheet being charge sheet No. 36/2023 was laid under Section 447/341/323/34 of the Indian Penal Code against the petitioners No. 3, 4 & 5. The learned trial Court on considering the matter; proceeded to frame the charge under Sections 354A(1)(i)/448/323/34 of the Indian Penal Code against the petitioner No. 3, herein, and charge under Sections 448/323/34 against the petitioners No. 4 & 5, herein.

4. The petitioners, herein, also considering the fact that the charge-

sheet was initially laid under Sections 323/341/448/34 of the Indian Penal Code, which were compoundable in nature, had decided to settle the matter before the Lok Adalat, however, the learned trial Court having also framed the charge under Section 354A(1)(i) of the Indian Penal Code which is non-compoundable in nature; the petitioners reduced in writing in the form of a deed of mutual agreement, on 07.12.2024, the resolution of the disputes so arising in between themselves.

5. It is to be noted that the petitioner No. 2 was also a party to the said deed of mutual agreement. It is in relation to the incident occasioning between the petitioners No. 2 & 3 that Section 354A(1)(i) of the Indian Penal Code, came to be so added by the learned trial Court against the petitioner No. 3.

6. Mr. Padung, learned counsel for the petitioners, has submitted that the petitioners, herein, are friends and are known to each other for a long time and the incident as occasioning on 10th of August, 2023, and 11th of August, 2023, were on account of a misunderstanding which had lead to the filing of the First Information Report(FIR) by the petitioner No. 1, herein, against the petitioners No. 3, 4 & 5.

7. It is further contended by Mr. Padung, learned counsel, that after the said incident had so occasioned, on being counselled by their family members and well-wishers; the petitioners had resolved their differences and continued to pursue their respective courses of study. It is further contended that they are in constant touch with each other.

8. Mr. Padung, learned counsel, has further contended that Section 354A(1)(i) of the Indian Penal Code, as added, being non-compoundable; the petitioners, herein, have jointly preferred the present proceeding, praying for quashing of the criminal proceeding so instituted against the petitioners No. 3, 4 & 5.

9. Ms. Laxmi, learned Addl. P.P., Arunachal Pradesh, has not objected to the prayer made on behalf of the petitioners but has submitted that the case on investigation, having ended in a charge-sheet; it is required that the trial in the matter, be taken to its logical conclusion.

10. I have considered the submissions advanced by the learned counsels appearing for the parties and also duly perused the materials made available on record.

11. At the outset, it is to be noted that the provisions of Section 528 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, is *pari materia* to the provisions of Section 482 of the Code of Criminal Procedure, 1973. The issue arising in the present proceeding is as to whether this Court has the power under Section 528 of the Bharatiya Nagarik Suraksha Sanhita(BNSS), 2023, to quash the criminal proceeding involving non compoundable offences in view of the compromise arrived at between the parties. The said issue, more particularly, with regard to matrimonial dispute/offences was considered by the Hon'ble Supreme Court in the case of ***B. S. Joshi & Ors. v. State of Haryana & Anr.***, reported in **(2003) 4 SCC 675** and the Hon'ble Apex Court had categorically held that the High court in exercise of its inherent powers can quash criminal proceedings or FIR or

complaint, and Section 320 of the Code, does not limit or affect the powers under Section 482 of the Code. Exercise of such power would depend upon the facts and circumstances of each case, but with the sole purpose to prevent abuse of the process of any Court or otherwise to secure the ends of justice. It was further held that it is well settled that these powers have no limit, of course, where there is more power; it becomes necessary to exercise utmost care and caution while exercising such powers. Having held so, the Hon'ble Apex Court observed and concluded as follows:-

"12. The special features in such matrimonial matters are evident. It becomes the duty of the Court to encourage genuine settlements of matrimonial disputes.

13. The observations made by this Court, though in a slightly different context, in G.V. Rao v. L.H.V. Prasad & Ors. [(2000) 3 SCC 693] are very apt for determining the approach required to be kept in view in matrimonial dispute by the courts, it was said that there has been an outburst of matrimonial disputes in recent times. Marriage is red ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counseled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their "cases" in different courts.

14. There is no doubt that the object of introducing Chapter XX-A containing Section 498A in the Indian Penal Code was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hyper-technical view would be counter-productive and would act against interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XXA of Indian Penal Code.

15. In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Code."

12. The decision rendered by the Hon'ble Apex Court in the case of **B. S. Joshi** (supra) came to be doubted when the Special Leave Petition in **Gian Singh V. State of Punjab** came up for hearing before a two Judges Bench of the Hon'ble Apex Court and accordingly, the matter was referred to a larger Bench. The larger Bench of the Hon'ble Supreme Court in its decision rendered in the case of **Gian Singh v. State of Punjab & anr.** reported in **(2012) 10 SCC 303**, had held that the case of **B. S. Joshi** (supra) was correctly decided by concluding as follows:-

“58. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crime doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed.

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61. The position that emerges from the above discussion can be summarized thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in

accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

13. It is a settled law that the offences which are non- compoundable cannot be compounded by a criminal Court in purported exercise of its powers conferred under Section 359 of the Bharatiya Nagarik Suraksha Sanhita(BNSS), 2023. Any such attempt by the Court would amount to alteration, addition and modification of Section 359 of the Bharatiya Nagarik Suraksha Sanhita(BNSS), 2023, which is the exclusive domain of legislature. Nevertheless, the limited jurisdiction to compound an offence within the framework of Section 359 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, is not an embargo against invoking inherent powers by the High Court vested in it under Section 528 of the Bharatiya Nagarik Suraksha Sanhita(BNSS), 2023, for quashing of proceedings or FIR or complaint in an appropriate case. This Court, keeping in view of the

particular facts and circumstances of the case and for justifiable reasons can invoke the provisions of Section 528 of the Bharatiya Nagarik Suraksha Sanhita(BNSS), 2023, in aid to prevent abuse of the process of any Court and/or to secure the ends of justice.

14. This Court, therefore, having regard to the nature of offence and the fact that the parties have amicably settled their dispute and the victim having willingly consented to the nullification of criminal proceedings, can quash such proceedings in exercise of its power under Section 528 of the Bharatiya Nagarik Suraksha Sanhita(BNSS), 2023, even if the offences are non-compoundable.

15. This Court, can indubitably evaluate the consequential effects of the offence beyond the body of an individual and thereafter, adopt a pragmatic approach, to ensure that the felony, even if it goes unpunished, does not tinker with or paralyze the very object of the administration of criminal justice system. Criminal proceedings involving non-heinous offences or where the offences are pre- dominantly of a private nature can be annulled irrespective of the stage the criminal proceedings are at.

16. Having noticed the powers available to this Court, under the provisions of Section 528 of the Bharatiya Nagarik Suraksha Sanhita(BNSS), 2023, and weighing upon the peculiar facts and circumstances involved in the present proceedings, this Court is inclined to invoke the inherent powers of this Court, under Section 528 of the BNSS, 2023 and quash the criminal proceedings existing against the petitioner no. 2 for the following reasons:-

(i). Firstly, the occurrence(s) involved in the present proceeding can be categorized as purely personal or having over-tones of criminal proceedings of private nature;

(ii). Secondly, it is seen that the petitioners, herein, are friends and have been spending time with each other frequently since long. The incident that had occasioned in the matter as projected by the petitioners, had so occasioned on account of the petitioner No. 3 being in an inebriated condition on 10.08.2023 and which had led to the incident so occasioning on 11.08.2023, which was contended to be on account of a misunderstanding between themselves. The petitioners, herein, being young children pursuing their respective courses of study, having resolved their differences and having projected to be in touch with each other, till date; this Court is of the considered view that no fruitful purpose would be served in continuing the criminal proceedings instituted against the petitioners No. 3, 4 & 5. Further, the incident involved, does not appear to exhibit mental depravity of the petitioners No. 3, 4 & 5, or, the commission of the said offence cannot be said to be of such a serious nature that quashing of the same, would override public interest; and

(iii). Lastly, the cause of administration of criminal justice system would remain so unaffected on acceptance of the amicable settlement between the parties.

17. In view of the conclusions reached hereinabove, this Court in exercise

of power under Section 528 of the Bharatiya Nagarik Suraksha Sanhita(BNSS), 2023, quash the First Information Report(FIR), dated 11.08.2023, registered as Niti Vihar P.S. Case No. 35/2023, under Sections 323/341/448/34 of the Indian Penal Code along with the proceedings pending before the Court of learned Chief Judicial Magistrate, Capital Complex, Yupia. Consequently, the charge sheet being charge sheet No. 36/2023, dated 20.08.2023, submitted by the I.O. in G.R. Case No. 632/2023, pending before the Court of the learned Chief Judicial Magistrate, Capital Complex, Yupia, also stands quashed.

18. With the above observations, this Criminal Petition stands disposed of.

JUDGE

Comparing Assistant