

GAHC010072122024



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

Case No. : Crl.Pet./392/2024

AJADUL ISLAM AND ANR
S/O SHAJAHAN ALI
R/O KAHIKUCHI
P.S. BARPETA,
DIST. BARPETA, ASSAM

2: ABDUL HALIM
S/O LATE MAMUD ALI
R/O KAHIKUCHI
P.S. BARPETA
DIST. BARPETA
ASSA

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PP, ASSAM

2:RAMELA BEGUM
W/O LOKMAN HUSSAIN
R/O BHAIRAGURI
P.S. BARPETA
DIST. BARPETA
ASSAM
PIN-78131

Advocate for the Petitioner : MR S M ABDULLAH P

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 06.05.2024

Heard Mr. S. M. Abdullah P., learned counsel for the petitioners. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State respondent No. 1 and Mr. S. Rahman, learned counsel for the respondent No. 2.

2. This is an application under Section 482 of the Code of Criminal Procedure, 1973 for setting aside and quashing the criminal proceeding in PRC Case No. 1062/2022, arising out of the Barpeta P.S. Case No. 729/2022, registered under Sections 366/376 of the Indian Penal Code, pending before the Court of learned Judicial Magistrate First Class, Barpeta, Assam.

3. It is submitted by Mr. S. M. Abdullah P., learned counsel for the petitioners, that the case has already been Charge-Sheeted against the present accused/petitioners under Sections 366/376 IPC. He further submitted that during the pendency of the present case, both the accused/petitioner No. 1 and the respondent No. 2 got married and presently they are residing as a husband and wife. At the relevant time of incident, the respondent No. 2 was a major girl and as per her own consent only, the marriage was solemnized between them. More so, the respondent No. 2 also sworn an affidavit on 11.12.2023 before the Notary Public, Barpeta, wherein she stated that the F.I.R. was lodged by her due to some misunderstanding and at the instigation of some elderly persons and accordingly, vide that affidavit, she stated that the matter has been amicably

settled between the parties and they also got married and hence, she has no objection in setting aside and quashing the entire proceeding initiated against both the accused/petitioners. The said affidavit is also annexed along with the present petition.

4. In this context, Mr. S. Rahman, learned counsel for the respondent No. 2, has submitted that in pursuant to the order dated 10.04.2024, the respondent No. 2 has also filed her affidavit, which is tagged with the case record. Accordingly, he submitted that the respondent No. 2 has no objection in setting aside and quashing of the entire criminal proceeding pending against both the accused/petitioners as during the pendency of this case, both the accused/petitioner No. 1 and the victim/ respondent No. 2 got married with each other with the consent of the victim/respondent No. 2 and at present they are living peacefully together as husband and wife and thus, she does not want to proceed with the case further.

5. In this context, Mr. D. Das, learned Additional Public Prosecutor for the State respondent No. 1, has submitted that from the record, it is seen that the victim girl was major at the time of incident, which had happened in the year 2022, and as per her Birth Certificate, she was born in the year 2002. Being a major girl, she herself consented to the marriage and as presently they are residing as husband and wife, the State has no objection in the event of allowing the petition by setting aside and quashing the entire criminal proceeding pending against both the accused/petitioners.

6. I have considered the submissions made by the learned counsels

appearing on behalf of the parties and also perused the case record and the materials available on record as well as the affidavit filed by the respondent No. 2, which is annexed along with the petition.

7. It is seen that on the strength of the F.I.R. filed by the respondent No. 2 on 17.07.2022, a case has been registered, being Barpeta P.S. Case No. 729/2022, under Sections 366/376 IPC, and accordingly, the Charge-Sheet was also filed against both the accused/petitioners showing the petitioner No. 2 as an absconder. However, it is seen that both the parties have resolved their dispute amicably and the victim/respondent No. 2 has also sworn an affidavit on 11.12.2023 before the Notary Public, Barpeta and at present both the accused/petitioner No. 1 and the victim/ respondent No. 2 are living peacefully together as husband and wife.

8. Hence, considering the amicable settlement between the parties, it is seen that even if the case is allowed to be continued, the chance of conviction is very remote and bleak in the present case and since the dispute being predominantly private in nature, particularly arisen out of love relationship, the continuance of the criminal proceedings, in the present case would be an abuse of the process of law.

9. In the case of **Kapil Gupta Vs State of NCT of Delhi** reported in **2022 (0) Supreme SC 1108**, the Hon'ble Apex Court has held as under:

"12. No doubt that the learned ASG is right in relying on various judgments of this Court which reiterate the legal position that in heinous and serious offences like murder or rape, the Court should not quash the proceedings. It will be relevant to refer to

paragraph 29.5 to 29.7 of the judgment of this Court in the case of Narender Singh versus State of Punjab, which read thus:

"29.5 While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

29.6 Offences under [Section 307](#) IPC would fall in the category of heinous and serious 1 (2014) 6 SCC 466 offences and therefore are to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of [Section 307](#) IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of [Section 307](#) IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under [Section 307](#) IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the latter case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7 While deciding whether to exercise its power under [Section 482](#) of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under [Section 482](#) of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under [Section 307](#) IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been

convicted by the trial court. Here charge is proved under [Section 307 IPC](#) and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime."

10. In the light of above and also in view of the observation made by the Hon'ble Supreme Court in the case law, referred to herein above, and further considering the fact that both the parties have amicably settled their dispute and accused/ petitioner No. 1 and the victim/ respondent No. 2 is living peacefully together as husband and wife, I am of the considered view that ends of justice would be meted out if the petition is allowed. Further, since the matter has already been settled between the parties, it is unlikely that the respondent No. 2 will depose against the accused/petitioner Nos. 1 & 2, and in that event allowing the proceeding to continue before the learned Court below, it would be an abuse of the process of law.

11. In view of above facts and circumstances, this Court is of the considered view that this is a fit case where the inherent power under Section 482 of the Code of Criminal Procedure, 1973 can be invoked to quash the criminal proceedings pending before the Court of learned Judicial Magistrate First Class, Barpeta, Assam.

12. Accordingly, the petition stands allowed. The F.I.R. dated 17.07.2022, being Barpeta P.S. Case No. 729/2022, under Sections 366/376 of the Indian Penal Code and the Charge-Sheet No. 950/2022, dated 28.09.2022, as well as the consequential criminal proceedings in PRC Case No. 1062/2022, pending before the Court of learned Judicial Magistrate First Class, Barpeta, Assam, stands set aside and quashed.

13. Criminal petition stands allowed and disposed of.

JUDGE

Comparing Assistant