

GAHC010245392022



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

Case No. : Crl.Pet./1213/2022

HEMANTA NATH AND 4 ORS
S/O LATE UMESH NATH
R/O VILL- RAJAPARA
P.S. MORNUI
DIST. GOALPARA, ASSAM

2: SRI URMILA NATH
W/O LATE UMESH NATH
R/O VILL- RAJAPARA
P.S. MORNUI
DIST. GOALPARA
ASSAM

3: SRI JUNUKA NATH @ JUNU NATH
W/O TARUN NATH
R/O VILL- RAJAPARA
P.S. MORNUI
DIST. GOALPARA
ASSAM

4: SRI TARUN NATH
S/O BHOTARU NATH
R/O VILL- RAJAPARA
P.S. MORNUI
DIST. GOALPARA
ASSAM

5: SRI NANDITA NATH
W/O SRI PRADIP NATH
R/O VILL- RAJAPARA
P.S. MORNUI
DIST. GOALPARA
ASSA

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE PP, ASSAM

2:SRI SHASHADHAR RAY
S/O LATE PARESH RAY
VILL- DOHIKATA
P.O. RAJAPARA
P.S. MORNIOI
DIST. GOALPARA
ASSAM

3:NIPAMANI RAY
D/O DOHIKATA
P.O. RAJAPARA
P.S. MORNIOI
DIST. GOALPARA
ASSAM

Advocate for the Petitioner : MR. N UDDIN

Advocate for the Respondent : PP, ASSAM

BEFORE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

20.06.2024

Heard Mr N Uddin, learned counsel for the petitioners, 1) Sri Hemanta Nath, 2) Sri Urmila Nath, 3) Sri Junuka Nath @ Junu Nath, 4) Sri Tarun Nath, and 5) Sri Nandita Nath, who have filed this application under Section 482 CrPC, with prayer for quashing of the impugned FIR, Charge Sheet and subsequent criminal proceeding vide PRC No. 258/2019, arising out of Mornoi PS Case No. 36/2015, registered under Sections 120(B)/366/328/34 of the Indian Penal Code, 1860 (IPC, for short).

2. Also heard Mr B Sharma, learned Additional Public Prosecutor for the State of

Assam and Ms S Dey, learned counsel for the respondent Nos. 2 and 3.

2. An FIR was lodged by the respondent No. 2 against all the petitioners contending that on 01.02.2015, at about 07:00 pm, the respondent No. 2's daughter, who is arrayed as respondent No. 3 in this instant case, was missing from his house. On the next morning, i.e., on 02.02.2015, while on a frantic search of his daughter, the respondent No. 2 learned that the petitioner No. 1 induced his daughter to elope with him with false promises of marriage. After keeping the victim in his house, the petitioner No. 1 sent the petitioner Nos. 2 and 3 on 18.02.2015, demanding dowry from the respondent No. 2. When the respondent No. 2 refused to oblige, the petitioner Nos. 2 and 3 left his house and promised to solemnize the marriage between petitioner No. 1 and the respondent No. 3. It is also alleged that all the petitioners administered phenyl like toxic substances to his daughter and left her on the road of Pahlampara village in an unconscious condition on 25.02.2015.

2.1. As the marriage was not solemnized, the FIR was lodged and a case was registered under Section-366-A/328/34 IPC. Investigation commenced and charge sheet was submitted against the petitioners. After submission of charge sheet, the learned CJM took cognizance and issued summons against the petitioner Nos. 1, 2, 3 and 4, under Sections 120(B)/328/34 IPC and under Section 366/328/34 IPC, against petitioner Nos. 1, 2, 3, 4 and 5. Thereafter, bailable warrant was issued against the petitioners. The charges are yet to be framed. Trial has not yet commenced. During pendency of this case, both the parties settled their disputes amicably.

3. The learned counsel for the respondent Nos. 2 and 3 have stated that the respondents have no objection if the proceeding against all the petitioners are set aside and quashed. An affidavit sworn by the respondent No. 2, and marked as Annexure-D, has been submitted along with the petition and another affidavit sworn in by the respondent No. 3 and marked as Annexure-E, has also been annexed with the petition. Through the affidavits mentioned above, it is stated by respondent Nos. 2 and 3 that they have no objection if the entire proceeding against the petitioners is set aside and quashed. Due to certain misunderstanding and misconceptions, this instant proceeding was initiated by the respondent No. 2. At present, they have amicably settled their dispute. The respondent No. 3 is married to another person and she is a mother of 3 (three) children and she is not at all willing to pursue the matter. Respondent No. 2 is also not at all willing to pursue the matter

4. The learned counsel for the petitioner has relied on the decision of Hon'ble the Supreme Court in *Gian Singh –Vs- State of Punjab & Another*; reported in (2012) 10 SCC 303. While considering the aspect of whether the High Court has power to quash the proceedings when some of the offences alleged to have been committed which are non- compoundable in nature, Hon'ble the Supreme Court has observed as follows :-

"57. The position that emerges from the above discussion can be summarised 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 Page | 5 for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre- dominantly 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.."

5. Reverting back to this case, it is held that the victim and the informant are not willing to proceed with this case. This case is also at the initial stage. Trial has not commenced and charges have not been framed. The respondent No. 3 is happily married to another person and she is a mother of three children. As she is not willing to proceed against all the petitioners, possibility of conviction appears to be remote and bleak.

Indeed further proceeding will be an abuse of the process of the Court. This appears to be a fit case to invoke the inherent jurisdiction under Section 482 CrPC.

6. I have also relied on the decision of Hon'ble the Supreme Court in ***Gian Singh's case (supra)***.

7. Considering all aspects and in view of my foregoing discussions, the entire proceeding of PRC Case No. 258/2019, arising out of Mornoi PS Case No. 36/2015, under Sections 120(B)/366/328/34 IPC, is hereby set aside and quashed.

8. In terms of the above observations, the criminal petition stands disposed of.

JUDGE

Comparing Assistant