

GAHC010260042023



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

Case No. : Crl.Pet./1227/2023

ABDUL HANNAN
S/O AYNAL HOQUE
VILL- NICHANAR CHAR,
P.O. KALAIRDIA, P.S. ALOPATI CHAR
DIST. BARPETA, ASSAM
PIN-781127

VERSUS

THE STATE OF ASSAM AND ANR
REP. B THE LEARNED PP, ASSAM

2:BUDDHESWARI KARMAKAR
W/O LT. RANJIT KARMAKAR
VILL- NO. 3 MADHAKALI GAON
P.O. KHOWANG
P.S. KHOWANG

DIST. DIBRUGARH
ASSAM
PIN-78567

Advocate for the Petitioner : MS J HAZARIKA

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 31.05.2024

Heard Mr. S. Ahmed, learned counsel for the petitioner. Also heard Mr. B. Sarma, learned Additional Public Prosecutor for the State and Ms. M. Khatun, learned counsel for the respondent No. 2.

2. The petitioner has filed an application u/s 482 Cr.P.C. praying to quash the impugned FIR in connection with Moran P.S. Case No. 26/2022 and proceeding in PRC case No. 1031/2022 u/s 279/304 A IPC, pending in the court of learned Chief Judicial Magistrate, Dibrugarh.

3. The brief fact of the case is that the informant/respondent No. 2 lodged an FIR at Moran Police station stating *inter alia* that on 25/01/2022 at about 9:30 PM, while the husband of the informant was proceeding from Moran towards his house at Madhakali village by ridding a scooty. When he reached at Khowang Grant village near Kareng Dhaba, suddenly a vehicle bearing No. AS-15-N-1399 (Maruti) coming in a rash and negligent manner knocked down the husband of the informant. As a result of which, the husband of the informant sustained multiple injuries on his person and subsequently, succumbed to his injuries on the same day during treatment in the hospital. Accordingly, a case was registered vide Moran P.S. Case No. 26/2022 u/s 279/304A IPC.

4. It was urged by learned counsel for the petitioner that with the intervention of the family members and the respectables, the matter has

been compromised between the parties and prays to quash the FIR and the proceeding of PRC Case No. 1031/2022. It is further submitted that this Court has allowed quashing of an FIR for the offence u/s 279/304 A IPC by referring the Judgment of Hon'ble Supreme Court in the case of Narendar Singh and others vs. State of Punjab and Parvatbhai Ahir vs. State of Gujarat.

5. Per contra, learned Additional Public Prosecutor submits that FIR in question or subsequent proceeding involving an offence under Section 279/304A IPC cannot be quashed on the basis of compromise.

6. Learned counsel Ms. M. Khatun representing the respondent No. 2 has submitted that the respondent No. 2, being informant of the case, has no objection in the event of quashing the FIR in Moran P.S. Case No. 26/2022.

7. I have considered the submissions of learned counsel for the parties. I have also perused the record.

8. Though the learned counsel for the petitioner and learned counsel for the respondent No. 2 contended that the matter has been settled between the parties but the respondent No. 2 is not present before the Court. The respondent No. 2 has filed an affidavit wherein she stated that on 25.01.2022 at about 9.30 p.m. while her husband was proceeding from Moran towards his house by riding a scooty through NH-37, an accident took place due to rash and negligent driving by the driver of the vehicle bearing No. AS-15-N-1399 (Maruti) as a result of which her

husband died. In the said affidavit, the respondent No. 2 also stated that after lodging of the FIR, the matter has been amicably settled with the petitioner and they have jointly approached before the Officer-in-Charge of Moran P.S. with a prayer to withdraw the said FIR. But the Officer-in-Charge of Moran P.S. was declined to withdraw the said FIR and subsequently, charge-sheet has been laid against the accused-petitioner. The respondent No. 2 also stated that she is not interested to proceed with the case and she has no objection in the event of quashing the FIR and subsequent proceeding of PRC Case No. 1031/2022 under Section 279/304A IPC pending in the court of learned CJM, Dibrugarh.

9. Similar question has arisen in the case of ***Ajay Maan vs. State of Haryana & Ors. vide CRM-M-50863-2022***, has held as under :-

"7. In Gian Singh vs. State of Punjab and another, 2012(4) RCR (Criminal) 543, Hon'ble Supreme Court has explained the legal position with regard to the power of the High Court in quashing a criminal proceedings or FIR or complaint in exercise of its inherent jurisdiction under Section 482 IPC. It was held as under:-

"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 for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominately 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."

10. In the case of **Arjun Kumar @ Arun Kumar**, reported in **(2018) 0 Supreme (P&H) 2964**, has also observed that the ultimate aim, objective and goal of a legal system is to reconcile the social conflicts inasmuch as law is required only to ensure that people do not have to fight with each other just to protect their right to property, right to life and liberty and other rights secured to them by the legal system. It was observed further that the civil disputes are the conflicts between two parties, having lesser overtones for the social order, social harmony or the society as such and so absolute freedom is given to the parties to settle their disputes by compromises, of course, coming with certain legal consequences as well. However, the criminal disputes do not necessarily restrict themselves to only two parties to the dispute in terms of their scope, consequences and effect. The criminal acts tend to cast their

effect and consequences even upon the society at large.

11. Section 304A IPC providing punishment for causing death due to rash and negligent act, cannot be considered to be dispute between the private parties. Said offence affects the society at large.

12. In the case of ***Baldev Singh Vs. State of Punjab and another***, reported in ***2016(3) Law Herald 2020***, observed that-

“it would be a dangerous proposition with a potential to provide an impetus to a proclivity on the part of the drivers to continue with their rash and negligent act buoyed by the thought that they would get away with the crime by affording sufficient compensation to the victim's legal representatives.”

13. It is further held that-

“quashing the proceedings under Section 304A IPC solely on the basis of settlement or compromise arrived at between the accused and the legal representatives is not permissible, as it militates against all canons of justice. Inclusion of the legal representatives in the definition of victim does not clothe him/them to enter into such a settlement, though the legal representative, undoubtedly has the authority to file an appeal or receive compensation.

Likewise, to draw an analogy that in cases involving the offence under Section 307 IPC which are of heinous nature, it has been

opined by the courts that the factum of a settlement or compromise between the parties can be a guiding factor, is not justified. In the case under Section 304-A the victim is obviously not present to settle the matter. To permit a legal representative or legal heir to compromise or settle the matter is indeed an invitation to a dangerous trend and cannot be permitted. To quash the proceedings under Section 304-A solely on the basis of a settlement or compromise arrived at between the accused and the legal representatives is not permissible and militates against all canons of justice. Inclusion of the legal representatives in the definition of victim does not clothe him/them to enter into such a settlement, though the legal representative, undoubtedly has the authority to file an appeal or receive compensation.

However, it is trite to mention that the power of the High Court under Section 482 Cr.P.C. can nevertheless be exercised in appropriate matters where it is felt that a prima facie case is not made out in consonance with the settled principles of law. There can indeed be no fetter on this power to act for securing the ends of justice or to prevent the abuse of process of law. However, this observation for a moment is not to be construed as taking the possibility of a conviction being bleak due to settlement, to be a relevant factor for quashing the FIR under Section 304-A IPC. Reference is thus answered in the negative as there can be no quashing of an offence registered under Section 304-A and subsequent proceedings, solely on the basis of a compromise arrived

at between the legal heirs/representatives of the victim (deceased) and the accused.”

14. In view of the legal position as discussed above, particularly the view taken in Baldev Singh's case (supra), which has been relied in Ajay Maan's case, it is apparent that no advantage can be given to the petitioner for quashing of the criminal proceeding on compromise.

15. In the case of **Kanagaraj v. State represented by the Inspector of Police**, reported in **2021(2) TAC 364**, conviction of the appellant under Section 279 & 304-A of the IPC was recorded and he had been sentenced to undergo 06 months simple imprisonment and to pay a fine of ₹1,000/-. The appeal preferred against the said conviction and sentence was dismissed. Criminal revision preferred by the appellant was dismissed by the High Court. Matter reached before Hon'ble Supreme Court, wherein dispute was raised regarding allegation of rash and negligent driving and alternative prayer was made to set aside the sentence. Hon'ble Supreme Court, without setting aside the conviction and on the consent of the private respondent, set aside the sentence only and enhanced the fine to ₹3,00,000/- payable as compensation to the son of deceased/respondent No.2.

16. It is, thus, clear that in Kanagaraj's case (supra), Hon'ble Supreme Court did not allow quashing of the petition involving offence under Section 304-A IPC on the basis of any compromise. Rather, without setting aside the conviction of the appellant recorded under Section 304-A IPC, only the sentence was modified and instead of sentencing the

appellant to imprisonment, the amount of fine was enhanced. Obviously, the said authority is of no help to advance the case of the petitioner in the present case, wherein he has prayed for quashing of the FIR on the basis of compromise.

17. In view of the aforesaid discussion and particularly the view taken in Ajay Maan's case, by making reference to Baldev Singh's case, this Court does not find any merit in the petition so as to quash the FIR based on compromise and proceeding of PRC Case No. 1031/2022 under Section 279/304 A IPC.

18. As such, criminal petition is dismissed and disposed of accordingly.

JUDGE

Comparing Assistant