

GAHC020000312024



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

Case No. : Crl. Pet./3/2024

ASI. TULSI DASS (ACCUSED) AND ANR
7 IR BATTALION/ 12 KAPURTHALA
S/O HAZARA SINGH
R/O CHHAKRI VILLAGE
DISTRICT- GURDASPUR

VERSUS

THE STATE OF NAGALAND
NAGALAND KOHIMA

2:C/T DAVINDER SINGH (COMPLAINANT)
REGT. NO. 472
S/O PRAYA LAL
ADD- VPO DHOOT KALAN
PO/PS- HARYANA
DIST- HOSHIARPUR
PUNJA

Advocate for the Petitioner : HISINLO HIMB

Advocate for the Respondent : P.P, NAGALAND

**BEFORE
HON'BLE MR. JUSTICE BUDI HABUNG**

ORDER

Date : 22-07-2024

Heard Mr. Hisinlo, learned counsel for the petitioner and also heard Mr. V. Zhimomi, learned P.P. for the State of Nagaland.

2. This is a joint petition filed by the petitioner No.1 and petitioner No.2 under section 482 of the Cr. PC, 1973 praying for quashing of the G.R. No.21/2023 arising out of Mon P.S Case No. 14/2023 under section 380/457 of the IPC. The petitioner No.1 is the accused and the petitioner no.2 is the informant in the above case.

3. The case of the petitioner is that on 06.03.2023, the petitioner No.2 filed a written FIR before the S.P. Mon Nagaland inter alia alleging therein that while he was posted in Mon district for election duty and was staying in Don Bosco Higher Secondary School, on 02.03.2023 on checking his bag, he found that his INSAS Rifle Magazine was missing and there upon he checked the CCTV footage and found that the petitioner No.1 was taking out the Rifle Magazine from his bag. Therefore, he lodged an FIR for taking necessary action.

4. Basing on the said written FIR, the police has registered the above Mon P.S. Case No.14/2023 under section 380/457 IPC and investigated into and the petitioner No.1 was arrested. After completion of investigation, the IO has submitted

the case into charge sheet against the accused/petitioner No.1 for offence u/s 380/457 IPC.

5. The learned counsel for the petitioner submits that the petitioner No.1 has admitted that he had taken the rifle Magazine from the petitioner No.2. However, he had no intention to steal the rifle Magazines as alleged. It is stated that, the petitioner No.2 and one of his friends took 2 bottles of liquor from him with a promise to pay the price of liquor in money. But they did not pay him any money. Therefore, the petitioner No.1 took 20 lives round of Rifle Magazine from Petitioner No.2 with a view to return him on payment. He had no any intention to steal the Rifle magazine from the petitioner No.2; but due to serious misunderstanding, the petitioner No.2 had lodge an FIR against him without even asking him for the reason.

6. The learned counsel for the petitioner further submits that however, during the pendency of the investigation, the parties have amicably settled the matter and also executed a compromise deed on 2.6.2023 in the presence of their competent authority Like D.S.P/Adjutant of 7th Indian Reserve Battalion, Kapurthala and Commandant, of 7th Indian Reserve Battalion, Kapurthala. The settlement deed amongst other contains that in view of the recovery and the return of the Rifle Magazine by the petitioner No.1 to the petitioner No.2, the petitioner No.2 does not have any further grievance against the petitioner No.1 and expressed his willingness to withdraw the FIR lodged by him. And as the said FIR was lodged due to serious misunderstanding-

ing between the parties, the informant/petitioner No.2 does not want to pursue the matter any longer.

7. However, in the meantime, the case has already been submitted into charge-sheet before the learned Court of CJM, Mon. And since the offence alleged against the accused is non compoundable offence, the case is beyond the power of the trial Court to compound the case, the petitioners has filed this criminal petition praying for quashing of the said FIR and the proceeding of G.R. 21/2023 pending before the Court of CJM Mon district, Nagaland.

8. The learned counsel for the petitioner further submits that the case involves allegation of stealing of certain article by the petitioner No.1 from the petitioner No.2 due to misunderstanding between the parties; however, as the stolen article has already been handed over back to the informant/petitioner No.2 by the petitioner No.1, the above dispute is between two individuals and it does not affect the society at large. Moreover, the petitioner No.2 (informant) since, he does not have any further grievance against the petitioner No.1, he does not want to pursue the matter any further. Under the circumstances, the proceeding of the case against the petitioner No.1 before the learned Court of C.J.M, Mon would cause unnecessary harassment to the parties. Hence, prays for setting aside of the said proceeding.

9. Mr. V. Zhimomi, learned P.P. while producing the trial Court record has fairly submitted that the record also reveals that the informant/petitioner No.2 and the accused/petitioner No.1 have already settled the matter amicably and same

has been informed to the I.O of the case as well as the learned Trial Court which could be seen on record of the case. Under the circumstances, the learned PP submits that the trial proceeding before the Court would be a futile exercise. Therefore, he has no objection if the prayer made by the petitioners is considered and allowed.

10. I have heard both the learned counsel for the parties. I have also perused the record produced before this Court.

11. Upon hearing the parties and on perusal of the record, it appears that due to some misunderstanding between the informant and the accused with regards to the nonpayment of the price of liquor bottle taken by the petitioner No2 and subsequent taking of rifle Magazine by the accused petitioner No1, the informant/petitioner No.2 had lodged the written FIR against the petitioner No.1 for stealing of the Rifle Magazine. However, record reveals that the accused/petitioner No.1, had taken the Rifle Magazine from the bag of the informant/petitioner No.2 with a view to extract the cost of liquor bottles from the petitioner No.2 and he had no intention to steal the same as apparently could be seen from the records.

12. Further, the above dispute appears to be in between the two individuals and did not affect the society at large. And since the parties had amicably settled the matter in present of the Army Officers to the rank of Adjutant and Commandant, moreover, the informant/petitioner No.2 himself did not want to pursue the any further against the accused/petitioner No.1; under the circumstances, it appears that the continuation of Criminal

case before the Trial court would in hardship to the parties and waste of the precious judicial time and also loss of exchequer to the state and thus it would result only a futile effort. In view of the above, I find sufficient force in the submission of the learned counsel for the accused petitioner No.1 supported by the learned PP.

13. 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 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. 21/23 arising out of Mon P.S Case No. 14/2023 under Section 380/457 of IPC needs to be quashed.

14. Accordingly, G.R. 21/23 arising out of Mon P.S Case No. 14/2023 under Section 380/457 of IPC pending in the learned Court of the Chief Judicial Magistrate, Mon District, Nagaland against the accused/petitioner No. 1, namely; ASI Tulsi Dass, is hereby quashed and set aside. As a result, the accused, namely, ASI Tulsi Dass, is discharged.

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

LCR be returned immediately.

**Sd/-
JUDGE**

Comparing Assistant