

GAHC020000452024



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

Case No. : Crl. Pet./4/2024

DR. ALEMLA AIER AND ANR
LATE YASHITSUNGBA AO
R/O HOUSE NO. 25A, KHER MAHAL, DIMAPUR, NAGALAND-797112
2: SHRI VIPIN KUMAR
S/O CHARAN SINGH
R/O HOUSE NO. 7-245
1ST FLOOR
NIRANKARI COLONY
NORTH WEST-DELHI
DR. MUKHERJEE NAGAR
DELHI-11000

VERSUS

THE STATE OF NAGALAND
NAGALAND KOHIMA

Advocate for the Petitioner : G ALAM

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR JUSTICE MRIDUL KUMAR KALITA**

ORDER

Date : 11-03-2024

1. Heard Mr. G. Alam, learned counsel for the petitioner. Also heard Mr. Kevi Angami, learned Public Prosecutor for the State of Nagaland.

2. This application under Section 482 of the Code of Criminal Procedure, 1973, has been jointly filed by the petitioners, namely Dr. Alemla Aier and Shri. Vipin Kumar, praying for quashing of the FIR dated 14.03.2022, on the basis of which West Police Station case no. 50/2022 corresponding to GR. Case no. 278/2022 under section 417/420 of the IPC was registered.

3. The case of the petitioners is that the petitioner no. 1 is the proprietor of M/s Eden Medical Centre and M/s Lemka Pharma with its office at Kashiram Road, near Sub-Jail, Dimapur and the petitioner no. 2 is the proprietor of Shanky Finance with its office at 1116, 11th floor, D Mall, NSP Pitampura, Delhi 110034. On 14.03.2022, the petitioner no. 1 had lodged an FIR before the Officer-in-Charge of East Police Station, Dimapur, Nagaland, inter-alia alleging that a financial consultancy agreement was entered into between the petitioner no. 1's firm as well as the firm of the petitioner no. 2, M/s Shanky Finance, and, as per the said agreement dated 25.08.2018, the petitioner no. 2's firm had to provide consultancy services for procuring financial assistance of Rupees 50 crores from financial institutions/ banks/NBFC/Others to

the petitioner no. 1's firm. It is further stated in the FIR that as per the terms of the agreement the firm belonging to petitioner no. 1, i.e., M/s Eden Medical Centre had transferred to the firm of the petitioner no. 2 namely Shanky Finance an amount of Rs. 1,50,000,00/-(Rupees one crore fifty lakhs) as advance payment for loan insurance charges under the agreement, and, it was also stipulated that if the petitioner no. 2's firm, namely Shanky Finance does not deliver the loan amount within 15 days, the said advance amount was to be refunded back to the petitioner no. 1. It is further alleged in the said FIR that the Shanky Finance, the firm belonging to the petitioner no. 2 was not able to fulfill its part of the commitment and accordingly, it was liable to refund back the agreed amount. Towards the refund of the said amount, the M/s Shanky finance had issued four cheques to the petitioner no. 1, however, all the said cheques were dishonored by the bank due to insufficiency of funds. It is further alleged in the FIR that the petitioner no. 2's firm has defrauded the petitioner no. 1 and have committed the breach of agreement which was entered into between the petitioner no. 1 and petitioner no. 2. On receipt of the said FIR, a GD entry was made bearing GD no. 5/2022 in the Police Station and, thereafter, West Dimapur PS case no. 50/2022 corresponding to GR. Case no. 278/2022 under section 417/420 of Indian Penal Code was registered.

4. Mr. G. Alam, learned counsel for the petitioner has submitted that the filing of the FIR by the petitioner no. 1 was due to misunderstanding which cropped up between the petitioners and now the dispute between the parties have been amicably resolved and to that effect they have also executed a settlement

deed/memorandum of understanding on 22.11.2023. The petitioners have annexed the said deed of settlement as Annexure-VI to this criminal petition. And, it is submitted by the learned counsel for the petitioner that in pursuance to the said settlement deed the entire outstanding due has been paid by the petitioner no. 2 to the petitioner no. 1. It is further submitted by the learned counsel for the petitioners that there was a stipulation in the memorandum of understanding at clause (9) whereby it was agreed between the petitioners that after the settlement of the dispute between them the first party, i.e., petitioner no. 1 shall take necessary steps by approaching the appropriate court for quashing of the FIR. It is contended by the learned counsel for the petitioners that in pursuant to the deed of settlement entered into between both the petitioners, the petitioners have approached this Court by filing this joint petition praying for quashing of the said FIR. It is further submitted by the learned counsel for the petitioners that the offence under section 417 of the Indian Penal Code is a compoundable offence, whereas, the offence under section 420 of the Indian Penal Code is compoundable with the leave of the court. It is also submitted that the dispute which has already been settled between the parties was predominantly of civil nature and as the first informant, i.e., petitioner no. 1 and the accused, i.e., petitioner no. 2 have settled all the dispute between them amicably, it would be futile to allow the criminal proceeding to proceed any further.

5. In support of his submissions, the learned counsel for the petitioners has cited the following rulings of the Apex Court as well as of this Court:

- (i) ***“Gian Singh Vs State of Punjab and Another”***

reported in **(2012) 10SCC 303**,

(ii) “**State of Madhya Pradesh Vs. Laxmi Narayan and Ors**” reported in **(2019) 5 SCC 688**,

(iii) “**Hussain Ahmed Khan versus State of Nagaland and 2 Ors (order dated 01.02.2024) in Criminal petition No. 38/2023.**”

6. In “**Gian Singh Vs State of Punjab and Anr**” (supra) the Supreme Court of India has observed as follows:

“61. 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 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.”

7. The learned counsel for the petitioner has submitted that in view of the compromise reached between the parties, the continuation of criminal proceeding will be an exercise in futility and, the justice in this case demands that the dispute between the parties is put to an end and peace is restored and, therefore, it submitted that this is a fit case where the FIR lodged by the petitioner no. 1 may be quashed.

8. On the other hand, the learned Public Prosecutor, Nagaland Mr. Kevi Angami, has submitted that though he has instructions from the Investigating Officer of the West PS case no. 50/2022 to the effect

that the investigation of the said case is under progress, however, he has also submitted that he is in receipt of a copy of the memorandum of understanding between the first informant and the accused.

9. I have considered the submissions made by the learned counsel for both the sides and have perused the materials available on record.

10. On perusal of the judgment of the Apex Court of India in the case of "***Gian Singh Versus State of Punjab and Anr***" (supra) it appears that it has been observed by the Apex Court that where a dispute between the parties are overwhelmingly and predominantly civil in nature arising out of civil, mercantile, financial, commercial, partnership like transaction and the disputes have been amicably settled between the parties, the High Court may be well within the framework of its inherent power to quash the criminal proceeding or criminal complaint or FIR, if it is satisfied that on the face of such settlement there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceeding the justice shall be casualty at the ends of justice would be defeated. In the instant case also as the first informant, i.e., petitioner no. 1 has entered into an amicable settlement and, as submitted by the learned counsel for the petitioners that all the outstanding dues against the advance payment made by the petitioner no.1 to the petitioner no. 2 have been settled, hence, it would be futile to proceed with the criminal proceeding as even if a charge-sheet is laid after the investigation it may not lead to the conviction of the petitioner no. 2 and under the facts and circumstances of this case, quashing of the FIR in this case would served the ends of justice.

11. In view of the above reasonings, this court is of the considered opinion that the FIR filed by the petitioner no. 1 on the basis of which West Police Station case no. 50/2022 corresponding to GR. Case no. 278/2022 was registered is liable to be quashed and accordingly the same is hereby quashed and set aside.

12. This criminal petition is accordingly allowed.

Sd/-
JUDGE

Comparing Assistant