

GAHC020005552023



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

Case No. : CRL.REVN/5/2023

SHRI LIYALO APON AND ANR.
R/O PEREZIE COLONY,
KOHIMA, BELOW POLYTECHNIC
2: SHRI JOHN KATH
PRESIDENT OF KANDI PUBLIC UNION KANDINU
TSEMINYU R/O LOWER CHANDMARI COLONY
KOHIMA NAGALAND
PIN 797001

VERSUS

THE STATE OF NAGALAND AND 2 ORS.
NAGALAND
2:SHRI JOEL NAGA
S/O NILLO RENGMA
PERMANENT R/O KANDINYU VILLAGE TSEMINYU DISTRICT
NAGALAND PRESENTLY RESIDING IN HOUSE NUMBER 202
FELLOWSHIP COLONY DIMAPUR 797112 NAGALAND
3:SHRI GWALOZU KATH
S/O N. KETHANG KATH
R/O TSEMINYU NEW TOWN TSEMINYU DISTRICT 797109
NAGALAND

Advocate for the Petitioner : C. T. JAMIR, SR. ADV

Advocate for the Respondent : P.P, NAGALAND

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

ORDER

Date : 08-02-2024

1. Heard Mr. I. Imchen, learned counsel for the petitioners. I have also heard Mr. K. Angami, learned PP for the respondent no. 1 and Ms. Neiteo Koza, learned counsel for the respondent nos. 2 and 3.
2. This criminal petition under section 482 of Cr.PC, 1973 has been filed by two petitioners praying for quashing of the Criminal Complaint case no. 04/2023 and GR case no. 80/2023 and the impugned order dated 28.09.2023 passed by the learned JMFC, Kohima in I.A.No./173/2023. Initially, the criminal petition was filed by two petitioners namely; Liyalo Apon and John Kath who are accused(s) in CR Case No. 04/2023 and GR case no. 80/2032 arisen out of the said CR case No. 04/2023. However in compliance of the order dated 12.12.2023, the above two petitioners and the private respondent nos. 2 and 3, i.e., Shri. Joel Naga and Shri. Gwalozu Kath filed a joint affidavit stating therein that since the settlement has been arrived at between the parties, the complainants/respondents nos. 2 and 3 have no intention to pursue the Criminal Complaint case no. 04/2023 filed before the Court of JMFC, Kohima, Nagaland and GR case no. 80/2023 arisen out of CR No. 04/2023.
3. The gist of the C.R.No. 04/2023 as recorded by the learned JMFC, Kohima is stated below:

"that the petitioner no. 1 was awarded public works by the

Government of Nagaland, Department of Planning and Co-ordination, Nagaland vide Work Order No/. EE/PLN/Article/WO/SCA to TSS/2019-20 dated Kohima the 16th Oct, 2019 issued by the Executive Engineer under the subject "Work Order for Construction of Girls hostel building at Kandinu, Tseminyu." No amount for the said project was mentioned in the work order but payment was made to petitioner no. 1 vide cheque no. 480138 on 28.10.2019 duly signed by the DDO for Development Commissioner & Planning Department and the Addl. Development Commissioner, Planning and Co-ordination Department amounting to Rs. 50,000/- (Rupees Fifty Lakhs). The Actual Payment receipt shows that the amount of Rs. 50,000/- was sanctioned to petitioner no. 1 for the construction of Girls Hostel Building at Kandinu, Tseminyu. Thereafter, another cheque no. 479771 dated 22.07.2020 was issued to the petitioner no. 1 amounting to Rs. 30,00,000/- (Rupees Thirty Lakhs) and the actual payment receipt shows that the amount was sanctioned from Planning Department for Tribal Girls Hostel at Kandinu to the petitioner no. 1. That the petitioner no. 1 misappropriated the funds meant for the project for construction of Girls Hostel at Kandinu, Tseminyu and to cover up his misdeeds, connived with petitioner no. 2 and invested some of the money meant for the said project in the construction of Kandinu Public Union Officer Building/KPU located at K. Station Village, Tseminyu. That in the year 2019, funds amounting to Rs. 10,91,000.- were raised for the construction of Kandi Public Union(KPU) Office and the same was handed over to petitioner no. 2 as he is the President of KPU and the construction of KPU started sometime in the year 2020. However, the complainants along with the villagers became suspicious of the activities regarding the construction of KPU building as the building seemed to have exceeded beyond the budget raised for the construction of KPU building. When inquired further, they learned that the brother of petitioner no. 1 reached an understanding and connived with petitioner no. 2 in misappropriating the funds for the Girls Hostel and diverted some of the funds in the construction of KPY building. That the progress/completion report signed by the Executive Engineer shows that the project in question is 100% complete, however, in reality it does not exist. That as per the detailed estimate for construction of Girls Hostel at Kandi Village, Tseminyu, the project is estimated to be Rs. 113.45 with 2 storey building (G+1) with 4 rooms and 2 toilets in the ground floor and 1 conference hall in the 1st floor. The building was designed to replicate the Girls Hostel at Kandinu Project mentioned in the DPR with an intention to deceive the public and public authorities. That the land where the KPU building stands belongs to Lt. Khanchu Kath although for any public work, land had to be acquired first as per the existing land acquisition and requisition laws and after complying with due process. And prayed trial of the accused persons under S. 378/379/409/415/420/34/120 IPC. "

4. The learned JMFC by an order dated 24.05.2023 has forwarded the said complaint to the Officer-in-Charge, Tseminyu,

with a direction to register an FIR against the accused persons for misappropriation of public funds. Accordingly, a case was registered against the petitioners/accused(s) being PS case no. 50/2023 under section 378/379/409/415/420/120B/34 IPC and investigated into.

5. However, while the case was still under investigation, with the intervention of the Kandi Village Chairman Forum comprising of 6 villages, the matter was amicably resolved between the complainant/respondent and accused(s)/petitioners. And vide settlement deed dated 19.08.2023, the accused(s)/petitioners were made to fulfill the following three conditions, they are:

- (i) That the accused shall reimburse the amount which was raised by the community for the construction of the KPU Hall;
- (ii) That the accused shall make the building functional w.e.f. 19.08.2023, and
- (iii) That the villages leaders have also agreed to make the existing KPU building as a full fledged Tribal Girls Hostel constructed under the Ministry of Tribal Affairs, Government of India.

6. The learned counsel for the petitioners submits that the petitioners/accused(s) had fulfilled the above conditions. The amount raised by the community was already reimbursed and the constructed building which was not yet made functional has also been made functional w.e.f. 19.08.2023, as a result, the compromise deed was executed between the parties on 08.09.2023. As per the compromise deed, the matter was amicably settled between the parties and as such the complainants/respondents are

no longer aggrieved as alleged in the complaint case no. 04/2023 and in the FIR No. 0016/2023 dated 29.05.2023. Consequent upon the execution of the compromise deeds, the respondent nos. 2 and 3/ complainants has submitted a withdrawal petition before the Officer-in-Charge, Tseminyu PS and also filed the I.A. No. 173/2023 before the learned Court of JMFC, Kohima, Nagaland stating therein that since they have no more grievance against the accused(s)/petitioners, the investigation of the case may not be proceeded further and the proceeding of the criminal complaint case no. 04/2023 may also be allowed to be withdrawn.

7. However, by an impugned order dated 28.09.2023, the said withdrawal petition being I.A./173/2023 was rejected by the learned Court of JMFC, Kohima on the ground that the offence alleged against the accused(s)/petitioners are non-compoundable; and hence, this petition.

8. The learned counsel for the petitioner submits that since the case has already been settled between the parties by executing a compromise deed and the complainants/ respondents has no more grievance against the petitioners/accused(s), this Court by exercising its power under section 482 of Code of Criminal Procedure, 1973 may quash the C.R. no. 04/2023 and GR No. 80/2023 and also the impugned order dated 28.09.2023 passed in I.A./173/2023.

9. By an order dated 01.02.2024, this Court had directed Mr. K. Angami, learned Public Prosecutor to produce the present status report of the Tseminyu PS case no. 0016/2023 under section 378/379/409/415/420/34/120B IPC. And in compliance with the said

direction, Mr. K. Angami, learned PP submits that the investigation of the case has been completed and on being found prima facie case established against both the accused(s)/petitioners, the I.O has already submitted the case into charge sheet against them under section 420/34 IPC. However, as no case was made out against the accused(s)/petitioners for offence under section 378/379/409/415/120B IPC; the above registered sections against them were omitted.

10. The learned counsel for the petitioner submits that since the case has already been charge sheeted against the accused(s) only under section 420/34 IPC and as the said section 420 IPC is compoundable offence with the permission of the Court, this Court may quash the proceeding against the accused(s)/petitioners in complaint case no. 04/2023 and GR No. 80/2023.

11. Ms. Neiteo Koza, learned counsel appearing for the respondent nos. 2 and 3 submits that since the petitioners/accused(s) has already fulfilled the grievance of the complainants/villages; they have already reimbursed the amounts raised by the community for construction of the KPU Hall and made the building functional w.e.f. 19.08.2023 and also the existing KPU building has been made full fledged Tribal Girls Hostel which was constructed under the Ministry of Tribal Affairs, Government of India; the respondents/complainants has no more grievance against the petitioners/accused(s). She also submits that on the direction of this Hon'ble Court, the respondent nos. 2 and 3 has also signed the affidavit along with the petitioner inter-alia contending therein that in view of the amicable settlement of the case by executing compromise deed, the respondent has decided not to press the case against the petitioners/accused(s) as

the respondents/complainants are no longer aggrieved with the issue raised in complaint case no. 04/2023 and the FIR No. 0016/23 registered before the Tseminyu PS. Hence the respondents/complainants has no objection, if this petition is allowed and the criminal complaint No. 04/2023 and GR/80/2023 and the impugned order dated 28.09.2023 passed in I.A./173/2023 arising out of CR case No. 04/2023 and GR case no. 80/2023 is quashed and set aside.

12. In the aforesaid backdrop, the question before this Court is to decide whether this is a fit case where this Court, in exercise of its inherent power under section 482 of Cr.PC can quash the criminal proceeding in the Trial Court arising out of CR case no. 04/2023 and GR case no. 80/2023 under section 420/34 IPC.

13. It is a settled law that the High Court in exercise of its power under section 482 of Cr.PC can quash a criminal proceeding or a criminal complaint under section 482 Cr.PC, but while doing so, the Court is to follow certain principles as enunciated by the Hon'ble Apex Court in **Gian Singh -Vs- State of Punjab and Anr.**, reported in **(2012) 10 SCC 303**, and in the **State of Madhya Pradesh-Vs-Laxmi Narayan and Others** reported in **(2019) 5 SCC 688**.

14. In **Laxmi Narayan (Supra)**, the Hon'ble Apex Court at paragraph 13 held as under:

"13. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

i) that the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly

those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

ii) such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

iii) similarly, such power is not to be exercised for the offences under the special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

iv) offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. 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 framing 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. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

v) while exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious

impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc”.

15. The ground pleaded by the petitioners and the respondents who have jointly filed the affidavit is that, in the instant case, there is no case warranting trial of the accused for offence of cheating under section 420/34 IPC. The case arose as the member of KPU in good faith and for the welfare of the larger public interest had decided to allocate the specified KPU Office building which was still under construction for Girls hostel, as the amount allocated was inadequate to complete the said project along with the acquisition of new plot of land, and the construction of the Girls hostel was completed in the year 2021, and on inspection and being satisfied with the said work, the concerned authority had issued the work completion certificate and on this, the respondents had filed the criminal complaint No. 04/2023 against the petitioners out of misconception that the present petitioners has misappropriated the funds meant for the construction of the Girls hostel and further contending that the said hostel was never constructed. The misconception had occurred because, although the project of the Girls hostel was completed as specified in the detailed project report (DPR), no student had turned up to get themselves admitted in the hostel, therefore, the girls hostel was temporarily utilized as class rooms for the Government High School Composite School, Kandinu Village which has been utilized for community purposes as and when required by the general public. And, a girl hostel being non-functional, at that point of time, the respondent nos. 2 and 3

wrongly presumed that the hostel was not constructed at all; and the fund so allocated for the said hostel has been misappropriated by the petitioners contractor, and with such wrong presumption, they had filed the criminal complaint case no. 04/2023 against the petitioners. However, the said misconception has been categorically clarified and the matter is now being settled and the respondents/complainants has no more grievance against the petitioners/ accused(s) persons.

16. Section 420 of IPC reads as under:

"420. Cheating and dishonestly inducing delivery of property.

—
Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

17. To constitute offence of cheating under section 420 IPC following are required to be made out:(i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii) (a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii) (b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

18. In the instant case, perusal of the complaint and the copy of

the chargesheet submitted by the I.O. of the case, prima facie it appears that no case has been made out against the accused(s)/petitioners warranting their trial under section 420 IPC. Further the offences under section 420 IPC is compoundable with permission of the Court. The instant case has arisen out of CR case no. 04/2023 and corresponding with the GR case no. 80/2023 which arose out of misconception by the respondents/complainants and further both the parties have subsequently settled the case. And, as the parties have already settled the matter which arose out of misconception of the complainant/respondent, I am of the view that even if the proceeding is allowed to continue, ultimately, the case will end in acquittal. Moreover, the case is not likely to cause serious impact on the society at large in as much as the criminal complaint was lodged out of misconception on the part of the respondents/complainants, hence, under such circumstances, the criminal case should not be allowed to proceed to create hurdle in the peaceful living of the citizen.

19. In view of the above and for the reason stated above, this criminal revision petition is allowed. Accordingly, the proceeding in connection with CR case no. 04/2023 and GR case no 80/2023 corresponding with Tseminyu PS case no. 16/2023 and the impugned order dated 28.09.2023 passed in I.A.No. 173/23 by the learned Court of JMFC, Kohima, Nagaland is quashed and set aside.

20. With the above observation, this petition stands disposed of.

Sd/-
JUDGE

Comparing Assistant