

GAHC020007472023



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

Case No. : Crl. Pet./38/2023

HUSSAIN AHMED KHAN
S/O SAHABUDDIN KHAN
R/O VILLAGE BANUGRAM
PO AND PS NILAM BAZAR
KARIMGANJ ASSAM-788722

VERSUS

THE STATE OF NAGALAND AND 2 ORS
KOHIMA NAGALAND
2:MD RAHUL ALAM S/O MD NOORUDDIN
R/O H.NO. 195 MP ROAD NEAR DURGA MANDIR
DIMAPUR NAGALAND
3:MR NCHUMBOMO NGULLIE
S/O LATE NWUNGO NGULLIE
R/O H/NO. 121 CHUMUKEDIMA TOWN WARD 5
CHUMUKEDIMA NAGALAND

Advocate for the Petitioner : G ALAM

Advocate for the Respondent : P.P, NAGALAND

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

ORDER

Date : 01-02-2024

1. Heard Mr. G. Alam, learned counsel for the petitioner. I have also heard Mr. K. Angami, learned PP for the respondent no. 1 and

Mr. Rokovi, learned counsel for respondent nos. 2 and 3.

2. The petitioner by filing this petition under section 482 of the Criminal Procedure Code (hereinafter Cr.P.C for short) is praying for quashing of the FIR dated 09.11.2023 which has been registered as Sub-Urban PS case no. 64/2023 under section 420/409/468/120B IPC and the consequential criminal proceedings and GR case no. 731/2023 pending before the learned Court of Chief Judicial Magistrate, Dimapur, Nagaland.

3. The case of the petitioner is that in the year 2019, the respondent nos. 2 and 3 had approached the petitioner for purchasing a plot of land at Guwahati. The petitioner accordingly arranged 3 katha of land to fulfill their needs and had agreed to sell half of the said land to both the respondent No.2 and 3 to which both the respondents had purchased the same at 1 katha 10 Lessa (4.01) area each situated at Revenue village Hatigaon under Mouza Beltola, District Kamrup (Metropolitan), Assam along with the A-Type house standing thereon. However, the respondent No.2 then wanted to sell his share of land. And later on, the respondent no. 2 had offered a proposal to the petitioner, either to sell his part of land to any intending purchaser or the petitioner may purchase it by himself. The petitioner then accepted the proposal and in fact he tried his best to find out an intending purchaser; however, the same could not be materialized nor could not return the said money to the respondents on time; as a result, the respondents had lodged an FIR before the Officer-in-charge, Sub-Urban P.S., Dimapur, Nagaland against the petitioner which was registered as SBN PS case no. 64/2023 under section 420/409/468/120B IPC and the case is still under investigation.

4. However, during the pendency of the investigation, the petitioner and both the respondent nos. 2 and 3 had mutually settled the case by executing a compromise deed on 29.11.2023. As per the said settlement, the respondents have received back their entire amounts from the petitioner which was paid to the petitioner for the land consideration. The said deed of settlement also contend that the petitioner has no more liability towards the respondents; and therefore, the respondents have no more grievances against the petitioner in the case. And it is also agreed that the respondents will withdraw the said FIR lodged by them and they will also file an application for withdrawal of the said FIR; and accordingly, the respondents had expressed their willingness to withdraw the FIR against the petitioner.

5. However, since some of the offences registered against the accused were under non compoundable offence; the petitioner filed this petition under section 482 of Cr.PC praying for quashing of the said FIR and the consequential criminal proceedings against the petitioner.

6. The learned counsel for the petitioner submits that the present case relates to the money transaction and the allegation is regarding non re-payment of land consideration amounts by the petitioner to the respondents. And when the repayment was not made on time, the respondents had given option to the petitioner either to sell the land to other intended purchaser and to return the money. However, the land could not be sold nor could he return the money to the respondent on time. Thus, the dispute between the petitioner and the respondents involved in the present case is purely civil in nature. However, when the petitioner could not return the said money to the

respondents on time, the respondent out of frustration and only with a view to get their money back early, the respondents had lodged the present FIR before the police. It is further submitted that, while the investigation was still in the initial stage, the matter has been amicably resolved and settled between the parties out of free will and the same has been informed to the police expressing their willingness to withdraw the said FIR. Hence prays for quashing of the said FIR and consequential criminal proceedings.

7. In support of his submission, the petitioner relied on the decision of the Hon'ble Apex Court in **Anita Maria Dias and others -Vs- State of Maharashtra and another** reported in **(2018) 3 SCC 290**. The Hon'ble Supreme Court at para 7, has held as under:

"7. In a case like this, where the proceedings are still at initial and nascent stage, the High Court should have exercised its discretion in quashing the proceedings. Law in this behalf is well settled by catena of judgments of this Court including Parbatbhai Aahir &Ors. v. State of Gujarat & Anr.1 and Gian Singh v. State of Punjab & Anr.2. We may also quote the following passage from the case of Narinder Singh &Ors. v. State of Punjab & Anr.3:

"29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in 1 (2017) 9 SCC 641 2 (2012) 10 SCC 303 3 (2014) 6 SCC 466 the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the

guiding factor in such cases would be to secure:

- (i) ends of justice, or*
- (ii) to prevent abuse of the process of any court.*

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.3. Such a power is not to be exercised in those prosecutions which involve 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. Similarly, for the offences alleged to have been committed under special statute like the 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.

29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed...”

8. The learned counsel for the petitioner has also relied on the decision of the Hon'ble Supreme Court in the case of **Gian Singh Vs. State of Punjab** reported in **(2012) 10 SCC 303**, the relevant paragraphs, para 30, 34, 45, is quoted herein as under:

"30. *In G. Sagar Suri and another v. State of U.P. and others[17], the Court was concerned with the order of the High Court whereby the application under Section 482 of the Code for quashing the criminal proceedings under Sections 406 and 420 of the IPC pending in the Court of Chief Judicial Magistrate, Ghaziabad was dismissed. In paragraph 8 (pg.643) of the Report, the Court held as under:*

"8. Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

34. *In Devendra and others v. State of Uttar Pradesh and another[20], while dealing with the question whether a pure civil dispute can be subject matter of a criminal proceeding under Sections 420, 467, 468 and 469 IPC, a two-Judge Bench of this Court observed that:*

"24. ... the High Court ordinarily would exercise its jurisdiction under Section 482 of the Code if the allegations made in the First Information Report, even if given face value and taken to be correct in their entirety, do not make out any offence."

45. *In a very recent judgment decided by this Court in the month of July, 2012 in JayrajsinhDigvijaysinh Rana v. State of Gujarat and another, this Court was again concerned with the question of quashment of an FIR alleging offences punishable under Sections 467, 468, 471, 420 and 120-B IPC. The High Court refused to quash the criminal case under Section 482 of the Code. The question for consideration was that inasmuch as all those offences, except Section 420 IPC, were non-compoundable offences under Section 320 of the Code, whether it would be possible to quash the FIR by the High Court under Section 482 of the Code or by this Court under Article 136 of the Constitution of India. The Bench elaborately considered the decision of this Court in Shiji and by invoking Article 142 of the Constitution quashed the criminal proceedings. It was held as under:-*

"13. In the light of the principles mentioned above, inasmuch as Respondent No. 2 - the Complainant has filed an affidavit highlighting the stand taken by the Appellant (Accused No. 3) during the pendency of the appeal before this Court and the terms of settlement as stated in the said affidavit, by applying the same analogy and in order to do complete justice under Article 142 of the Constitution, we accept the terms of settlement insofar

as the Appellant herein (Accused No. 3) is concerned.

14. In view of the same, we quash and set aside the impugned FIR No. 45/2011 registered with Sanand Police Station, Ahmedabad for offences punishable Under Sections 467, 468, 471, 420 and 120-B of IPC insofar as the Appellant (Accused No. 3) is concerned.

15. The appeal is allowed to the extent mentioned above”

9. The respondent nos. 2 and 3 by filing an affidavit have conceded the contention and submission made by the petitioner in so far as case being civil in nature related to money transaction and non-repayment and subsequent compromise arrived between the parties and settlement of the case. The relevant portion in paragraph 3 of their affidavit is reproduced herein below:

"3. That the deponent, namely, Md. Ruhul Alam, through his known person, Sahab Uddin Ahmed, residing at Guwahati had decided to purchase a plot of land at Guwahati. In 2019 a plot of land measuring 3(three) Katha was found suitable to his need. Accordingly, Md. Ruhul Alam and the petitioner have decided to individually purchase the land measuring 01(one) Katha 10 (ten) Lessa (i.e. 4.01 Are) each by them. The consideration amount was paid from time to time for purchase of land measuring 01(one) Katha 10(ten) Lessa to the landowner during the period 2019-20. However, due to outbreak of unprecedented Covid-19 pandemic and death of the landowner, the land records in favour of each of them could not be completed. With the passage of time, due to non-compleiteion of the land records in connection to the said land, a misunderstand arose between the deponents and the petitioner. Later on, the deponents, more particularly, Md. Ruhul Alam had given a proposal to the petitioner to either sale his part of land to any intending purchaser or may purchase it by the petitioner. But, the petitioners could not materialize and could not return the money to them. Upon enquiry from the Land Revenu office at Beltola, the deponents wer improperly advised. Due to the elapse of time, the misunderstanding between them had aggravated extensively leading to lodging of F.I.R. dated 09/11/2023

registered as Sub Urban PS Case No. 64/23 under Sections 420/409/468/120(B) Indian Penal Code, 1860 against the petitioner and the said Sahab Uddin Ahmed. However, the bonafide mistakes and misunderstandings occurred between them were clarified and settled vide compromise deed dated 29.11.2023 entered into between them in the presence of the witnesses. Therefore, the statements made in the criminal petition are admitted to be correct and the deponents have agreed to withdraw the F.I.R. in Sub Urban P.S. Case No. 64/23 lodged against the petitioner and the said Sahab Uddin Ahmed, as they have agreed that the disputes between them were resolved and decided to live peacefully."

10. The learned counsel for the respondents also submits that the respondents have willingly agreed to withdraw the FIR in Sub-Urban PS case no. 64/2023 lodged against the petitioner as it was lodged due to some ill advise and misunderstanding and now since the matter has been amicably settled between the parties by executing a deed of compromise and as the respondents has no more grievances against the petitioner, and hence, prays for quashing of the FIR in Sub-Urban PS case no. 64/2023 under section 420/409/468/120 (B) of IPC and the consequential proceedings arising out of GR case no. 731/23 pending before the court of CJM, Dimapur, Nagaland.

11. Mr. K. Angami, learned Public Prosecutor submits that as per the direction of this Court on 19.01.2024, he has obtained instruction regarding the present status of Sub-Urban PS case no. 64/2023. He submits that in view of the settlement of the instant case between the parties by executing a compromise deed dated 29.11.2023, a copy of which was made available to the IO of the case along with the information of filing of quashing petition before

this Hon'ble Court, there has been no further progress in the investigation of the said case. Under the circumstances, the learned Public Prosecutor submits that the I.O of the case is also awaiting for the decision of this Court in the matter, hence, the same is left at the discretion of this Court.

12. I have considered the submission advanced by both the learned counsel for the parties and also the materials available on record including the affidavit filed by both the respondent nos. 2 and 3. I have also perused the FIR lodged by them. However, from the allegation made in the said FIR and subsequent deed of compromise executed by the parties, there is no material to take cognizance of the offence registered against the petitioner/accused for offence of cheating under section 420 IPC and criminal breach of trust by public servant, or by banks, merchant or agent under section 409 and there is no whisper of any forgery for the purpose of cheating under section 468 and 120 (B) having been committed by the petitioner in the complaint and the dispute as could be seen from the allegation made in the FIR and the relief sought for appears to be civil in nature.

13. In the case of **Gian Singh (supra)**, the Hon'ble Supreme Court further held as under:

***58.** Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crime- doer only because he*

and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed."

14. In another case titled **Ramgopal & Other V. State of MP**, reported in Criminal Appeal Nos. 1489 and 1488 of 2012 (MANU/SC/0728/2021), the Hon'ble Supreme Court has held that:

"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 had managed with the complainant to enter into a compromise.

The High Court, therefore, having regard to the nature of offence and the fact that parties have amicably settled their dispute and the victim has willingly consented to the nullification of criminal proceedings, can quash such proceedings in exercise of its inherent powers, under Section 482 CrPC, even if the offences are non-compoundable. The High Court can indubitably evaluate the consequential effects of the offence beyond the body of an individual and thereafter adopt a pragmatic approach, to ensure

that the felony, even if goes unpunished does not tinker with or paralyze the very object of the administration of criminal justice system."

15. Thus, from the above judgment of the Hon'ble Apex Court, the law is now fairly settled that this Court under Section 482 Cr.PC can quash the criminal proceeding on the ground of compromise arrived at between the parties. The law is also settled that if the dispute is private in nature and does not affect the public at large, in that case even the criminal proceedings for non compoundable offences on the basis of compromise can be quashed by this Court while exercising the power under section 482 Cr.PC. In the instant case, the offence under Sections 409/468/120(B) are non-compoundable offence, but the dispute between the parties are purely private and civil in nature which has arisen out of money transaction and subsequent misunderstanding between the parties and, while the case was still under investigation at the initial stage itself the parties have amicably settled their dispute. Under the circumstances, even if the investigation and the proceeding is allowed to continue, the case is likely to end in acquittal and therefore, the criminal case should not be allowed to proceed to create hurdle in their peaceful living.

16. In view of what has been stated above, this Court find nothing based on which further investigation of the case could be proceeded much less cognizance of the offences could be taken in the complaint lodged by the respondents.

17. As stated above, the facts and circumstances in the complaint case does not disclose prima facie that the petitioner/accused is likely to have committed the offences registered against him,

therefore, in the light of the principle of law laid by the Hon'ble Supreme Court in the cases given above, I am of the considered view that the further investigation into the FIR in Sub Urban PS Case No. 64/23 under section 420/409/468/120(B) of IPC and the consequential proceedings arising out of GR case no. 731/23 pending before the court of Chief Judicial Magistrate, Dimapur, Nagaland deserves to be quashed and set aside. Accordingly, the same is quashed and set aside.

18. With this, the Criminal Revision Petition is disposed.

Sd/-
JUDGE

Comparing Assistant