

GAHC020007482023



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

Case No. : Crl. Pet./39/2023

SHRI SURESH RAI
VILLAGE OF GALA BAHAR
DIST-BISHNUPUR MANIPUR
PRESENT ADDRESS- NIHOTO VILLAGE
DIMAPUR NAGALAND

VERSUS

THE STATE OF NAGALAND
KOHIMA NAGALAND

2)SHRI MD AJAY RUDDIN
VILLAGE OF GALA BAHAR DIST- BISHNUPUR MANIPUR PRESENT
ADDRESS- NIHOTO VILLAGE DIMAPUR NAGALAND

3) SHRI AKOUVI SAVI
S/O LATE KEDUSHU SAVI CILLAGE OF JAKHAMA
KOHIMA NAGALAND

Advocate for the Petitioner : TOSHITEMJEN PONGENER

Advocate for the Respondent : P.P, NAGALAND

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

ORDER

Date : 30-01-2024

Heard Mr. ToshitemjenPongener, learned counsel for the

applicant/petitioner and Mr. K. Angami, learned Public Prosecutor (P.P.), Nagaland.

2. This application under Section 482 of the Code of Criminal Procedure, 1973 has been jointly filed by three (3) applicants, namely; (1) Shri Suresh Rai, (2) Md. Ajay Ruddin and (3) Shri Akouvi Savi. The applicant No.1, Shri Suresh Rai and applicant No.2, Md. Ajay Ruddin are accused persons in Khuzama PS Case No. 04/2023,U/S 279/336/337 IPC read with sec. 184 MV Act, and applicant No.3, Shri Akouvi Savi is informant of the above PS Case who represents the victim, Shri Nokedu Savi (minor).

3. By filing this application, the petitioners are praying for setting aside and quashing of GR Case No. 47/2023, registered under Section 279/336/337 IPC read with sec. 184 MV Act, arising out of Khuzama PS Case No. 04/2023 under Section 279/336/337 IPC read with sec. 184 MV Act pending before the learned Court of Judicial Magistrate First Class, Kohima, Nagaland, on the ground that the accused persons and the victim's family have amicably settled the matter by executing a deed of settlement on 02.04.2023 and subsequently by signing affidavit on 10.10.2023, and the accused side has paid a compensation to the victim who had accepted and acknowledged the receipt in presence of the competent witnesses and well-wishers for the betterment of future of the victim and the family of the accused persons.

4. The case of the petitioner in brief is that on 04.03.2023, a written FIR was lodged before the Officer-in-Charge, Khuzama Traffic Police, Kohima, Nagaland, by Shri Akouvi Savi (Petitioner No. 3) inter alia alleging therein that on 04.03.2023, at about 8:00 AM a Truck (number unknown) coming from Imphal hit his nephew, Shri Nokedu Savi and sped away. However, the passerby and the residents nearby saw the incident and reported to them, as a result, the suspected Truck was chased and intercepted at Kohima and brought to the Police custody. Accordingly a case was registered, being Khuzama PS Case No. 4/2023 under Section 279/336/337 IPC read with sec. 184 MV Act and arrested Shri Suresh Rai (Petitioner No. 1), Md. Ajay Ruddin (Petitioner No. 2) and

one Shri Alip Khan (Passenger). The case was then investigated into and on completion of investigation, a case was laid into Charge-sheet against the petitioner Nos. 1 & 2 under Section 279/336/337 IPC read with sec. 184 MV Act. However, as nothing was found against co-accused Alip Khan, the IO prayed for his discharge from the liabilities. Accordingly, the learned JMFC took cognizance of the case; registered the case being GR No. 47/2023 under Section 279/336/337 IPC read with sec. 184 MV Act.

5. The further case of the petitioner is that in the meantime, during the pendency of the investigation while the accused persons were still under judicial custody, the matter was amicably settled between the victim's family and the owner of the offending vehicle, Md. Ammu and executed a Compromise Deed dated 02.04.2023 whereby, it was agreed that since the victim has received a compensation from the owner of the offending vehicle, the victim represented by the informant in return will withdraw the case from the police/Court.

6. And subsequently, after the release of the accused persons (i.e., petitioner Nos. 1 & 2) one more affidavit was executed by the victim, informant/petitioner No. 3 and all the accused/petitioner Nos. 1, 2 and Shri Alip Khan on 10.10.2023. The said affidavit dated 10.10.2023, reiterated the earlier Compromise Deed dated 03.04.2023, declaring that Compromise Deed has been entered between the parties for amicable settlement of the case pending before the learned Court of JMFC, Kohima, and a compensation has been paid to the victim family by the accused side and in return for which the informant has agreed to withdraw the case against the accused persons (Petitioner Nos. 1 & 2).

7. It is submitted that the above Compromise Deed dated 02.04.2023 and the affidavit dated 10.10.2023 were submitted before the learned Court of JMFC, Kohima. However, since some of the offence charged against the accused persons i.e. Section 279/336 IPC are non-compoundable offence, the petitioner has filed this instant Criminal Petition praying for quashing and setting aside the GR No. 47/2023 under Section 279/336/337 IPC read with sec. 184 MV Act pending before the learned Court of JMFC, Kohima, Nagaland.

8. In support of his submission, the learned counsel for the applicant/petitioner has relied on the judgment of the Hon'ble Supreme Court in **Yogendra Yadav & Ors. vs. State of Jharkhand & Ors.**, reported in **(2014) 9 SCC 653**. The relevant portion at paragraph 4 is reproduced herein below:-

"4. ...Now the question before this Court is whether this Court can compound the offences under Sections 326 and 307 IPC which are non-compoundable? Needless to say that offences which are non-compoundable cannot be compounded by the court. Courts draw the power of compounding offences from Section 320 of the Code. The said provision has to be strictly followed (Gian Singh V. State of Punjab). However, in a given case, the High Court can quash a criminal proceeding in exercise of its power under Section 482 of the Code having regard to the fact that the parties have amicably settled their disputes and the victim has no objection, even though the offences are non-compoundable. In which cases the High Court can exercise its discretion to quash the proceedings will depend on facts and circumstances of each case. Offences which involve moral turpitude, grave offences like rape, murder, etc. cannot be effaced by quashing the proceedings because that will have harmful effect on the society. Such offences cannot be said to be restricted to two individuals or two groups. If such offences are quashed, it may send wrong signal to the society. However, when the High Court is convinced that the offences are entirely personal in nature, and therefore, do not affect public peace or tranquility and where it feels that quashing of such proceedings on account of compromise would bring peace and would secure ends of justice, it should not hesitate to quash them. In such cases, the prosecution becomes a lame prosecution. Pursuing such a lame prosecution would be waste of time and energy.

That will also unsettle the compromise and obstruct restoration of peace..."

9. In order to verify the authenticity of the said Compromise Deed dated 02.04.2023 and 10.10.2023, this Court, by an Order dated 15.12.2023, had directed the learned JMFC, Kohima to verify the authenticity of the above Compromise Deeds and submit a report before this Court. In compliance of the said direction, the learned JMFC, Kohima, has enquired into the matter by examining victim's side as well as the accused persons and submitted a detailed report before this Court through the Deputy Registrar (Judicial), Gauhati High Court, Kohima Bench, on 23.01.2024. And I have perused the same. As per the report, the learned JMFC, Kohima, has found that the Compromise Deed dated 03.04.2023 was signed and executed by the informant, Shri Akouvi Savi (petitioner No. 1), representing the victim's side voluntarily without any coercion; and it was authenticated by the learned Chief Judicial Magistrate, Kohima on 20.04.2023. As such the same was found to be correct. The subsequent affidavit executed on 10.10.2023 between the victim, informant and the accused persons was also found to be true and it was also authenticated by the Notary Public bearing registration No. 437/10/23 dated 10.10.2023. Both the Settlement Deeds were executed by victim's side and the accused persons voluntarily and without any coercion. The report also contained that the accused persons and the owner of the vehicle have already compensated the victim for treatment, which has been acknowledged by the victim's father, Shri Tosovi Savi.

10. 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.P.C. can quash the criminal proceeding in the trial Court arising out of Khuzama PS Case No. 4/2023 under Section 279/336/337 IPC read with sec. 184 MV Act.

11. It is no more *res integra* as it is by now settled that a High Court in exercise of its power under Section 482 of Cr.P.C can very well quash a criminal proceeding or a criminal complaint under Section 482 of Cr.P.C. 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**.

12. 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”.

13. Mr. K. Angami, learned P.P. appearing on behalf of the State of Nagaland submits that in view of the report submitted by the learned JMFC, Kohima, confirming the authenticity of the two Settlement Deeds executed between the parties and in view of the decision of the Hon'ble Apex Court, he has no objection if the compromise settlement of the case is allowed, as the settlement of the present case would only affect the two individual parties and not the society at large.

14. Heard the learned counsel for the parties and I have also perused the records and the contention made by the petitioner.

15. The ground pleaded by the three petitioners herein, that is the informant/victim and two accused persons supported by the settlement Deed dated 02.04.2023 and 10.10.2023 executed in presence of the competent witness before the competent authority reveals that the accused persons have already paid adequate compensation to the victim for his treatment, and the victim side has no further grievance against the accused persons.

16. Considering the facts and circumstances of the present case, this Court is of a considered opinion that the origin of the dispute is in the nature of a personal dispute; in the given factual background, the commission of offence shall not have a serious impact on the society at large, in as much as the entire episode arose out of disputes which are private in nature. The offences in the given facts cannot be treated as heinous and serious offences of mental depravity as could be discernible as gathered from the materials collected by the IO of the case during the investigation. Therefore, the ends of justice would meet in quashing the criminal proceeding being GR No. 47/2023 under Section 279/336/337 IPC read with sec. 184 MV Act pending before the learned Judicial Magistrate First Class, Kohima, Nagaland, arising out of Khuzama PS

Case No. 04/2023 under Section 279/336/337 IPC read with sec. 184 MV Act.

17. In view of the above, this criminal petition is allowed. Accordingly, the criminal proceeding against Shri Suresh Rai and Md. Ajay Ruddin, being GR No. 47/2023 under Section 279/336/337 IPC read with sec. 184 MV Act arising out of Khuzama PS Case No. 04/2023 U/S 279/336/337 IPC read with sec. 184 MV Act, pending before the learned Judicial Magistrate First Class, Kohima, Nagaland, including the charges order is set aside and quashed.

18. With the above, this petition stands disposed of.

Sd/-
JUDGE

Comparing Assistant