THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Jurisdiction)

DATED : 20th FEBRUARY, 2020

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

Crl.M.C. No.10 of 2019

Petitioners : Nilu Thapa and Another

versus

Respondent : State of Sikkim

Petition under Section 482 read with Section 320 of the Code of Criminal Procedure, 1973

Appearance

Mr. S. S. Hamal, Advocate with Ms. Priyanka Chhetri and Mr. Subham Pradhan, Advocates for the Petitioners.

Dr. (Ms.) Doma T. Bhutia, Public Prosecutor with Mr. Sujan Sunwar, Mr. Hissey Gyaltsen and Ms. Mukun Dolma Tamang, Assistant Public Prosecutors for the State-Respondent.

O R D E R (ORAL)

Meenakshi Madan Rai, J.

1. By filing the instant Petition the Petitioners herein seek quashing of the FIR No.24/2019, dated 04-04-2019, of Singtam Police Station, under Sections 354/509 of the Indian Penal Code, 1860 (hereinafter, IPC) filed by the Complainant (Petitioner No.1) against the Accused (Petitioner No.2.) and the consequential proceedings in General Register Case No.108 of 2019 (*State of Sikkim* vs. *Ganesh Bhattarai*) pending before the Court of the Learned Chief Judicial Magistrate, East Sikkim, at Gangtok, under Sections 354/506 of the IPC.

2. Heard Learned Counsel for the parties.

3. It is submitted by Learned Counsel for the Petitioners that both Petitioners have now compromised the matter amicably and Petitioner No.1 in the said circumstance does not seek to pursue prosecution. However, the offence vide which the second Petitioner is booked is under Section 354 of the IPC which is non-compoundable. Learned Counsel prays that the powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter, Cr.P.C.) are not fettered by the provisions of Section 320 of the Cr.P.C.. Accordingly, the FIR and consequently, the General Register Case No.108 of 2019 : *State of Sikkim* vs. *Ganesh Bhattarai*, before the Learned Chief Judicial Magistrate, East Sikkim, at Gangtok, be quashed.

4. Learned Public Prosecutor submits that in view of the Compromise Deed entered into between the disputing parties she has no objection to the prayer of the Petitioners.

5. Considered submissions.

6. In ***B. S. Joshi and Others*** vs. ***State of Haryana and Another***[1] the Supreme Court while examining the powers of the High Court under Section 482 of the Cr.P.C. held that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or Complaint and Section 320 of the Cr.P.C. does not limit or affect the powers under Section 482 of the Cr.P.C. In ***State of Karnataka*** vs. ***L. Muniswamy and Others***[2] the Supreme Court while considering the scope of inherent power of quashing under Section 482 of the Cr.P.C. held that in the exercise of this wholesome power, the High Court is entitled to quash proceedings if it comes to the conclusion

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[1] (2003) 4 SCC 675
[2] (1977) 2 SCC 699

that the ends of justice so require. It was observed that in a criminal case the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice and that the ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The Supreme Court further observed that the compelling necessity for making these observations is that without a proper realization of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction. In ***Gian Singh*** vs. ***State of Punjab and Another***[3] the Supreme Court recognized the need of amicable resolution of disputes and held as under;

> **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 FIR may be exercised where the offender and the 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 a serious impact on society. Similarly, any compromise between the victim

[3] (2012) 10 SCC 303

> and the offender in relation to the offences under special statutes like the 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 predominatingly civil flavour stand on a 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, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the 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 the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.**"**

This was also reiterated in the ratiocination of ***Narinder Singh and Others*** vs. ***State of Punjab and Another***[4] wherein it was held as under:

> **"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:
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> **29.1.** Power conferred under Section 482 of the Code is to be distinguished from the power which lies in 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

[4] (2014) 6 SCC 466

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.**"**

7. On the anvil of the ratiocination hereinabove, we may appositely look at the facts of the instant case. On 04-04-2019 an FIR was lodged by the first Petitioner against the second Petitioner to the effect that on the same day when she along with other supporters of the SDF party had assembled at Raley, East Sikkim, to receive their candidate for a meeting, the second Petitioner of Lower Samdong came on a motor bike and used abusive language besides pushing the Complainant by touching her body. The matter came to be registered at Singtam Police Station, East Sikkim being FIR bearing No.24/2019, dated 04-04-2019, under Section 354/509 of the IPC. On filing of the Charge-Sheet before the Learned Chief Judicial Magistrate, East Sikkim, at Gangtok, it was registered as General Register Case No.108 of 2019. Charge was framed against

the Accused under Sections 354/506 of the IPC to which he pleaded "*not guilty*". Before Prosecution evidence could be led in the matter, both parties reached an amicable compromise vide document "Annexure P/4".

8. Both the Petitioners are in the Court. It is submitted by the first Petitioner that she has entered into the compromise with the second Petitioner of her own freewill and without any duress from any quarter.

9. In the said circumstances, it is but obvious that pursuing the prosecution will serve no purpose as in all likelihood there will be no evidence to establish the Prosecution case.

10. Accordingly, FIR bearing No.24/2019, dated 04-04-2019, of the Singtam Police Station, East Sikkim, stands quashed as also General Register Case No.108 of 2019 before the Court of the Learned Chief Judicial Magistrate, East Sikkim, at Gangtok.

11. Crl.M.C. No.10 of 2019 stands disposed of.

12. Copy of this Order be forwarded to the Learned Trial Court for information.

(Meenakshi Madan Rai)
Judge
20-02-2020

Approved for reporting : **Yes**

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