Serial No. 14
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.Petn. No. 14 of 2020

Date of Decision: 16.11.2020

Shri Teilang Nongrum Vs. State of Meghalaya & Anr

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner : Mr.T.L.Jyrwa, Adv.

For the Respondent(s) : Mr. A.Kumar, AG, with
Mr. A.H.Kharwanlang, GA for R 1
Mr. S.A.Sheikh, Adv. For R 2.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

1. This matter was taken up via virtual hearing.

2. The facts leading to the filing of this instant petition before this Court is that on 10.07.2019, the Respondent No 2 has lodged an FIR against the Petitioner herein alleging that the Petitioner without any authority had used the audio of a song sung, composed and produced by the Respondent No 2 titled " Hapneh iaphi Khun" in his upcoming Khasi movie titled "Kaei ka Jingieid", the video of which he has created and has uploaded the same in his YouTube channel styled as "Teilang Nongrum Channel".

3. Accordingly, a criminal case was registered as Nongpoh PS Case No 142(8) of 2019 u/s 63 of the Copyright Act, 1957 and proceedings thereon commenced.

4. It is also the case of the Petitioner that in the meantime, after accepting the fact that the said act was not done intentionally, the Petitioner and the Respondent No 2 both being from the same profession, the two have come to an amicable settlement and pursuant to that, a Compromise deed dated 02.09.2019 was drawn up with certain terms and conditions which was agreed to by the parties thereto.

5. In view of the settlement arrived at between the parties, the Respondent No 2 has accordingly requested the Investigating Officer to put an end to the matter by forwarding the original Compromise Deed to him.

6. However, the IO without considering the said Compromise Deed has proceeded with the investigation and has finally filed a Charge Sheet finding the Petitioner liable for an offence under Section 63 of the Copyright Act, 1957.

7. The matter having come up in the Court of the learned Chief Judicial Magistrate, Nongpoh in G.R.Case No 68 of 2020, summon was accordingly issued upon the Petitioner to appear before the Court on 05.11.2020.

8. It is also in the averment of the Petitioner that the offence under Section 63 of the Copyright Act being a non-compoundable offence, there is a statutory bar for the Court of the learned Chief Judicial Magistrate to acknowledge the Compromise Deed of the parties and to compound the same. Hence this petition.

9. Heard Mr. T.L.Jyrwa, learned Counsel for the Petitioner who has made submission before this Court urging for consideration of the Petitioner's prayer that the proceedings in the said G.R. Case No 68 of 2020 before the Court of the learned Chief Judicial Magistrate, Nongpoh be quashed.

10. Mr. Jyrwa relying on the written synopsis filed before this Court has submitted that admittedly, section 63 of the Copyright Act is a penal provision and the offence of copyright infringement is a non-compoundable offence not coming within the purview of section 320 Cr.PC as such, even

after the parties have settled the matter amicably outside court, when the matter came up before the learned Chief Judicial Magistrate, summon was issued to the Petitioner to answer to the charges.

11. However, it is submitted that in view of the said settlement between the parties, continuation of the criminal proceedings would serve no practical purpose except that it would cause extreme hardship and injustice to the Petitioner herein which will not be for ends of justice.

12. In support of his case, the Petitioner has cited the case of "***Gian Singh v. State of Punjab:*** (2012) 10 SCC 303 at paragraph 61 wherein the Hon'ble Supreme Court has held as follows:

> "***…61 .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 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 the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding".***

13. Another case cited by the learned Counsel for the Petitioner is the case of ***"Narinder Singh v. State of Punjab"***: (2014) 6 SCC, where the Apex Court at paragraph 29 has 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 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 matter between themselves. However, this power is to be exercised sparingly and with caution.***
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> ***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:***
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> ***(i) ends of justice, or***
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> ***(ii) to prevent abuse of the process of any Court.***
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> ***While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.***
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> ***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 serious impact on society. Similarly, for 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 parties have resolved their entire dispute among themselves."

14. Yet another case cited by the learned Counsel for the Petitioner is the case of ***"Devender Bansal & Anr v. State (NCT of Delhi)"***, (which will be looked into at the relevant juncture) and in view of the said authorities cited, it is prayed that the proceedings in G.R. Case No 68 of 2020 as mentioned above be set aside and quashed.

15. The State Respondent in the written submission submitted by Mr. A.H.Kharwanlang, learned GA has reproduced the brief facts of the case as enumerated above and has also pointed out that section 63 of the Copyright Act, 1957 is an offence which is punishable upto 3 years and is a cognizable offence and non-compoundable.

16. Again, Section 320 Cr.PC was also referred to by the State Respondent which provides for compounding of offences punishable under IPC which will result in the acquittal of the accused and under sub-section 9 of Section 320, it is provided that no offence shall be compounded except as provided by this section.

17. The case of ***"Gian Singh v State of Punjab" (Supra)*** was referred to by the State Respondent to submit that in the said case, the Apex Court has made a distinction between quashing of offences or criminal proceedings on the ground of settlement between the offender and the victim and compounding of an offence under Section 320 Cr. PC, which according to the Supreme Court is not the same thing.

18. The State Respondent went on to cite the case of ***"Shiji & Ors. v. Radhika & Anr,"*** wherein at paragraph 17 and 18 of the same, the exercise of inherent power by the High Court Under Section 482 Cr.PC has been

considered as :

> ***"17. It is manifest that simply because an offence is not compoundable under Section 320 IPC is by itself no reason for the High Court to refuse exercise of its power under Section 482 CrPC. That power can in our opinion be exercised in cases where there is no chance of recording a conviction against the accused and the entire exercise of a trial is destined to be an exercise in futility. There is a subtle distinction between compounding of offences by the parties before the trial Court or in appeal on one hand and the exercise of power by the High Court to quash the prosecution under Section 482 CrPC on the other. While a Court trying an accused or hearing an appeal against conviction, may not be competent to permit compounding of an offence based on a settlement arrived at between the parties in cases where the offences are not compoundable under Section 320, the High Court may quash the prosecution even in cases where the offences with which the accused stand charged are non-compoundable. The inherent powers of the High Court under Section 482 CrPC are not for that purpose controlled by Section 320 CrPC.***
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> ***18. Having said so, we must hasten to add that the plenitude of the power under Section 482 CrPC by itself, makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. It is neither necessary nor proper for us to enumerate the situations in which the exercise of power under Section 482 may be justified. All that we need to say is that the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of the process of law. The High court may be justified in declining interference if it is called upon to appreciate evidence for it cannot assume the role of an appellate court while dealing with a petition under Section 482 of the Criminal Procedure Code. Subject to the above, the High Court will have to consider the facts and circumstances of each case to determine whether it is a fit case in which the inherent powers may be invoked".***

19. Finally, it is submitted that the High Court can exercise its inherent power in the case between the parties herein, however cost may be imposed on the private parties so that frivolous criminal proceedings against each other, which could have been settled amicably out of court, may not be pursued in court wasting the court's time and finances.

20. The learned Counsel for the Respondent No 2, Mr. S.A.Sheikh has also advanced his submission only to the extent that he has endorsed the submission of the State Respondent.

21. Having heard the parties, the factual matrix of the case not being

necessary to be repeated, what is required by this Court is under the facts and circumstances of the case, whether the proceedings of G.R. Case No 68 of 2020 pending before the Court of the learned Chief Judicial Magistrate, Nongpoh is liable to be quashed or not.

22. Admitted facts as it is, is that the Petitioner has illegally encroached upon the right of the Respondent No 2 as far as the use of the song ***"Hapneh iaphi Khun"*** is concerned, which has indeed attracted the provision of Section 63 of the Copyright Act, 1957 and if pursued, would entitle the Court to proceed with the criminal trial in accordance with law, however, it is also an admitted fact that the parties on cordial relationship have agreed to settle the dispute amicably outside court on the terms and conditions of the Compromise Deed (Annexure I) duly executed on 02.09.2019 in presence of witnesses.

23. Inspite of such settlement, the Investigating Officer having been informed of the same, the charge sheet against the Petitioner was filed and consequently, the learned Chief Judicial Magistrate, Nongpoh has no option but to proceed in accordance with law, the Petitioner was compelled to approach this Court with this instant application.

24. On consideration of the submission made and viewing the case as a whole, it is apparent that the alleged dispute is private in nature with a commercial angle involved and having a form of a civil dispute, the peace and tranquility of the public would not be affected if the proceedings are quashed.

25. As far as overcoming the obstacle of proceeding in a non-compoundable case is concerned, the authorities cited by the Petitioner has clearly exhibited that the inherent power of the High Court under Section 482 Cr.PC is unfettered so as to override the said obstacle in a given circumstance.

26. Apart from the relevant portions of the judgments cited and pointed out by the learned Counsel for the Petitioner which has been extracted and noted above, this Court is also in respectful agreement with

the observations and findings of the Hon'ble Delhi High Court in the case of ***Devender Bansal(supra)*** and certain parts of the said judgment are worth reproduction herein as follows:

> ***"…8. The incorporation of inherent power under Section 482 Cr.P.C. is meant to deal with the situation in the absence of express provision of law to secure the ends of justice such as, where the process is abused or misused; where the ends of justice cannot be secured; where the process of law is used for unjust or unlawful object; to avoid the causing of harassment to any person by using the provision of Cr.P.C. or to avoid the delay of the legal process in the delivery of justice. Whereas, the inherent power is not to be exercised to circumvent the express provisions of law.***
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> ***9. It is settled law that the inherent power of the High Court under Section 482 Cr.P.C. should be used sparingly. The Hon'ble Apex Court in the case of State of Maharashtra through CBI v. Vikram Anatrai Doshi and Ors. MANU/SC/0842/2014 and in the case of Inder Singh Goswami v. State of Uttaranchal MANU/SC/0808/2009 has observed that powers under Section 482 Cr.P.C. must be exercised sparingly, carefully and with great caution. Only when the Court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the Court if such power is not exercised, Court would quash the proceedings.***
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> ***10. It is a well settled law that where 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 about peace and would secure ends of justice, it should not hesitate to quash them. In such cases, pursuing prosecution would be waste of time and energy. Non-compoundable offences are basically an obstruction in entering into compromise. In certain cases, the main offence is compoundable but the connected offences are not. In the case of B.S. Joshi and others v. State of Haryana and another 2003 (4) SCC 675 the Hon'ble Apex Court observed that even though the provisions of Section 320 Cr.P.C. would not apply to such offences which are not compoundable, it did not limit or affect the powers under Section 482 Cr.P.C. The Hon'ble Apex Court laid down that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, section 320 Cr.P.C. would not be a bar to the exercise of power of quashing. In the nutshell, the Hon'ble Apex Court justified the exercise of powers under Section 482 Cr.P.C. to quash the proceedings to secure the ends of justice in view of the special facts and circumstances of the case, even where the offences were non-compoundable.***
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> ***In the light of the aforesaid, this Court is of the view that notwithstanding the fact that the offence under Section 63 Copyright Act is a non-compoundable offence, therefore, there should be no impediment in quashing the FIR under this section, if the Court is otherwise satisfied that the facts and circumstances of the case so warrant…."***

27. The submission of the State Respondent though relevant, however the prayer for imposition of cost may not be relevant at this stage.

28. In light of the above, this Court has considered it fit and proper for the impugned proceedings of GR Case No 68 of 2020 pending before the Court of the learned Chief Judicial Magistrate, Nongpoh to be quashed which is hereby done so.

29. Petition disposed of. No cost.

Judge

Meghalaya
16.11.2020
"N.Swer, Stenographer"

