

GAHC020000112025

2025:GAU-NL:49



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

Case No. : Crl. Pet./3/2025

AZIZUR RAHMAN CHOUDHURY AND ANR
S/O ATAUR RAHMAN CHOUDHURY
R/O H.NO 14/3, EROS LANE, OPPOSITE EROS CINIMA HALL
WARD NO. 6, DIMAPUR
P.S. DIMAPUR
NAGALAND -797112
PERMANENT R/O VILLAGE HAMINDPUR, P.O. SUTARKANDI
P.S. KARIMGANJ SADAR, DIST- KARIMGANJ
ASSAM 788712

2: RAZIA SULTANA TALUKDAR
WIFE OF AZIZUR RAHMAN CHOUDHURY
R/O H.NO 14/3
EROS LANE
OPPOSITE EROS CINIMA HALL
WARD NO. 6
DIMAPUR
P.S. DIMAPUR
NAGALAND -797112
PERMANENT R/O VILLAGE HAMINDPUR
P.O. SUTARKANDI
P.S. KARIMGANJ SADAR
DIST- KARIMGANJ
ASSAM 78871

VERSUS

STATE OF NAGALAND
KOHIMA NAGALAND

Advocate for the Petitioner : G ALAM,

Advocate for the Respondent : P.P, NAGALAND,

**BEFORE
HONBLE MR JUSTICE KARDAK ETE
JUDGMENT AND ORDER (ORAL)**

20-02-2025

Heard Mr. G. Alam, learned counsel for the petitioners and also heard Mr. Veto V. Zhimomi, learned Public Prosecutor for the State.

2. This is an application under section 528 of the BNSS, 2023, jointly filed by the petitioners praying for quashment of the FIR and consequential criminal proceedings in Dimapur Women PS case no. 22/2024 under section 85/351(2) of BNS, 2023, read with Section 4 of the Dowry Prohibition Act, 1961, corresponding to GR case no. 635/2024.

3. The criminal investigation has been set into motion on the filing of the FIR by the petitioner no. 2 on 07.10.2024 before the Birubari PS inter-alia stating that she was in love with the petitioner no. 1 and they got married on 01.04.2019, and after their marriage, it was alleged that the petitioner no. 1 demanded dowry and harassed her (petitioner no. 2) physically and mentally. She was also badly beaten by the petitioner no. 1, which was informed to her parents, after which she was rescued by the police from Khatkhathi PS on 23.09.2024, and since then, she is residing with her mother at Rupnagar, Guwahati.

4. The said FIR was not entertained by the Birubari Police Station, Guwahati, against which the petitioner no. 2 approached the Commissioner of Police, Guwahati (M). Accordingly, the FIR was forwarded to the All Women PS, Panbazar. Upon receipt of the said FIR, the case has been registered being All Women PS case no. 52/2024 under Sections 85/351(2) of BNS, 2023 read with section 4 of the Dowry Prohibition Act, 1961. Thereafter, based on the order dated 26.11.2024, passed in GR case no. 5975/2024, the case being Guwahati Central All Women PS case no. 52/2024, by the Court of Chief Judicial Magistrate, Kamrup (M) at Guwahati, the case was forwarded to the Officer-in-Charge of the Sub-Urban PS, Dimapur, Nagaland. Accordingly, the case has been re-registered as Dimapur Women PS case No. 22/2024 under sections 85/351(2) and the case is at the stage of investigation.

5. Mr. G. Alam, learned counsel for the petitioners submits that the petitioners are husband and wife who got married in the year 2019, out of which 2(two) children are born. The FIR has been lodged due to the misunderstanding between the petitioners and it appears to be at the behest of the parents of the petitioner no. 2. The petitioner no. 2 having realised it, the petitioners have entered into a settlement by Deed of Compromise dated 18.01.2025 at Dimapur, to continue their peaceful married life and for the interest of their children who are aged about 5 years and 1 year 6 months. He submits that since the allegation against the petitioner no. 1 by way of lodging an FIR is purely due to misunderstanding and the matter having being settled between the parties, the FIR may be quashed as the petitioners are husband and wife having two children and they have decided to have a peaceful married life

and now, they are living together.

6. Mr. Veto V. Zhimomi, learned Public Prosecutor, by placing the case diary, submits that as per the statement recorded under Section 192 of the BNSS, 2023 of the informant (petitioner no. 2 herein) reflects that the FIR has been lodged at the behest of her parents and due to misunderstanding on account of argument between her and the petitioner no. 1. He submits that the record prima facie does not reveal any act of alleged offence by the petitioner no. 1, therefore, he submits that in the facts and circumstances of the case and the materials on the case diary, this Court may pass appropriate order as may deem fit.

7. Considered the submissions of the learned counsel for the parties and also perused the CD.

8. The petitioners are husband and wife who have got married in the year 2019, and out of their wedlock, two children are born aged about 5 years and 1 year 6 months. The petitioner no. 2, who is the wife has lodged an FIR against her husband (petitioner no. 1) alleging serious allegations for demand of dowry. On perusal of the case diary, particularly the statement of the complainant (petitioner no. 2), it reveals that the FIR has been lodged at the behest and due to the pressure of her parents after having an argument with her husband (petitioner no. 1).

9. Thereafter, during the pendency of the investigation, the petitioners have settled the matter by way of settlement of Deed on 18.01.2025. The petitioners have amicably settled the matter and thereby decided to live together as husband and wife. The petitioners are having two children out

of their wedlock and are stated to be living happily and peacefully as husband and wife at Dimapur.

10. Having considered the matter in its entirety, this Court is of the view that the continuance of the present criminal proceeding would serve no purpose, as the petitioners have already entered into a mutual agreement thereby settling the matter amicably. Thus, in my considered view, the chances of conviction are bleak and remote which would amount to abuse of the process of law if the investigation/criminal proceeding is allowed to proceed.

11. The Hon'ble Supreme Court has enunciated the law on the quashment of FIR and the criminal proceedings in a catena of decisions. In the case of ***State of Madhya Pradesh Vs. Laxmi Narayan*** reported in ***(2019) 5 SCC 688***, the Hon'ble Supreme Court after considering the earlier decisions has observed and held as under:

"15. 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:

15.1. 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;

15.2. 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;

15.3. 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;

15.4. 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;

15.5. 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."

12. Having considered that the petitioners are husband and wife and during the pendency of the investigation of the FIR lodged by the petitioner no. 2, they have settled the matter and are living together along with their two children and, also, considering the matter has arisen out of misunderstanding between the husband and the wife which appears to be purely a matrimonial dispute as well as the law laid down by the Hon'ble

Supreme Court, I am of the considered view that the continuance of the investigation in the present case and consequential proceedings would be a futile exercise. Thus, the FIR dated 07.10.2024 registered as Dimapur Women PS case no. 22/2024 under section 85/351(2) of BNS, 2023 is liable to be quashed.

13. In view of the above facts and circumstances and the law enunciated by the Hon'ble Supreme Court, I am of the view that the present case is one of the cases where the inherent power of this Court is fit to be invoked.

14. Accordingly, the FIR dated 07.10.2024 registered as Dimapur Women PS case no. 22/2024 under section 85/351(2) of BNS, 2023 read with Section 4 of the Dowry Prohibition Act, 1961, corresponding to GR case no. 636/2024 is hereby quashed.

15. The criminal petition stands allowed and disposed of.

JUDGE

Comparing Assistant