

GAHC020006642024

2025:GAU-NL:35



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

Case No. : Crl. Pet./51/2024

SHRI TIMOTHY JOSHI
AGED ABOUT 39 YEARS, S/O JULIUS JOSHI,
R/O NAYA BASA, SIMULBARI,
SIMULBARI TEAGARDEN,
PO/PS-GARITHURA, DISTRICT- DARJEELING

2: SMTI. HELIS KARKI (VICTIM)
AGED ABOUT 42 YEARS

W/O CHRISTOPHER KARKI

R/O H.NO. 05
THILIXU VILLAGE

CHUMOUKEDIMA
NAGALAN

VERSUS

THE STATE OF NAGALAND
KOHIMA

Advocate for the Petitioner : KEDI KOSO, YEKA SUMI

Advocate for the Respondent : PP,

**BEFORE
HONBLE MR JUSTICE KARDAK ETE**

ORDER

Date : 17.02.2025

Heard Mr. Yeka Sumi, learned counsel for the petitioners. Also heard Mr. K. Angami, learned Public Prosecutor for the State.

2. This is an application under section 482, Cr.PC, 1973 (now repealed) corresponding to section 528 of the BNSS, 2023, jointly filed by the petitioners praying for quashment of the criminal proceedings in GR case no. 782/2023 under section 406/417/420/120(B)/506 IPC, 1860, pending before the learned Judicial Magistrate First Class, Dimapur, Nagaland on the basis of settlement between the petitioners.

3. The case set up by the prosecution is that on 03.12.2023, a written FIR was received from one Helis Karki (petitioner no. 2 herein) stating that the accused, Timothy Joshi (petitioner No. 1 herein) who is serving as a pastor of New Life Church Ministry, Khanntibhati (Darjeeling), West Bengal is an acquaintance through church ministry, where he approached her for sell of a land and building along with 12 decimal land within Mouza-Bairtisal under Matigara Gram Panchayat, Dajeeling, West Bengal for a sum of Rs. 90,00,000/- (Ninety lakhs) only, and the accused Timothy introduced her to other 4 (four) accused(s) namely Jiresh Joshi, Samuel Joshi, Simon Chhetri and Sukumar Saibya. Pursuant thereto, on different occasions, she made payments amounting to Rs. 55,50,000/- (Fifty five lakhs and fifty thousand) only but after the payment of the above amount, found some anomalies in their behaviors which prompted her not to make

further payment unless possession of the said property is completed by way of transfer as per the agreement. However, they gave false promises to transfer the said property. Thereafter, having known the truth, she did not pay the remaining amount and tried to recover the money from them, but they never responded rather they threatened her not to file any complaint in police station or approach anyone.

4. Upon receipt of the above written FIR, the case was registered being Diphupar PS case no. 094/2023 under section 420/403/406/120B IPC. After completion of the investigation, the chargesheet has been laid by the order dated 30.04.2024 against the petitioner No. 1 under 406/417/420/120(B)/506 IPC which is pending at the stage of Consideration of Charges before the learned Judicial Magistrate First Class, Dimapur, Nagaland.

5. Mr. Yeka Sumi, learned counsel for the petitioners submits that during the pendency of the criminal proceedings, the petitioners along with the other co-accused(s) have amicably settled the matter by Deed of Agreement dated 10.07.2024. He submits that since the parties have settled the matter, the chances of conviction are bleak and remote, therefore, the continuance of the criminal proceedings would be a futile exercise and as such prays that the criminal proceedings may be quashed.

6. Mr. K. Angami, learned Public Prosecutor submits that as per the documents annexed in the present petition, the signatures of the petitioner no. 2/informant particularly in the FIR and the date of Agreement does not tally but are different. Having submitted above, Mr. K.

Angami, learned Public Prosecutor fairly submits that since the parties have settled the matter amicably, this court may pass appropriate orders as may deem fit in the facts and circumstances of the case.

7. Considered the submissions of the learned counsels for the parties and also perused the records.

8. On consideration of the materials, it reveals that a certain transaction was made between the petitioners with regard to purchase of land and building. The payment was made by the petitioner no. 2/informant to the petitioner no. 1 for consideration of the said property. It also reveals that the said transaction could not be completed between the parties. The petitioner no. 2 had also tried to recover the money from the petitioner no. 1, as the transaction could not be completed and having found certain anomalies. However, having failed to recover the amount which she had made payment in favour of the petitioner no. 1, the present FIR was lodged by the petitioner no. 2 against which a chargesheet against the petitioner no. 1 has been filed after completion of the investigation.

9. During the pendency of the criminal proceedings, the petitioners have entered into mutual settlement/agreement on 10.07.2024 whereby they have decided to settle the matter and the petitioner no. 1 has agreed to compensate the petitioner no. 2. It is also stated at the bar that the petitioner no. 1 has already compensated the petitioner no. 2 by paying the amount which the petitioner no. 2 has made payment in favour of the petitioner no. 1.

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 criminal proceeding is allowed to proceed.

11. The law of quashment of the criminal proceedings has already been enunciated by the Hon'ble Supreme Court 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 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. In the present case as noted herein above, the parties have settled the matter amicably and the amount which the petitioner no. 2 has paid to the petitioner no. 1 for consideration of the property has already been compensated. Although on perusal of the materials, certain ingredients of the alleged offences appear to be attracted, essentially dispute appears to be of civil nature.

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 for the cases where the inherent power of this Court may be invoked.

14. Accordingly, the criminal proceeding in GR case no. 782/2023 under section 406/417/420/120B/506 IPC pending before the learned Judicial Magistrate First Class, Dimapur is hereby quashed.

15. In the result, this petition stands allowed and disposed of.

JUDGE

Comparing Assistant