

THE HIGH COURT OF MEGHALAYA

Crl. Revn. P. (SH) No. 35 of 2012

1. Shri. Zaheer Ahmed Ghafoor Pariat
Branch Manager M/s Karvy,
Shillong, East Khasi Hills District,
Meghalaya.

2. Shri. Bell John Star Wanniang,
Resident of Mawlai
P.S. Mawlai
Shillong
East Khasi Hills District,
Meghalaya.

..... **Petitioners**

- versus -

1. The State of Meghalaya,
Represented by its Commissioner &
Secretary (Home) Department,
Shillong.

..... **Respondent**

BEFORE THE HON'BLE MR JUSTICE SR SEN

Advocate for the Petitioners	:	Mr. AS Siddiqui
Advocate for the Respondent	:	Mr. ND Chullai, PP
Date of Hearing	:	23.04.13
Date of Judgment and Order	:	30.04.13

JUDGMENT AND ORDER

The case in nut shell is that, the petitioner No.1 is the Branch Manager of M/s Karvy, Shillong which is a Private Company dealing with Stocks, Share and also rendering service as Registrar for opening DEMAT Account etc. and the Petitioner No. 2 was serving under the Petitioner No. 1 as office boy. On 23.03.12, the petitioner No. 1 was being defrauded with an amount of Rs. 52,550.92p by the Petitioner No. 2; compelled to lodge an FIR which was registered as Sadar P.S. Case No. 48(3)2012 u/s 419/468 IPC against the Petitioner No. 2.

2. The Petitioner No. 2 after realising his mistake, on 7.04.12 approached the Petitioner No. 1 and asked for an apology

and both the parties settled the matter amicably and the Petitioner No. 2 returned the mis-appropriated amount. Thereafter, the Petitioner No. 1 approached the Court by way of petition for withdrawal of the case before the Chief Judicial Magistrate, Shillong. The Chief Judicial Magistrate rejected the petition on the ground that the offences are cognizable and a warrant triable. Hence, the petitioner approached this Court by way of petition under Section 482 for quashing of the proceeding.

3. Mr. AS Siddiqui has submitted that the matter has been settled amicably between the parties and the Petitioner No. 1 is no more interested to proceed with the case, so proceeding may be quashed. To support his submissions, he relied in ***Gian Singh Vrs State of Punjab and Anr. reported in (2012) 10 SCC 303.***

4. On the other hand, Mr. ND Chullai, the learned PP has submitted that the matter is corruption in nature, even if the parties have settled the matter, Section 482 CrPC may not be applied and the petition may be rejected.

5. After hearing the submissions advanced by the learned counsel at the Bar and considering the gravity of offence, I am of the considered view that Section 482 CrPC cannot be invoked.

6. Though it is a fact that Section 482 CrPC has given wide power to High Court but it should not be applied in random but to be used sparingly. Section 482 CrPC has been incorporated to prevent abuse of process of law and not to encourage offences. In this instant case, it is admitted fact that the Petitioner No. 1 was defrauded by his office boy to an amount of Rs. 52,550.92p which he has refunded only after filing of FIR, this shows that he had committed the offence in the nature of corruption. Had he realised his mistake and refunded the defrauded amount prior to FIR or registration of the case, the situation would have been considered.

7. In this instant case, it is admitted fact that after FIR has been filed and the case has been registered, the Petitioner No. 2 realised his mistake and refunded the mis-appropriation amount, this shows that he had certain mens-ria to commit offence. Therefore, invocation of the power under Section 482 CrPC will not prevent the abuse of process of law in the present facts and circumstances of the case rather it will be a misuse.

The Hon'ble Supreme Court at Para 61 in the case of Gian Singh vrs State of Punjab and Anr. reported in (2012) 10 SCC 303 was pleased to observed.

***“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 exercise 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 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 predominately 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.”

8. Since I am of the considered view that offence is in nature corruption involving public interest, invoking of power under Section 482 is un-wanted as we are aware, presently our country is facing with corruption and cheating in random. In such a case, quashing of the proceeding under Section 482 is not advisable and un-wanted, so I am unable to accept the plea placed by the petitioner.

9. Accordingly, this instant petition stands rejected and disposed of.

JUDGE

V. Lyndem