

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Jurisdiction)

S.B. : HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE

CrI.M.C. No.01 of 2015

Petitioners : 1. Mr. Tshwang Norbu Sherpa,
S/o Late Thugey Dorjee Sherpa,
R/o Tokchi,
P.S. Pakyong,
Dist. East Sikkim,
Sikkim.

2. Mr. Phurba Sherpa,
S/o Late Thugey Dorjee Sherpa,
R/o Tokchi,
P.S. Pakyong,
Dist. East Sikkim,
Sikkim.

3. Mr. Pemba Sherpa,
S/o Late Thugey Dorjee Sherpa,
R/o Tokchi,
P.S. Pakyong,
Dist. East Sikkim,
Sikkim.

versus

Respondent : State of Sikkim
through Learned Public Prosecutor,
High Court of Sikkim,
Gangtok,
East Sikkim.

Application under Section 482 of the Code of Criminal Procedure, 1973



Appearance

Mr. Zangpo Sherpa, Advocate with Mr. Dewen Sharma Luitel and Mr. Sangay Bhutia, Advocates for the Petitioners.

Mr. J. B. Pradhan, Additional Advocate General and Public Prosecutor with Mr. Karma Thinlay Namgyal, Senior Government Advocate and Additional Public Prosecutor, Mr. S. K. Chettri and Mrs. Pollin Rai, Assistant Public Prosecutors for the State-Respondent.

O R D E R (Oral)

(19th March, 2015)

Wangdi, J.

1. This petition has been preferred by the Petitioners seeking to invoke the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 (for short “Cr.P.C.”), to quash the First Information Report (for short “FIR”) resulting in registration of Pakyong P.S. Case No.26/2013 dated 08-07-2013 under Section 307 of the Indian Penal Code (for short “IPC”) against the Petitioner No.1 and proceedings in Sessions Trial Case No.70 of 2013 pending before the Court of the Principal Sessions Judge, East Sikkim at Gangtok, arising therefrom.

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2. As per the averments contained in the petition, on 08-07-2013 an FIR was lodged by the Petitioner No.2 in the Pakyong Police Station stating that the Petitioner No.1 had assaulted him and Petitioner No.3 with a spear and machete (bamphok) resulting in the registration of Pakyong P.S. Case No.26/2013 dated 08-07-2013 under Section 307 IPC against the Petitioner No.1.

3. Shorn of all other details, it would be sufficient to mention that the investigation resulted in a charge-sheet being filed against the Petitioner No.1 and presently trial for offence under Section 307 IPC is on against him in the Court of the Principal Sessions Judge, East Sikkim at Gangtok.

4. It is stated that the Petitioners No.1, 2 and 3 are real brothers who, having realised the futility of pursuing with the case, have settled the matter amicably amongst themselves during the pendency of the trial and are now living in harmony as a family. The Petitioners thus do not want the trial against the



Petitioner No.1 to continue further and has approached this Court seeking to quash the criminal trial.

5. Mr. Zangpo Sherpa, Learned Advocate for the Petitioners, submits that the offence committed by the Petitioner No.1 arose out of a dispute pertaining to division of family properties as would appear from the Final Report filed by the Pakyong Police Station. He submits that in facts and circumstances similar to the present case, this Court in ***Crl.M.C. No.20 of 2013*** in the matter of ***Ms. Renuka Rai vs. State of Sikkim and Another***, had quashed the General Register Case pending before the Court of the Judicial Magistrate, East Sikkim at Gangtok by order dated 03-03-2014. He further submits that permissibility of this Court to exercise its inherent powers under Section 482 Cr.P.C. in a circumstance as in the present case has been well-settled in ***Gian Singh vs. State of Punjab and Another : (2012) 10 SCC 303*** and in the recent case of ***Yogendra Yadav and Others vs. State of Jharkhand and Another : (2014) 9 SCC 653***.



6. Mr. J. B. Pradhan, Learned Additional Additional Advocate General who appears on behalf of the State-Respondent essentially does not object to the proposition particularly in view of the decision in ***Yogendra Yadav (supra)*** where offences under Sections 326 and 307 IPC were involved.

7. I have considered the rival contentions raised on behalf of the parties.

8. This is a joint petition filed by the Petitioner No.1 who is the accused person in the Sessions Trial Case No.70 of 2013, the Petitioner No.2, a victim and the one who lodged the FIR and the Petitioner No.3 who is the other victim. The three Petitioners are brothers of the same parents. On a perusal of the charge-sheet, I find that the dispute between the parties has emanated purely on account of dispute with regard to division of their family properties. Under these circumstances, in my view, it would be futile to allow the Sessions Trial Case to proceed further as no useful purpose would be served as observed in ***Gian***



Singh (supra) which has been referred to in the later case of *Yogendra Yadav (supra)*.

9. The Learned Additional Advocate General expresses his anxiety on quashing a proceeding involving an offence under Section 307 IPC which entail punishment up to 10 years. While appreciating this anxiety, I find that in the very case of *Yogendra Yadav (supra)*, it has been observed as under:-

“4. Now, the question before this Court is whether this Court can compound the offences under Sections 326 and 307 IPC which are non-compoundable? Needless to say that offences which are non-compoundable cannot be compounded by the court. Courts draw the power of compounding offences from Section 320 of the Code. The said provision has to be strictly followed (*Gian Singh v. State of Punjab*) [(2012) 10 SCC 303]. However, in a given case, the High Court can quash a criminal proceeding in exercise of its power under Section 482 of the Code having regard to the fact that the parties have amicably settled their disputes and the victim has no objection, even though the offences are non-compoundable. In which cases the High Court can exercise its discretion to quash the proceedings will depend on facts and circumstances of each case. Offences which involve moral turpitude, grave offences like rape, murder etc. cannot be effaced by quashing the proceedings because that will have harmful effect on the society. Such offences cannot be said to be restricted to two individuals or two groups. If such offences are quashed, it may send wrong signal to the society. However, when the High Court is convinced that the offences are entirely personal in nature and, therefore, do not affect

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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, the prosecution becomes a lame prosecution. Pursuing such a lame prosecution would be waste of time and energy. That will also unsettle the compromise and obstruct restoration of peace.”

10. In view of the aforesaid decision which has been rendered on facts and circumstances almost *pari materia* to the one before us, I have no hesitation exercising the inherent powers under Section 482 Cr.P.C. and to quash the proceedings in Sessions Trial Case No.70 of 2013 pending before the Court of the Principal Sessions Judge, East Sikkim at Gangtok.

11. In the result, the Crl.M.C. is allowed.

12. As a consequence, FIR No.26/2013 filed in the Pakyong Police Station dated 08-07-2013 and the consequential proceedings in Sessions Trial Case No.70 of 2013 pending in the Court of the Principal Sessions Judge, East Sikkim at Gangtok, stand hereby quashed.



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13. Let a copy of this order be transmitted forthwith to the Court of the Principal Sessions Judge, East Sikkim at Gangtok for its due compliance.

(S. P. Wangdi)
Judge
19-03-2015