



HIGH COURT OF SIKKIM, GANGTOK
(Criminal Jurisdiction)

S.B. : HON'BLE SHRI SUNIL KUMAR SINHA, C.J.

CrI. M.C. No. 03 of 2015

1. Shri Yogesh Rai,
S/ o Shri Nar Bahadur Rai,
R/ o Lower Samdur,
P.O. Samdur & P.S. Ranipool,
East Sikkim.

Presently lodged at State Jail,
Rongyek, East Sikkim.

... **PETITIONER NO. 1/**
ACCUSED

2. Smt. Manu Lepcha,
W/ o Shri Passang Tamang,
R/ o Lower Samdur,
P.O. Samdur & P.S. Ranipool,
East Sikkim.

... **PETITIONER NO. 2/**
COMPLAINANT

Versus

State of Sikkim,
Through:
The Ld. Public Prosecutor,
High Court of Sikkim,
Gangtok, East Sikkim.

... **RESPONDENT**

Petition under Section 482 of Code of Criminal Procedure, 1973.



Appearance:

Ms. Sedenla Bhutia, Advocate for the Petitioners.

Petitioner No. 2/ Complainant (present in person and identified by her counsel Ms. Sedenla Bhutia).

Ms. Pollin Rai, Asstt. Public Prosecutor for the State-Respondent.

ORDER (Oral)

(02.12.2015)

1. Petitioner No.1 is the sole accused in GR Case No. 192/ 2015 (State of Sikkim vs. Yogesh Rai) under Sections 457/ 380 IPC, pending in the Court of Chief Judicial Magistrate (East & North) at Gangtok, East Sikkim. The said case arises out of FIR No. 18/ 2015 registered at Ranipool Police Station, East Sikkim at Gangtok. Petitioner No. 2 is the complainant, who had lodged the said FIR No. 18/ 2015.

2. Petitioner No. 2, on 05.04.2015, lodged FIR No. 18/ 2015 in Ranipool Police Station regarding the theft committed in her shop in which one LPG cylinder with Regulator, some cigarettes, two bottles of bear and a jar of mustard oil etc., amounting to Rs.4,000/- were stolen. The said articles were seized from the house of Petitioner No. 1. The police, thereafter, filed charge-sheet against the Petitioner No. 1 and the said GR Case was registered in which he is facing trial under Sections 457/ 380 IPC.



3. Ms. Sedenla Bhutia, learned counsel appearing on behalf of the Petitioners, submits that Petitioner No. 1 is in jail since 05.04.2015; Petitioner No. 2 is the neighbor of Petitioner No. 1, who used to call her aunt; they have entered into a compromise and now the Petitioner No. 2 wants that the FIR and criminal case pending against Petitioner No. 1 may be quashed and the Petitioner No. 1 may, accordingly, be released from custody. A copy of the Compromise Deed dated 24.11.2015 has also been filed along with this Petition.

4. Ms. Bhutia also refers to the Judgment of ***Gian Singh vs. State of Punjab and Another : (2012) 10 SCC 303*** and many other Judgments rendered by various High Courts.

5. On the other hand, Ms. Pollin Rai, learned Asstt. Public Prosecutor appearing on behalf of the State, opposes the said arguments. However, she does not dispute that a Compromise Deed was executed between the parties on 24.11.2015.

6. I have heard learned counsel for the parties and have also ascertained the facts relating to execution of Compromise Deed from Petitioner No. 2/ Complainant, who is present before this Court.



7. It appears that the aforesaid Sections are not compoundable under Section 320 Cr. P.C., therefore, the parties have resorted to Section 482 Cr. P.C.

8. In **Gian Singh** (supra), it was held that 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 Cr. P.C. 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. It was further held that in what cases power to quash the criminal proceeding or complaint or FIR may be exercised 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. It was further held that 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 the 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 predominatingly 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 dispute 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 the 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 between them.

9. In the instant case, the articles stolen from the shop of Petitioner No. 2, were seized from the house of Petitioner No. 1, who is the neighbor of Petitioner No. 2 and who used to call her aunt. Petitioner No. 1 is in judicial custody since 05.04.2015 and has already undergone about 8 months. Now, the parties have compromised and to keep cordial relation, Petitioner No. 2 wants



that the case against Petitioner No. 1 may be quashed and he may be released immediately.

10. Considering the above facts and circumstances of the case, particularly, considering that the parties have entered into compromise, I am of the view that no fruitful purposes would be served in continuation of criminal case. The offences alleged in the present matter are not heinous offences like murder, rape, dacoity etc.

11. In view of these, I find it to be a fit case for quashing of the above criminal proceeding against Petitioner No. 1 (accused).

12. Accordingly, the Petition is allowed. FIR No. 18/ 2015 and GR Case No. 192/ 2015 (State of Sikkim vs. Yogesh Rai) pending in the Court of Chief Judicial Magistrate (East and North) at Gangtok, East Sikkim, are hereby quashed.

13. The properties seized in connection with the aforesaid case shall be returned back to Petitioner No. 2.

14. Certified copy, as per Rules.

Sd/ -
Chief Justice
02.12.2015

Approved for Reporting : ~~Yes~~/ No.
Internet : Yes/ ~~No~~