



THE HIGH COURT OF SIKKIM : GANGTOK
(Criminal Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

Crl. M.C. No. 02 of 2020

1. Dorjee Tamang,
Aged about 38 years,
Son of Shri B.B. Tamang,
Resident of Kopibari,
Middle Syari,
P.O. Tadong & P.S. Gangtok,
East Sikkim.
2. Shri Laxuman Subba,
Aged about 34 years,
Son of Shri B.B. Subba,
Resident of Upper Syari,
P.O. Tadong & P.S. Gangtok,
East Sikkim.
3. Shri Sunil Gurung,
Aged about 32 years,
Son of Shri Pravin Gurung,
Resident of Lower Syari,
P.O. Tadong & P.S. Gangtok,
East Sikkim.
4. Shri Sanjeev Manger,
Aged about 22 years,
Son of Shri J.K Manger,
Resident of Lower Syari,
P.O. Tadong & P.S. Gangtok,
East Sikkim.
5. Shri Sunil Sundas,
Aged about 31 years,
Son of Shri Ram Bdr. Sundas,
Resident of Middle Syari,
P.O. Tadong & P.S. Gangtok,
East Sikkim.
6. Shri Karma Sherpa,
Aged about 23 years,
Son of Shri Sonam Sherpa,
Resident of Upper Syari,
P.O. Tadong & P.S. Gangtok,
East Sikkim.
7. Shri Jit Bahadur Chettri,
Aged about 22 years,
Son of Shri Bir Bahadur Chettri,
Resident of Nandok,
P.O. & P.S. Ranipool,
East Sikkim.



8. Shri Prakash Gurung,
Aged about 51 years,
Son of Shri Bahadur Gurung,
Resident of Lower Syari,
P.O. Tadong & P.S. Gangtok,
East Sikkim.
9. Shri Babin Gurung,
Aged about 50 years,
Son of Shri Lok Bahadur Gurung,
Resident of Lower Syari,
P.O. Tadong & P.S. Gangtok,
East Sikkim.
10. Shri Pravin Gurung,
Aged about 55 years,
Son of Shri Lok Bahadur Gurung,
Resident of Lower Syari,
P.O. Tadong & P.S. Gangtok,
East Sikkim.
11. Shri Sonam Bhutia,
Aged about 38 years,
Son of late Pem Dorjee Bhutia,
Resident of Nandok,
P.O. & P.S. Ranipool,
East Sikkim.
12. Shri Ongchok Tamang,
Aged about 31 years,
Son of Shri Man Bdr. Tamang,
Resident of Lower Syari,
P.O. Tadong & P.S. Gangtok,
East Sikkim.
13. Shri Binod Gurung,
Aged about 33 years,
Son of Shri Pradeep Kumar Gurung,
Resident of Middle Syari,
P.O. Tadong & P.S. Gangtok,
East Sikkim.
14. Shri Bijoy Tamang,
Aged about 36 years,
Son of Shri Suk Man Tamang,
Resident of Lower Syari,
P.O. Tadong & P.S. Gangtok,
East Sikkim.
15. Shri Bhim Kumar Thapa,
Aged about 38 years,
Son of Shri B. S. Thapa,
Resident of Middle Syari,
P.O. Tadong & P.S. Gangtok,
East Sikkim.



16. Shri Shaker Tamang,
Aged about 38 years,
Son of Shri Pema Namgyal Tamang,
Resident of Lower Syari,
P.O. Tadong & P.S. Gangtok,
East Sikkim.
17. Shri Manoj Gurung,
Aged about 34 years,
Son of Shri Manoj Kumar Gurung,
Resident of Lower Syari,
P.O. Tadong & P.S. Gangtok,
East Sikkim.
18. Shri Aita Singh Tamang,
Aged about 43 years,
Son of Late Chandra Bahadur Tamang,
Resident of Lower Syari,
P.O. Tadong & P.S. Gangtok,
East Sikkim.
19. Shri Sangay Lama,
Aged about 31 years,
Son of late Dal Bahadur Lama,
Resident of Lower Syari,
P.O. Tadong & P.S. Gangtok,
East Sikkim.
20. Shri Sujan Gurung,
Aged about 38 years,
Son of Shri Lok Bahadur Gurung,
Resident of Middle Syari,
P.O. Tadong & P.S. Gangtok,
East Sikkim.
21. Shri Bhupen Tamang,
Aged about 53 years,
Son of late Mingma Tamang,
Resident of Lower Syari,
P.O. Tadong & P.S. Gangtok,
East Sikkim.
22. Shri Nima Gyalpo Tamang,
Aged about 50 years,
Son of late Maita Tamang,
Resident of Lower Syari,
P.O. Tadong & P.S. Gangtok,
East Sikkim.
23. Shri Ujjwal Subba,
Aged about 26 years,
Son of Shri Kul Bahadur Subba,
Resident of Lower Nandok,
P.O. & P.S. Ranipool,
East Sikkim.



24. Shri Rajen Tamang,
Aged about 48 years,
Son of late Bhim Bahadur Tamang,
Resident of Lower Syari,
P.O. Tadong & P.S. Gangtok,
East Sikkim.
25. Shri Phuchung Tshering Lepcha,
Aged about 38 years,
Son of Late Wangchuk Lepcha,
Resident of Nandok,
P.O. & P.S. Ranipool,
East Sikkim.
26. Shri Phurba Tshering Lepcha (Complainant),
Aged about 48 years,
Son of Gyampo Lepcha,
Resident of Lower Syari,
P.O. Tadong & P.S. Gangtok,
East Sikkim.
- Petitioners
- versus**
- State of Sikkim
- Respondent

Appearance:

Mr. J.B. Pradhan, Senior Advocate with Mr. D.K. Siwakoti,
Mr. Bhusan Nepal and Ms Ranjeeta Kumari, Advocates for the
Petitioners.

Mr. S.K. Chettri, Additional Public Prosecutor with Mr. Sujan Sunwar,
Assistant Public Prosecutor for the Respondent.

**Application under Section 482 read with section 320
of the Code of Criminal Procedure, 1973.**

Date of hearing : 06.08.2020

Date of judgment : 13.08.2020

JUDGMENT & ORDER

Bhaskar Raj Pradhan, J.

- 1.** The petitioner no. 26 had lodged a first information report
(FIR) against petitioners no. 1 to 25 before the Sadar Police Station,
Gangtok, East Sikkim which was registered as Sadar P.S Case No.



52/2019 dated 05.04.2019 under sections 447/143/149/506 and 500 of the Indian Penal Code, 1860 (for short 'IPC').

2. The petitioner no. 26 alleged that on 04.04.2019 around 7 p.m. while returning home after attending a party meeting with candidate of the SDF party, he received a call from his wife regarding some problem at home. On reaching home, the petitioner no.26 learnt that one Manoj Subba along with his friend had come to his house in a vehicle and a group of boys who were all supporters of SKM party had followed them shouting and abusing and making allegation that Manoj Subba and his friend were bringing anti social elements to the village and distributing money. Whereas, actually Manoj Subba had come to the house of the petitioner no. 26 to collect his motorbike which he had left few weeks ago. The FIR further alleged that a group of boys illegally entered his house and abused and threatened his wife and children. After he reached home, he was also threatened and abused for bringing anti social people into the village and distributing money. The investigation resulted in filing of a charge-sheet against petitioners no. 1 to 25 under sections 447/143/149/506 and 509 IPC.

3. On 11.09.2019, the Court of the learned Chief Judicial Magistrate, Gangtok, East Sikkim, took cognizance of the offences under sections 447/143/149 and 506 IPC. The substance of accusation is yet to be framed. On 1.10.2019, the learned Chief Judicial Magistrate granted bail to the petitioners no.1 to 25 as the offence was bailable and fixed the next date for substance of accusation.



4. On 27.11.2019, the learned counsel for the petitioners no.1 to 25, submitted that the matter was likely to be settled. The learned Chief Judicial Magistrate recorded in the order dated 27.11.2019 that section 143 of the IPC is non-compoundable and therefore, the matter cannot be compounded. However, if the parties were willing to settle the matter then they could take recourse to appropriate provision of law.

5. On 10.12.2019, the counsel for the petitioner no. 26 submitted before the learned Chief Judicial Magistrate that he and his family had amicably settled the matter. It is in these circumstances that the petitioners who are the complainant on the one side and the accused persons on the other have jointly approached this court with a prayer to exercise its inherent powers under section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') to quash the criminal proceedings in G.R. Case No. 236 of 2019 (*State of Sikkim vs. Dorjee Tamang and 24 Others*) pending before the court of the learned Chief Judicial Magistrate under sections 447/143/149 and 506 IPC. The petitioners have also annexed the original "Milapatra" dated 15.12.2019 which records that on 15.12.2019 in the presence of the Ward Panchayat Members and village elders they had amicably settled the matter, the petitioner no. 26 and his family members having forgiven the youths involved in the incident of 04.04.2019.



6. Heard Mr. J.B. Pradhan, learned Senior Advocate on behalf of the petitioners and Mr. S.K. Chettri, learned Additional Public Prosecutor for the state respondent. Mr. Pradhan submitted that the incident relates to the peak period of campaigning during the Sikkim Legislative Election 2019. He submitted that the petitioners no.1 to 22, 24 and 26 are co-villagers being residents of Syari, Gangtok, East Sikkim and petitioners no. 23 and 25 are residents of adjacent neighbouring village Nandok, East Sikkim, falling under the same Syari Assembly Constituency. It is further submitted that except for the instant incident and criminal proceedings, there were no other disputes between the petitioners and that after the election, all the petitioners were living in cordial and good relations in the village. It is averred in the petition that the incident occurred at the height of election campaigning and it was neither pre-planned nor on account of any hostility, hatred or ill will between the petitioners. That, there is no enmity between the parties thereof. The petitioner no. 1 to 25 had already expressed their regret about the incident to their co-villager - petitioner no. 26, who in turn had also decided to forgive and forget the incident. In the circumstances, it is submitted that in the interest of justice the criminal case pending may be quashed.

7. Mr. S.K. Chettri also submits that the State has considered the allegations in the FIR and the fact that the parties



are willing to compromise the matter and therefore, they have no objection if all pending disputes between them are settled amicably.

8. Mr. J.B. Pradhan had relied upon various judgments of the Supreme Court as well as this court. In **Gian Singh vs. The State of Punjab**¹, the Supreme Court laid down guidelines for and limitations on exercise of quashment power of the High Court. It was held as follows:-

“61. The position that emerges from the above discussion can be summarised thus: 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 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. 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 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 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

¹ (2012) 10 SCC 303



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.”

9. In **Narinder Singh and Others vs State of Punjab and Another²**, the principles laid down in **Gian Singh** (supra) regarding quashment of non-compoundable offences in view of compromise arrived at between the parties were reiterated.

10. Sections 447 and 506 IPC are compoundable offences, compoundable by the petitioner no. 26 in the present case. Section 143 IPC is punishment provided for an unlawful assembly. Section 149 IPC mandates every member of an unlawful assembly guilty of offence committed in prosecution of common object. Considering the nature and the gravity of the allegations made in the FIR and the fact that the allegations were made against each other by the petitioners in the heat of election campaigning coupled with the fact that they have considered and decided to forgive and forget, this court is of the view that this is a fit case to exercise the inherent powers of this court under

² (2014) 6 SCC 466



section 482 Cr.P.C. and quash the criminal proceedings pending before the Court of the learned Chief Judicial Magistrate, Gangtok, East Sikkim to secure the ends of justice. This will allow the co-villagers to co-exist in a peaceful atmosphere which may have been disturbed by heightened passions during the peak of elections due to their political leanings. The nature of the allegations may not bring them to the category of heinous and serious offences so as to be treated as crime against society.

11. Accordingly, G.R. Case No. 236 of 2019 (*State of Sikkim vs. Dorjee Tamang and 24 Others*) pending before the Court of the learned Chief Judicial Magistrate, Gangtok, East Sikkim, under section 447/143/149/506 of the IPC arising out of FIR No. 52/2019 registered on 05.04.2019 before the Sadar Police Station, is quashed.

12. The petition is allowed.

13. Parties to bear their own costs.

14. Copy of this judgment and order be transmitted to the learned trial court for information and compliance.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting : **Yes/No**
Internet : **Yes/No**

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