

GAHC040008442023



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

Case No. : Crl.Petn./113/2023

Pate Ruja and 2 Ors.

S/o Late Pate Salla,

Permanent Resident of Papu Nallah, PO/PS Naharlagun, District Papum Pare,
Arunachal Pradesh. 2: Takio Ari Pate

Age:

Occupation :

3: Kaling Taja

Age:

Occupation

VERSUS

THE STATE OF AP

Represented through the Public Prosecutor, Govt. of Arunachal Pradesh.

Advocate for the Petitioner : T T Tara

Advocate for the Respondent : P P of AP

**BEFORE
HONBLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

JUDGMENT & ORDER (Oral)

Date : 29.02.2024

Heard Mr. J. Jini, learned counsel for the petitioners. Also heard Ms. T. Jini, learned Additional Public Prosecutor for the State.

2. The petitioners herein, who are the informant, victim and the accused respectively, in connection with Naharlagun Police Station Case No. 49/21 dated 26.03.2021, registered under Sections 452/324 of the IPC have instituted the present proceedings for quashing of the FIR dated 26.03.2021, leading to registration of the said Naharlagun P.S. Case No. 49/21 along with Charge-sheet No. 169/2021 dated 02.09.2021, under G.R. Case No. 206/2021 filed by the police on conclusion of investigation, against the petitioner no. 3.

3. The petitioner no. 1 had lodged a First Information Report (FIR) on 26.03.2021 informing the police of Naharlagun police station that the petitioner no. 3 had trespassed into the house of the petitioner no. 2 and attacked her with a Dao causing grievous hurt to her head and fingers without any valid reason. On receipt of the said FIR, the police registered a case being Naharlagun P.S. Case No. 49/2021, under Sections 452/324 of the IPC. The police on conclusion of the investigations have submitted a Charge-sheet being Charge-sheet No. 169/2021 dated 02.09.2021, under G.R. Case No. 206/2021 before the Court of the learned Chief Judicial Magistrate, Itanagar capital complex, Yupia. The said proceedings in G.R. Case No. 206/2021 was endorsed by the learned Chief Magistrate Judicial, Yupia to the Judicial Magistrate First Class, Capital Complex, Yupia for trial and

disposal and the same is pending trial as on date and the charges are yet to be framed therein.

4. The facts leading to the lodging of the said FIR dated 26.03.2021 is that on 25.03.2021, at around 23:30 hours, the petitioner no. 3 had trespassed into the house of the daughter-in-law of the informant i.e., the petitioner no. 1 and had attacked her with a Dao causing grievous hurt on her head and fingers without valid reasons. It has been brought on record that the petitioner no. 3 is working as a contingency employee in the office of the Director, ATI, Naharlagun, wherein the petitioner no. 2 is also employed. It is contended in the writ petition that the accused and the victim are both residing at the same complex called the Bida complex as tenant and both were working in the same establishment. The petitioner no. 3 had on 25.03.2021 along with some of his colleague had gone for a pre-mopin party after closing of the office and consumed some local wine and got drunk. The petitioner no. 3 had also while returning home fell into a drain and had got wet. On reaching the rented premises wherein the petitioner no. 3 was residing, he could not enter into the premises as the main gate was locked. The petitioner, thereafter, entered the premises through a small gate and went to the room of the victim, the petitioner no. 2 to seek help to take her Scotty inside the rental campus, which she denied to help him at late night. Infuriated, the petitioner no. 3 entered into the kitchen of the petitioner no. 2 and took a Dao to break open the locked gate and since the petitioner no. 3 was in a drunken state and on seeing him holding a Dao, the petitioner no. 2, the victim fearing that he would hurt someone with the Dao, tried to stop him and during the pushing and pulling that followed, the petitioner no. 2 was hurt by the Dao. It was contended that there was no intention on the part of the petitioner no. 3 to house trespass and or, had not made any preparation for the purpose and or, for causing any hurt to the petitioner no. 2 or to assault her. However, the said incident occasioning, the

brother-in-law of the petitioner no. 2 i.e., the petitioner no. 1 herein had filed the said FIR on 26.03.2021 before the police of the Naharlagun Police Station.

5. It is stated that after the said incident, the petitioners being colleagues have resolved their differences and there is no any enmity and or grievance either on the part of the petitioner no. 1 or the petitioner no. 2 against the petitioner no. 3 and the petitioner no. 1 and petitioner no. 2, no longer desires to proceed with the criminal proceedings so initiated against the petitioner no. 3. The resolution as brought about in the matter between the petitioners were reduced into writing by way of execution of a Deed of Settlement dated 30.05.2023 and therein have contended that the matter was amicably settled and the parties were co-habiting peacefully and not desirous of prosecuting the criminal proceedings as pending against the petitioner no. 3.

6. The Sections involved being not compoundable under Section 320 of the Cr.P.C., the petitioners have jointly instituted the present proceedings praying for quashing of the criminal proceeding now pending against the petitioner no. 3.

7. The learned counsels for the parties have made submissions in line with the facts and circumstances and noted herein above in this order.

8. I have considered the submissions advanced by the parties and also considered the materials available on record.

9. This Court had vide order dated 21.11.2023, required the Investigating officer

of the case to collect the Medico Legal Certificate (MLC) of the victim and to place the same before this Court. Accordingly, the Medico Legal Certificate was obtained and the same was placed before this Court by the Investigating officer and therein, it is seen that the injuries sustained by the petitioner no. 2 were so sustained on her Face and were 'Simple' in nature but, was caused by a sharp weapon.

10. The issue arising in the present proceedings is as to whether this Court has the power, under Section 482 of the Cr.P.C. to quash criminal proceedings involving non-compoundable offences in view of the compromise arrived at between parties. The said issue, was considered by the Hon'ble Supreme Court in the case of **B. S. Joshi V. State of Haryana & Another** reported in **(2003) 4 SCC 675** and the Hon'ble Apex Court categorically held that the exercise of jurisdiction under Section 482 of the Code could not be inflexible or could there be lying a rigid formula to be followed by the Courts. Exercise of such power would depend upon the facts and circumstances of each case, but with the sole purpose to prevent abuse of the process of any Court or otherwise to secure the ends of justice. It was further held that it is well settled that these powers have no limit, of course, where there is more power; it becomes necessary to exercise utmost care and caution while exercising such powers.

11. The decisions rendered by the Hon'ble Apex Court in the case of **B. S. Joshi (supra)** came to be doubted when the Special Leave Petition in **Gian Singh V. State of Punjab** came up for hearing before a two bench Judge and accordingly the matter was referred to a larger bench. The larger bench of the Hon'ble Supreme Court in its decision in the case of **Gian Singh V. State of Punjab and Anr.**, Reported in **(2012) 10 SCC 303** has held that the case of **B. S. Joshi (supra)** was correctly decided and held as follows:-

“58. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed.

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 F.I.R may be exercised where the offender and 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 serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like 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 pre-dominantly civil flavour stand on 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, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put 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 wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

12. Having considered the law laid down by the Hon'ble Apex Court in the context of the power of this Court to quash proceedings involving non-compoundable Sections in exercise of its power under Section 482 Cr.P.C., the issue involved in the present proceedings is hereby considered.

13. It is a settled law that the offences which are non-compoundable cannot be compounded by a criminal Court in purported exercise of its powers conferred under Section 320 Cr.P.C. Any such attempt by the court would amount to

alteration, addition and modification of Section 320 Cr.P.C., which is the exclusive domain of legislature. Nevertheless, the limited jurisdiction to compound an offence within the framework of Section 320 Cr.P.C. is not an embargo against invoking inherent powers by the High Court vested in it under Section 482 Cr.P.C. This Court, keeping in view of the particular facts and circumstances of the case and for justifiable reasons can invoke the provisions of Section 482 Cr.P.C. in aid to prevent abuse of the process of any Court and/or to secure the ends of justice.

14. This Court, therefore, having regard to the nature of offence and the fact that the parties have amicably settled their dispute and the victim has willingly consented to the nullification of criminal proceedings, can quash such proceedings in exercise of its power under Section 482 Cr.P.C., even if the offences are non-compoundable.

15. This Court, can indubitably evaluate the consequential effects of the offence beyond the body of an individual and thereafter adopt a pragmatic approach, to ensure that the felony, even if goes unpunished, does not tinker with or paralyze the very object of the administration of criminal justice system. Criminal proceedings involving non-heinous offences or where the offences are pre-dominantly of a private nature can be annulled irrespective of the stage the criminal proceedings are at.

16. Having noticed the powers available to this Court, under the provisions of Section 482 of the Code, the weighing upon the peculiar facts and circumstances involved in the present proceedings, I am inclined to invoke the inherent powers of this Court, under Section 482 Cr.P.C., and quash the criminal proceedings existing against the petitioner no. 2 for the following reasons:-

(1) *Firstly*, the occurrence involved in the present proceedings can be categorized as a dispute between the petitioner no. 2 and petitioner no. 3 only occasioning on account of the circumstances as noticed herein above without any premeditation to commit the same on the part of the petitioner no. 3.

(2) *Secondly*, the nature of injuries incurred, by the petitioner no. 2 on account of assault by the petitioner no. 3, does not appear to exhibit mental depravity of the petitioner no. 3 or the commission of the said offence cannot be said to be of such a serious nature that quashing of which would override public interest.

(3) *Thirdly*, even after lodging of the said FIR dated 25.07.2021, the petitioners have reconciled their differences and were co-existing as neighbors/colleagues and having reconciled their differences in their own volition without any coercion or compulsion had reduced such reconciliation in writing by executing a Deed of Settlement dated 30.05.2023. Accordingly, the possibility of conviction is remote and bleak and the continuation of the criminal proceedings would cause great prejudice to the accused petitioner no. 3 despite full and complete settlement arrived at in the matter with the victim.

17. In view of the conclusions reached herein above and having considered the offence involved in the matter and the reconciliation arrived at between the petitioners, this Court, in exercise of the powers conferred under Section 482 of the Cr.P.C. quash the criminal proceedings pending before the Court of learned Chief Judicial Magistrate, Capital Complex, Yupia against the petitioner no. 3, consequently, the G.R. Case No. 206/2021, under Sections 452/324 of the IPC (arising out of Naharlagun P.S. Case no. 49/2021) along with the FIR dated 26.03.2021 and the charge-sheet being Charge-sheet no. 169/2021, stands quashed.

18. The criminal revision petition is accordingly allowed in terms of the above.

JUDGE

Comparing Assistant