

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM & ARUNACHAL PRADESH)

ITANAGAR PERMANENT BENCH (NAHARLAGUN)

Criminal Petition No.36 (AP) of 2019

1. Shri Toko Shama, S/o Toko Chilly,
Resident of Nyokum Lapang, P.O/P.S- Itanagar, Papum Pare District, Arunachal Pradesh.
2. Shri Tana Tamar, S/o late Tana Shelly,
Resident of Doimukh, P.O/P.S- Doimukh, Papum Pare District, Arunachal Pradesh.
3. Shri Tana Tadap, S/o late Tana Shelly,
Resident of Doimukh, P.O/P.S- Doimukh, Papum Pare District, Arunachal Pradesh.
4. Shri Tana Takum, S/o late Tana Shelly,
Resident of Doimukh, P.O/P.S- Doimukh, Papum Pare District, Arunachal Pradesh.
5. Shri Niku Yangfo, S/o late Kacha Yangfo,
Resident of Chaing Tajo, P.O/P.S Chaingtajo, East Kameng District, Arunachal Pradesh.
6. Shri Sime Killo, S/o late Tayu Killo,
Resident of Chaing Tajo, P.O/P.S- Chaingtajo, East Kameng District, Arunachal Pradesh.

..... Petitioners.

– VERSUS –

The State of Arunachal Pradesh through the Public Prosecutor, Arunachal Pradesh.

..... Respondents.

Advocates for the Petitioners : Mr. T. Garam

Advocates for the Respondent : Mr. J. Tsering, Addl. P.P.

::: BEFORE :::

HON'BLE MR. JUSTICE NANI TAGIA

JUDGMENT AND ORDER (Oral)

16.07.2019

Heard Mr. T. Garam, learned counsel for the petitioners and Mr. J. Tsering, learned Additional Public Prosecutor for the State.

2. This Criminal petition has been filed under Section 482 of the Code of Criminal Procedure by the petitioners for quashing and setting aside the Nirjuli P.S. Case No. 31/2016 under Sections 447/427/120(B)/34 of the Indian Penal Code, corresponding to G.R. Case No.361/2016, pending before the Court of learned Judicial Magistrate, First Class, Capital Complex, Yupia, on the ground, that the informant/victim and the accused have amicably settled their differences by a Deed of Compromise dated 07.05.2019. The aforesaid Nirjuli P.S. Case came to be registered on the basis of the First Information Report(FIR) dated 20.05.2016 lodged by one, Sh. Toko Shama/petitioner No.1 before the Officer-in-Charge, Police Station Nirjuli against the petitioners No. 2 to 6 complaining, *inter alia*, that on 19.05.2019, at around 5.30. PM, the petitioners No. 2 to 6 along with around 60 others carrying local dao and sticks vandalized his private property i.e. RCC wall measuring length 132 Mtr.(Approx.) and height 8 feet located at Nirjuli Village-1 by engaging 3 (three) nos of JCB machines without any reason.

3. On the basis of the aforesaid FIR dated 20.05.2016, the Nirjuli P.S. Case No. 31/2016 under Sections 447/427/120(B)/34 of the Indian Penal Code was registered. On completion of the investigation, charge-sheet against the accused/petitioners No.2 to 6 was filed by the Investigating Authority on

24.12.2016 under Sections 447/427/120(B)/34 of the Indian Penal Code. In pursuance to the charge-sheet as above, the Court of the learned Judicial Magistrate, 1st Class, Capital Complex, Yupia has framed the charges against the petitioners No. 2 to 6 on 27.11.2018 and the same is pending trial before the learned Judicial Magistrate, 1st Class, Capital Complex, Yupia.

4. Mr. T. Garam, learned counsel for the petitioners has tried to impress upon this Court that the offences under which the petitioners No. 2 to 6 have been charged are not of a heinous nature and the said incident has occurred out of the land dispute between the petitioner No.1 and the petitioners No. 2 to 6. In support of his case, Mr. T. Garam, learned counsel for the petitioners has referred to the case of *Narinder Singh & Ors Vs. State Of Punjab & Anr*, reported in *2014 (6) SCC 466*, more particularly, the paragraph Nos. 29.4 and 29.5, which are quoted herein below:

"....29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases...."

5. By referring to the ratio laid down in the *Narinder Singh (Supra)*, Mr. T. Garam, learned counsel for the petitioners has submitted that the criminal case against the accused/petitioners No. 2 to 6 arose out of a civil dispute, namely, the land dispute between the petitioner No.1 and the petitioners No.2 to 6. Mr. Garam, further submits that as the informant/victim/petitioner No.1 and the accused/petitioners No. 2 to 6 have resolved their differences by a mutual

Deed of Settlement dated 07.05.2019, the possibility of conviction of the accused remains remote and bleak and, therefore, as held by the Hon'ble Apex Court in the case of *Narinder Singh (Supra)*, the present is a fit case for this Court to quash the criminal proceeding pending against the accused/petitioners No.2 to 6 before the learned Judicial Magistrate, 1st Class, Capital Complex, Yupia.

6. Per contra, Mr. J. Tsering, learned Additional Public Prosecutor for the State submits that by looking at the First Information Report (FIR), the charge-sheet and the charge framed that the offence alleged against the accused/petitioners No. 2 to 6 cannot be termed as an offence which is not of a serious nature inasmuch as the accused/petitioners No.2 to 6 have employed as many as 60 persons armed with dao and other weapons including 3 nos of JCB to dismantle the RCC wall of the petitioner No.1. Mr. J. Tsering, further submits that as the charge has already been framed by the Court of the learned Judicial Magistrate, 1st Class, Capital Complex, Yupia, the criminal proceeding against the petitioners No.2 to 6 may not be quashed at this stage inasmuch as the power vested under Section 482 of the Code of Criminal Procedure upon this Court is to be exercised in the rarest of the rare case and only for the purpose of securing ends of justice and to prevent abuse of the process of any Court. Mr. J. Tsering, learned Additional Public Prosecutor also submits that no such circumstance exist in the present case for invoking the power under Section 482 of the Code of Criminal Procedure by this Court.

7. Rival submissions advanced at the Bar have received due consideration of this Court.

8. It is seen from the charge-sheet filed against the accused/petitioners No.2 to 6 that the accused/petitioners No.2 to 6 on 19.05.2016 had damaged the RCC wall of the petitioner No.1 by engaging 3 nos of JCB machines along with other persons. In connection therewith, the petitioners No. 2 to 6 were arrested and 3 nos of JCB along with RC book were seized and as many as 8 witnesses have been tendered for supporting the prosecution's case. Although,

the act of the accused/petitioners No. 2 to 6 may have been propelled by a land dispute between the petitioner No. 1 and the petitioners No. 2 to 6, yet, it cannot be said that the offence alleged against the accused/petitioners No. 2 to 6 is predominantly of a civil character. The dismantling of the petitioner No.1's RCC wall by the accused/petitioners No. 2 to 6 by employing men and 3 (three) nos of JCB machines forcibly and unauthorizedly cannot, in the considered view of this Court, be termed as an offence or criminal case having overwhelmingly and predominantly civil character.

9. Although, the dispute may have been amicably settled between the petitioner No.1 and the accused/petitioners No.2 to 6 by a Deed of Compromise dated 07.05.2019, yet that by itself would not make the possibility of conviction of the accused in the present case remote and bleak inasmuch as there are as many as 7 other witnesses excluding the informant/victim/petitioner No.1 himself. Therefore, though the petitioner No.1/informant may not support the case of the prosecution during the trial, yet, the accused may still be convicted on the basis of the evidence given by 7(seven) other witnesses as well as other evidences that may be tendered and produced by the prosecution.

10. In view of the above, the ratio laid down by the Hon'ble Apex Court in the case of *Narinder Singh (Supra)*, that the criminal cases having overwhelmingly and predominantly civil character as well as the possibility of conviction of the accused being remote and bleak is not present in the instant case.

11. In that view of the matter, I do not find any merit in the present criminal petition requiring quashing of the Nirjuli P.S. Case No. 31/2016 under Sections 447/427/120(B)/34 of the Indian Penal Code, corresponding to G.R. Case No.361/2016, pending before the Court of the learned Judicial Magistrate, First Class, Capital Complex, Yupia. Accordingly, the criminal petition is **dismissed** being devoid of merit.

12. Interim order passed on 23.05.2019 stands vacated.

13. Any remedy available to the petitioners under the law before any of the forum, undoubtedly can be availed of by the petitioners as it may deemed appropriate.

14. The criminal petition accordingly disposed of.

JUDGE

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