

**IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM &
ARUNACHAL PRADESH)**

[ITANGAR PERMANENT BENCH]

Crl. Petn. 10 (AP)2015

- (1) Sri Layi Mihu,
S/o – Shri Baku Mihu
Village – Amboli, P.O./P.S. – Anini
District – Upper Dibang Valley, Arunachal Pradesh

- (2) Sri Kable Singh Sanghera,
S/o – Lt. Shri Amar Singh Sanghera
Sub- Inspector (A.P.P.), Officer-in-Charge,
Police Station, Bhalukpong, District – West Kameng,
Arunachal Pradesh

- (3) Sri Junwang Lamthak
S/o. Smt. Neele Rajkumari Lamthak
Village – Kheti, P.O./P.S.- Khonsa
District- Tirap, Arunachal Pradesh

- (4) Smt. Neele Rajkumari Lamthak
Mother of Junwang Lamthak
Village – Kheti, P.O./P.S.- Khonsa
District-Tirap, Arunachal Pradesh

.....Petitioners

Advocates for the Petitioner:

Mr. C. W. Mantaw
Mr. H. Chada

-Versus-

- (1) State of Arunachal Pradesh

- (2) Sri Junwang Lamthak
S/o. Smt. Neele Rajkumari Lamthak
Village – Kheti, P.O./P.S.- Khonsa
District- Tirap, Arunachal Pradesh

- (3) Smt. Neele Rajkumari Lamthak
Mother of Junwang Lamthak
Village – Kheti, P.O./P.S.- Khonsa
District-Tirap, Arunachal Pradesh

.....Respondents

Advocates for the Respondent:
Mr. K. Tado, P.P., Arunachal Pradesh

:::BEFORE:::
HON'BLE JUSTICE (MRS.) RUMI KUMARI PHUKAN

Date of hearing : 10.08.2015
Date of Judgment & Order : **14.08.2015**

JUDGMENT & ORDER (CAV)

This is an application filed under Section 482 of the Code of Criminal Procedure, 1973, *read with* Section 483 praying for quashing and setting aside the proceeding pending before the Judicial Magistrate, 1st Class at Khonsa in G.R. Case No. 94/2013 in connection with Khonsa P.S. Case No. 85/2015 registered under Sections 341/324/201/34 IPC.

2. Given background of the instant case, can be summarized as under that on 19.10.2013 at around 9.15PM, while one Sri Junwang Lamthak was coming back by picking his cousin sister from Fall-Out Bar, the Khonsa police team stopped them at bus stand of Khonsa Bazar and restrained them on the road and thereafter took him to Police Station. Said Junwang was illegally confined inside the Police Station by the Officer-in-Charge, namely, Sri Kable Singh Sanghera, Khonsa Police Station and his PSO/Constable Sri Layi Mihu and both of them brutally assaulted him and forcibly shaved his hair by a Knife and also caused incised injury on his neck. They also snatched his Handset and Watch. On being informed of the matter, the mother of the said victim, Smti Neele Rajkumari Lamthak recovered her son and took him to the hospital for providing treatment and on 21.10.2013 lodged a written complaint before the Superintendent of Police, Khonsa, subsequent to which, the Officer-in-Charge, Khonsa Police Station, registered the First Information Report (FIR) as Khonsa P.S. Case No. 85/2013 under Sections 341/324 IPC against Constable L. Mihu, only, and the final Charge-Sheet was submitted against the said constable under Sections 341/324 IPC.

3. The Lower Court, however, directed for further investigation as it was found that there was no fair investigation on the part of the I.O. of the said case, and no independent witnesses were examined by the I.O. even though the occurrence took place in the open market. As per the direction of the Court, further investigation was done and a supplementary Charge-Sheet was filed against the above mentioned two accused persons under Sections 341/324/201/34 IPC. In the meantime, the I.O. had also applied for prosecution sanction of the above-mentioned 2(two) accused persons, as directed by the Court.

4. From a perusal of the LCRs so received by the Court, it appears that both the accused persons appeared before the Court below in response to the summons served upon them.

5. Necessary copies as per section 207 of the Code of Criminal Procedure, 1973, were furnished to the said accused persons and while the case was fixed for consideration of charge, both the accused persons have moved the present petition before this Court along with the compromise deed entered into between the parties i.e. accused persons as well as informant and victim of the said case and it has been submitted that the case, at hand, has been amicably settled at the village level in presence of village chief and village council members. A prayer was made before the Judicial Magistrate, 1st Class, Khonsa, to close the said proceeding in view of the settlement so arrived at, with a prayer to compound the offence, however, such prayer for closing the said proceeding, was turned down by the Judicial Magistrate, 1st Class, Khonsa, on 25.01.2014. Hence, this criminal petition has been filed.

6. I have heard the submissions of the rival parties, at length.

7. According to the petitioners, as the matter has been amicably settled between the parties and the same is private in nature, therefore, there is no use of further proceeding in the said case and it will tantamount the abuse of process of law only. Accordingly, it is submitted that the proceeding pending before the said Magistrate, is

required to be set aside and quashed, in exercise of the inherent power conferred upon this Court under Section 482 of the Code of Criminal Procedure, 1973. To bolster his argument, learned counsel for the petitioners Mr. Mantaw, has relied upon the decision of the Apex Court as rendered in the cases of ***B.S. Joshi -vs- State of Haryana*** reported in ***(2003) 3 SCC 227*** and ***Dimpey Gujral -vs- Union Territory through Administrator U.T. Chandigarh*** reported in ***(2013) 11 SCC 497***.

8. Learned counsel for the petitioners has referred to Paragraphs No. 6 and 7 of the decision rendered in ***B.S. Joshi***(supra), as under:

"6. In Pepsi Food Ltd. & Anr. V. special Judicial Magistrate & Ors. [(1998) 5 SCC 749] this Court with reference to Bhajan Lal's case observed that the guidelines laid as to where the court will exercise jurisdiction under Section 482 of the Code could not be inflexible or laying 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 is well settled that these powers have no limits of course, where there is more power, it becomes necessary to exercise utmost care and caution while invoking such powers.

7. The High court has relied upon Madhu Limaye case for coming to the conclusion that since the offence under sections 498A and 406 IPC are non-compoundable. It would be impermissible in law to quash the FIR on the ground that there has been a settlement between the parties. The decision in Madhu Limaye's case has been misread and misapplied by the High Court. The question considered in that case was when there was a bar on the power of revision in relation to any interlocutory order passed in an appeal, enquiry, trial or other proceedings, what would be its effect on exercise of power under Section 482 of the Code. Sub Section(2) of Section 397 of Cr.P.C. providing that the power of revision conferred by sub Section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceedings was noticed and it was held that on a plain reading of Section 482, it would follow that nothing in the Code, which would include sub-Section (2) of Section 397 also, "shall be deemed to limit or affect the inherent powers of the High Court". The Court said that if we were to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers but adopting a harmonious approach held that the bar provided in sub-section (2) of section 397 operates only in exercise of the revisional power of the High Court meaning thereby that the High Court will

have no power of revision in relation to any interlocutory order. It was further held that, then in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redressal of the grievance of the aggrieved party. In Madhu Limaye's case, it was, inter alia, said that if for the purpose of securing the ends of Justice Interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or effect the exercise of the inherent power by the High Court. By way of illustration, an example was given where without jurisdiction the Court takes cognizance or issues process and assumes it to be an interlocutory order, would it stand to reason to say that inherent power of the High Court cannot be exercised for stopping the criminal proceedings as early as possible, since being an interlocutory order, it was not revisable and resultantly the accused had to be harassed up to the end, though the order taking cognizance or issuing process was without jurisdiction. It was held that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice."

9. Thus, the contention of the learned counsel for the petitioners is that the offences can be allowed to be compounded in view of the settlement arrived at between the parties as well as in view of the fact that they are now living peacefully and hence, the continuance of the proceeding in the Court below, will be contrary to the principles laid down by the Apex Court.

10. I have gone through the decision rendered by the Apex Court in ***Dimpey Gujral***(supra), wherein reference has been made to the case of ***Gian Singh Vs. State of Punjab, & anr.***, reported in ***(2012) 10 SCC 303***, and it has been held as under:

"57. The position that emerges from the above discussion can be summarized 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 plentitude 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 compliant 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 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."

11. In the case of **B.S. Joshi**(supra), it has been held by the Apex Court that settlement between the parties under Sections 498A/406 IPC can be permitted to promote social justice and to encourage the genuine settlement of matrimonial disputes.
12. Regarding exercise of power by this Court under Section 482 of the Code of Criminal Procedure, 1973, a catena of cases have repeatedly laid down the same legal proposition as has been mentioned in the case of **Dimpey Gujral**(supra).
13. For better appraisal of the same, some of the cases are referred, hereunder:

(1). **Narindra Singh & Ors. -vs- State of Punjab & anr.** reported in **(2014) 6 SCC 466** wherein it has been held by the Apex Court, as under:

"Quashing of criminal proceedings on the basis of settlement: It would be open to the High Court to examine whether the prosecution has collected sufficient evidence to prove the charge under S. 307 IPC. If there is a strong possibility of conviction, the High Court may not accept the settlement and quash the criminal proceedings. It would be permissible for the High Court may not accept the plea of compounding, if chances of conviction are bleak.

Quashing of Criminal Proceedings on the basis of settlement : where the settlement is arrived at immediately after the commission of offence and the matter is still under investigation, the High Court may accept the settlement. Likewise, where the charge is framed but the evidence is yet to start, or the evidence is still at infancy stage, the Court may permit settlement."

(2). **Madan Mohan Abbot -vs- State of Punjab** reported in **(2008) 4 SCC 582** wherein it has been held by the Apex Court that ***the Court should ordinarily accept the terms of the compromise even in criminal proceedings where the question involved is of purely personal nature.***

(3). **Gian Singh -vs- State of Punjab & anr.**, reported in **(2012) 10 SCC 303**, wherein it has been held by the Apex Court, as under:

"Whether power which independently lies with High Court to quash criminal proceedings pursuant to compromise arrived at, should at all be exercised. Power of High Court in quashing criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction was distinct and different from power given to criminal court for compounding offences Under Section 320 of Cr. P. C.. However, before exercise of such power High court must have due regard to nature and gravity of crime Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. could not be fittingly quashed even though victim or victim's family and offender have settled dispute. Such offences were not private in nature and have serious impact on society. Similarly any compromise between victim and offender in relation to offences under special statutes Prevention of Corruption Act or offences committed by public servants while working in that capacity etc; could not provide for any basis for quashing criminal proceedings involving such

offences but criminal cases having overwhelmingly and pre-dominantly civil favour stand on different footing for purposes of quashing, particularly offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or offences arising out of matrimony relating to dowry, etc. or family disputes where wrong was basically private or personal in nature and parties have resolved their entire dispute. In this category of cases High Court must consider whether it would be unfair or contrary to interest of justice to continue with criminal proceeding or continuation of criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between victim and wrongdoer and whether to secure ends of justice, it was appropriate that criminal case is put to an end and if answer to above question(s) was in affirmative, High Court should be well within its jurisdiction to quash criminal proceeding."

14. In view of the above legal pronouncement and settled proposition of law, the Court can examine the nature of offence, evidence on record, impact on the society, etc. and whether it is purely personal in nature.

15. It has also been categorically declared that the offences committed by the public servant while working in that capacity and thereafter compromise arrived at, by such public servant cannot be the basis for quashing criminal proceeding.

16. In the instant matter, placed before us, as we found that the offence complained of, is against the police officials i.e. public servants and the said officials by taking advantage of their official capacity, has abused the process of law and assaulted the informant's son(victim) in a public vicinity which has maligned the image of the police in public life and has unsecured the life and liberty of the private person.

17. Without being any case registered against the victim, by its over-power, the police authority/the Officer-in-Charge, Khonsa Police Station, Khonsa, picked-up the said victim from public locality and had confined and assaulted him and had also shaved his hair inside the police station with a knife causing incised injury on his person, that too, without any basis of any specific complaint, etc., cannot be

termed to be an act of personal in nature. Further, the said Officer-in-Charge after lodging of the complaint by the mother of the victim, conducted investigation in an unfair manner and has casually submitted the Charge Sheet which, however, was not accepted by the Court below and on being directed for further investigation by the said Court, subsequent/supplementary charge-sheet has been submitted by the I.O. of the case, under sections referred to above.

18. Now, in the attending facts and circumstances of the case at hand, the settlement arrived at between the parties, obviously, for manifest reason on the part of the said 2(two) accused persons, to avoid serious consequences of their wrong act in the event of proof of their offences in the said case. There is material evidence on record regarding complicity of the said accused persons in connection with the case, quoted above.

19. In such backdrop, it is found that this criminal petition has been filed by the petitioners with an ulterior motive to escape from legal punishment and has not been filed *bona fide*, as has been demonstrated by the petitioners, before this Court.

20. It is also not the proposition of law that every case of settlement so arrived at between the parties, can be accepted by the Court mechanically without going through the nature of accusation and its impact on the society.

21. Situated thus, allowing the settlement so arrived at between the parties concerned; may be at the influence or at the behest of the said two accused persons who were the police personnel; will led a serious negative impact on the society. In view of the above, this Court is not inclined to accept the compromise/settlement deed so arrived at between the contesting parties and accordingly, there is no occasion to quash the criminal proceeding, in question.

22. The criminal petition accordingly stands dismissed. There shall be, however, no order as to costs. Connected LCRs be send down to the Court below forthwith.

JUDGE

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