

IN THE GAUHATI HIGH COURT  
(HIGH COURT OF ASSAM; NAGALAND; MIZORAM AND ARUNACHAL PRADESH)  
ITANAGAR PERMANENT BENCH

Appeal From  
Writ Petition (Civil)

Crl. Ptn. No. 09 (AP) 2016

Appellant  
Petitioner.

Shri Nyamlang Pongtey & Anr.

-Versus-

Respondent  
Opposite Party.

The State of A.P.

Counsel for the Appellant  
Petitioner.

N. Ratan  
D. Ete  
R. Laya  
J. Lollen  
R. Ngomle  
T. Taggu  
N. Tsering  
R. Vijay  
M. Ete

Counsel for the Respondent  
Opposite Party.

P. P. (AP).

Noting by Officer or Advocate	Serial No.	Date	Office note, reports, orders or proceeding with signature
(1)	(2)	(3)	(4)

IN THE MATTER OF:

1. Shri Nyanlang Pongtey,  
S/o Shri Kapse Pongtey,  
Permanent resident of Old Paniduri Village,  
P.O.- Borduria, P.S.- Khonsa,  
Tirap District, Arunachal Pradesh. Pin: 792130  
Ph no. 09612484181, Email Id: Nil.
  
2. Shri Tingo Pongtey,  
S/o Shri Kapse Pongtey,  
Permanent resident of Old Paniduri Village,  
P.O.- Borduria, P.S.- Khonsa,  
Tirap District, Arunachal Pradesh. Pin: 792130  
Ph no.08132894924, Email Id: Nil.

(Common cause) *h*

*h*

-Vrs-

The State of Arunachal Pradesh (represented through  
the Ld. Public Prosecutor)

CRL. PETN. 09 (AP)/ 2016

- B E F O R E -

**HON'BLE MRS. JUSTICE RUMI KUMARI PHUKAN**

15-02-2016

Heard Mr. N. Ratan, learned counsel appearing for the petitioners as well as Mr. K. Tado, learned P.P. appearing on behalf of the State of Arunachal Pradesh.

The present petition has been filed by the two petitioners, namely, (1) Shri Nyaniang Pongtey and (2) Shri Tingo Pongtey, praying for allowing the petitioners to compound the GR case No. 26/2013 and to close the proceeding which is pending trial before the JMFC Khonsa, Tirap District. The petitioner No.1 is the victim/informant in GR case No. 26/2013 and petitioner No.2 is the accused in the aforesaid case.

It has been submitted that the petitioner No.2, is the younger brother of the petitioner No.1. In drunken condition the petitioner No.2 made an assault to petitioner No.1, for which an FIR was lodged before the O.C. PS, Khonsa Police Station by the petitioner No.1 on 29-04-2013, which resulted in a charge sheet against the petitioner No.2.

Consequently, the case was proceeded trial in GR Case No. 26 of 2013. Charge under Sections 326 IPC was framed against the petitioner No.2 in the foresaid case and during trial, the petitioner no.1 has given the evidence before the Court that the petitioner no.2 has inflicted him injury but however, he has also made a statement before the Court that because of the drunken condition on the fateful day, the petitioner no.2 assaulted him. They have already settled the matter outside the Court and they are living together peacefully now.

It has been contended that although the parties have arrived at a settlement but the offence under Section 326 being a non compoundable offence, the parties cannot file a

compromise petition before the Trial Court as the same will not be allowed by the Court being the offence non compoundable.

In this context, the learned counsel for the petitioners has submitted that the Hon'ble High Court has inherent power under Section 482 Cr.P.C. to quash the criminal proceeding or/and criminal complaint under Section 326 IPC even being a non compoundable offence. In support his submissions, he has relied upon the decisions given by the Hon'ble Supreme Court rendered in **Gian Singh V. State of Punjab**, reported in **(2012) 10 SCC 303, Narinder Singh & Ors. Vs. State of Punjab & Anr**, reported in **(2014) 6 SCC 466**.

I have carefully gone through the observations made in the aforesaid decisions. It has been observed that wherein the compromise arrived at between the parties in non compoundable offence, there is scope of inherent power under Section 482 Cr.P.C. but it can be exercised very sparingly to prevent the abuse of the process of any court and to ensure peaceful family affairs for the ends of justice.

In para 29 in **Narinder Singh and Others** (supra), it has observed as under:-

*"29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:*

*19.(1) Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties*

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*have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.*

*29.(II) When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:*

*(i) ends of justice, or*

*(ii) to prevent abuse of the process of any Court. While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.*

*29.(III) Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by Public Servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.*

*29.(IV) On the other, those criminal cases having overwhelmingly and pre-dominantly 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(V) 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.*

*29.(VI) Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC.*

*For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can*

*examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.*

*29.(VII) While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not."*

*Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.*

In the present case in hand, one of the brother lodged the FIR against the another brother and the incident occurred due to drunken condition of the younger brother which however, they have settled between them and they are willing to live together peacefully. In such backdrop continuation of criminal proceeding against his own brother will reiterate their relation resulting disharmony in the family. The dispute herein is

a private in nature and as such, the settlement of such matter will not have any serious impact in the society. Taking of all these factors into consideration, it can be arrived at that the compromise between the parties should be accepted so as to prevent abuse of process and to secure the ends of justice.

Accordingly, this Criminal Petition is allowed. The criminal proceeding of the GR Case No.26/2013 which is pending before the JMFC, Khonsa, is hereby set aside and quashed.

**JUDGE**