

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

Crl. Petn. 52 (AP) 2017

1. Mr. Kumol Tayeng, S/o Late Sashidhar Tayeng,
Village: Gadum, P.O./P.S:Mebo, Dist:East,
Siang, Arunachal Pradesh.
2. Mrs. Monica Tayeng, D/o Kumol Tayeng,
Presently residing at G-Extension, Naharlagun,
P.O./P.S: Naharalagun, Dist:Papum Pare,
Arunachal Pradesh.
3. Mr. Lohit Borah, S/o A.C. Borah,
Village:Gaurisagar, P.O./P.S.:Gaurisagar,
Dist: Sibsagar, P.O/P.S:Naharlagun,
Dist:Papum Pare, Arunachal Pradesh.

.....Petitioners

-Versus-

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

.....Respondent

-BEFORE-
THE HON'BLE MR. JUSTICE S.SERTO

For the Petitioner	: Mr. V. Jamoh, Adv.
For the State Respondent	: Ms. M. Tang, Addl. PP.
Date of hearing	: 05-09-2017
Date of judgment (Oral)	: 05-09-2017

JUDGMENT & ORDER (Oral)

1]. This is an application under Section 482 Cr.P.C., 1973 praying for quashing and setting aside the Charge-Sheet No. 71/2014 submitted by the Naharlagun Police in the Court of Chief Judicial Magistrate, Capital Complex, Yupia in respect of Naharlagun P.S. Case No. 51/2014 under Section 366 IPC.

Heard Mr. Vijay Jamoh, learned counsel appearing for the petitioner and Ms. M. Tang, learned Addl. PP appearing on behalf of the State of Arunachal Pradesh.

2]. Facts and circumstances which led to the filing of the present petition are as follows; that on 04.12.2014, the petitioner No. 1 lodged an FIR at Naharlagun Police Station stating that his daughter i.e. petitioner No. 2 has

been kidnapped/ abducted to compel her marriage by the petitioner No. 3 who now has become his son in law having married the petitioner No. 2.

Following the said complaint, the FIR being Naharlagun P.S. Case No. 51/2014 was registered under Section 366 of the IPC against the petitioner No. 3. However, it was found later on that it was not a case of kidnapping or abduction but as consensual elopement, therefore, 2 families i.e. the families of petitioner Nos. 1 & 2 and the family members of petitioner No. 3 settled the issues amicably and got the two petitioners i.e. petitioner No. 2 & petitioner No. 3 married with each other. Ever since then, the petitioner Nos. 2 & 3 has lived together as husband and wife peacefully and joyfully. But being ignorant about the process of law, the 2 families did not meet the Police for closure of the FIR. Therefore, the Police being oblivious of what has taken place between the parties proceeded with the investigation and submitted the Charge-Sheet which is impugned, herein.

Having realized at least that the same needs to be quashed and set aside have come to this Court invoking this Court's jurisdiction under Section 482 Cr.P.C., 1973.

3]. Learned counsel for the petitioners submitted that since the two families have settled the issues amicably and as a result of the settlement, the petitioner Nos. 2 & 3 have been married and are leaving together as husband and wife peacefully and happily to keep the Charge-Sheet alive and allow the Court having jurisdiction to try the case would not be in the interest of both the husband and wife and the cordial relationship of the 2 families that has been brought about and cemented by the marriage.

The learned counsel further submitted that in the given situation, the prosecution of the petitioner No. 3 in the case would be a lame prosecution which would amount to wastage of time and energy.

The learned counsel cited 2 (two) judgments of Hon'ble Supreme Court passed in the following cases; the relevant paras referred to by the learned counsel are reproduced herein below one after the other;

(1) *Yogendra Yadav and Others-vs-State of Jharkhand and Other,*
reported in **(2014) 9 SCC 653**, Para-4 to 6;

“4. Now, the question before this Court is whether this Court can compound the offences under Sections 326 and 307 of the IPC which are non-compoundable. Needless to say that offences which are non-compoundable cannot be compounded by the court. Courts draw the power of compounding offences from Section 320 of the Code. The said provision has to be strictly followed (Gian Singh v. State of Punjab. However, in a given case, the High Court can quash a criminal proceeding in exercise of its power under Section 482 of the Code having regard to the fact that the parties have amicably settled their disputes and the victim has no objection, even though the offences are non-compoundable. In which cases the High Court can exercise its discretion to quash the proceedings will depend on facts and circumstances of each case. Offences which involve moral turpitude, grave offences like rape, murder etc. cannot be effaced by quashing the proceedings because that will have harmful effect on the society. Such offences cannot be said to be restricted to two individuals or two groups. If such offences are quashed, it may send wrong signal to the society. However, when the High Court is convinced that the offences are entirely personal in nature and, therefore, do not affect public peace or tranquility and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice, it should not hesitate to quash them. In such cases, the prosecution becomes a lame prosecution. Pursuing such a lame prosecution would be waste of time and energy. That will also unsettle the compromise and obstruct restoration of peace.

5. In Gian Singh this Court has observed that

“58 where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the 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. Needless to say that the above observations are applicable to this Court also.

6. Learned counsel for the parties have requested this Court that the impugned order be set aside as the High Court has not noticed the correct position in law in regard to quashing of criminal proceedings when there is a compromise. Affidavit has been filed in this Court by complainant-Anil Mandal, who is respondent No. 2 herein. In the affidavit he has stated that a compromise petition has been filed in the lower court. It is further stated that he and the appellants are neighbours, that there is harmonious relationship between the two sides and that they are living peacefully”.

(2) Narinder Singh and Other-vs- State of Punjab and Another, reported in **(2014) 6 SCC 466**, wherein, it has been held in Para-8 to 12 that;

“8 We find that there are cases where the power of the High Court under [Section 482](#) of the Code to quash the proceedings in those offences which are uncompoundable has been recognized. The only difference is that under [Section 320\(1\)](#) of the Code, no permission is required from the Court in those cases which are compoundable though the Court has discretionary power to refuse to compound the offence. However, compounding under [Section 320\(1\)](#) of the Code is permissible only in minor offences or in non-serious offences. Likewise, when the parties reach settlement in respect of offences enumerated in [Section 320\(2\)](#) of the Code, compounding is permissible but it requires the approval of the Court. In so far as serious offences are concerned, quashing of criminal proceedings upon compromise is within the discretionary powers of the High Court. In such cases, the power is exercised under [Section 482](#) of the Code and proceedings are quashed. Contours of these powers were described by this Court in [B.S.Joshi vs. State of Haryana](#) (2003) 4 SCC 675 which has been followed and further explained/elaborated in so many cases thereafter, which are taken note of in the discussion that follows hereinafter.

“9 At the same time, one has to keep in mind the subtle distinction between the power of compounding of offences given to Court under [Section 320](#) of the Code and quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction conferred upon it under [Section 482](#) of the Code. Once, it is found that compounding is permissible only if a particular offence is covered by the provisions of [Section 320](#) of the Code and the Court in such cases is guided solitary and squarely by the compromise between the parties, in so far as power of quashing under [Section 482](#) of the Code is concerned, it is guided by the material on record as to whether the ends of justice would justify such exercise of power, although the ultimate consequence may be acquittal or dismissal of indictment. Such a distinction is lucidly explained by a three-Judge Bench of this Court in [Gian Singh vs. State of Punjab & Anr.](#) (2012) 10 SCC 303. Justice Lodha, speaking for the Court, explained the difference between the two provisions in the following manner:

“57 Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under [Section 320](#) is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in [Section 320](#) and the court is guided

solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.

“10 Apart from narrating the interplay of [Section 320](#) and [Section 482](#) of the Code in the manner aforesaid, the Court also described the extent of power under [Section 482](#) of the Code in quashing the criminal proceedings in those cases where the parties had settled the matter although the offences are not compoundable. In the first instance it was emphasized that the power under Sec. 482 [of the Code](#) is not to be resorted to, if there is specific provision in [the Code](#) for redressal of the grievance of an aggrieved party. It should be exercised very sparingly and should not be exercised as against the express bar of law engrafted in any other provision [of the Code](#). The Court also highlighted that in different situations, the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power under [Section 482](#) on either of the twin objectives, (i) to prevent abuse of the process of any court, or (ii) to secure the ends of justice, is a sine qua non.

“11 As to under what circumstances the criminal proceedings in a non- compoundable case be quashed when there is a settlement between the parties, the Court provided the following guidelines:

“58 Where the High Court quashes a criminal proceeding having regard to the facts that the dispute between the offender and the victim has been settled although the 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 wrongdoing that seriously endangers and threatens the well-being of the 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 the 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 the [Prevention of Corruption Act](#) or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavor 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 the victim and the offender and the

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 FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the 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.”

“12 Thereafter, the Court summed up the legal position in the following words:

“61 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 guidelines 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 predominately civil flavor 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 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 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.”

4]. Learned Addl. PP Ms. M. Tang submitted that since the petitioner No. 2 who was portrayed as the victim and the petitioner No. 3 who is the accused have been married and are stated to be living happily together and since the complainant himself is one of the petitioners, in this petition, she has no objection in allowing the petition.

5]. It appears from the facts and circumstances submitted by the learned counsel for the petitioners that the alleged kidnapping/abduction of the petitioner No. 2 by the petitioner No. 3 has led to their marriage and they are happily and peacefully living together as husband and wife. The fact that the complainant in the FIR case, which is none other than the petitioner No. 3 (father of the petitioner No. 2) is one of the petitioners in my opinion has testified the same. In such a situation, I agree with the submission of the learned counsel for the petitioners that even if the Court who has the jurisdiction to take cognizance of the same and try the case proceeds with the trial it would be a lame prosecution, which will lead to nothing but wastage of time and energy of that Court. Moreover, it may lead to disturbance of the married life of the 2 petitioners i.e. petitioner Nos. 2 & 3 which in my opinion should not happen especially for a young couple like them. Society is built on the foundation of families, therefore, marriages which forms such foundation should not be disturbed rather help to blossom and grow stronger. From the judgments referred to by the learned counsel for the petitioner, it is amply clear that this Court in exercise of the power under Section 482 Cr.P.C, 1973 can quash such Charge-Sheet or proceedings in the interest of justice.

Accordingly, the Charge-Sheet No. 71/2014 in connection with Naharlagun P.S. Case No. 51/2014 under Section 366 IPC is hereby quashed and set aside in response to the prayer of the petitioners for the reasons stated above.

With this, the petition stands disposed of.

Send down a copy of this order to learned Sessions Judge, Capital Complex, Yupia as well as Chief Judicial Magistrate, Capital Complex, Yupia, immediately.

JUDGE

Talor