

IN THE GAUHATI HIGH COURT
**(THE HIGH COURT OF ASSAM; NAGALAND; MIZORAM AND ARUNACHAL
PRADESH)**

ITANAGAR PERMANENT BENCH
(NAHARLAGUN)

Crl. Petn. 36 (AP) 2016

1. Shri Tadar Budh,

Son of Late Tadar Tadang,
Permanent R/p village Dolo,
PO/PS Nyapin, District Kurung Kumey,
Arunachal Pradesh.

2. Shri Pani kaha,

Son of Shri Pani Taro,
Permanent resident of lower Nyapin,
PO/PS Nyapin, District Kurung Kumey,
Arunachal Pradesh.

3. Smti. Pani Kioch,

Wife of Shri Pani Taro,
Permanent resident of lower Nyapin,
PO/PS Nyapin, District Kurung Kumey,
Arunachal Pradesh.

.....petitioners.

-VERSUS-

1. The State of Arunachal Pradesh,

Represented by the Public Prosecutor,
Arunachal Pradesh, Gauhati High Court,
Itanagar Permanent Bench.

.....respondent.

By Advocates:

For the **petitioners:**

Mr. T. Uli,
Mr. K. Posi,
Mr. T. Nagu,
Mr. N. Yahi
Ms. O Binggep
Mr. L. Perme

For the **respondents:**

P. P. of A.P.

:::BEFORE:::

HON'BLE MR. JUSTICE AJIT BORTHAKUR

Date of hearing : **08.03.2018.**

Date of Judgment : **08.03.2018.**

JUDGMENT & ORDER (ORAL)

Heard Mr. L. Perme, learned counsel for the petitioners and Ms. M. Tang, learned Addl. P.P., Arunachal Pradesh for the state respondent.

2. By this petition under Section 482 of the Code of Criminal Procedure, 1973, the petitioners, viz. Shri Tadar Budh, Petitioner No. 1 (accused); Shri Pani Kaha, Petitioner No. 2 (victim) and Smt. Pani Kioch, Petitioner No. 3 (informant/mother of the victim), have prayed for setting aside and quashing of the criminal proceeding arising out of First Information Report (FIR), dated 23.02.2008, registered as Nyapin P.S Case No. 01/2008, corresponding to Sessions Case No. 10/2016 (NYN P.S. Case No. 01/08), under Sections 307/326 IPC, pending in the Court of learned District & Sessions Judge, Yupia.

3. Brief facts of the case is that, on 21.02.2008, at about 5 p.m, the petitioner No. 1 had assaulted the petitioner No. 2 with a local knife at Lower Nyapin and thereafter, the petitioner No. 3, having come to know of the

incident, lodged an FIR with the Nyapin Police Station against the petitioner No. 1. Accordingly, a case was registered being Nyapin P.S. Case No. 01/2008, under Sections 307/326 IPC. The police, after completion of investigation, submitted Charge Sheet under the aforesaid Sections of the IPC against the petitioner No. 1. Thereafter, the Sessions Case No. 10/2016 (NYN 01/08), under Sections 307/326 IPC has been registered in the Court of learned District & Sessions Judge, Yupia, Papum Pare District, Arunachal Pradesh and the same is presently pending at the stage for consideration of charges.

4. Mr. Perme, learned counsel for the petitioners, submits that the petitioners are closely related to each other. The petitioner No. 2 (victim) is the son of the petitioner No. 3 (informant). Mr. Perme further submits that the aforesaid unfortunate incident took place in the year 2008 and by the end of the year 2008, they had amicably settled the matter outside the Court and all of them are living harmoniously as one family. In the said settlement, the petitioners have agreed not to pursue the matter any further and withdraw the case accordingly. It is the submission of Mr. Perme that the petitioner No. 1 has compensated the petitioner No. 2 as per the customary law by way of paying local ornaments worth Rs. 10,000/- (Rupees ten thousand only) approximately and 3 (three) Mithuns (bros-frontails) worth Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand only) approximately, to the petitioner No. 2 (victim).

5. Ms. Tang, learned Addl. P.P., Arunachal Pradesh submits that having regard to the nature of the incident, wherein the petitioner No. 2, allegedly sustained grievous injuries, the instant petition may not be a fit one for quashing of the FIR of the case. On a query made by this Court, the Addl. P.P., fairly submits that although the Charge Sheet has been submitted under sections 307/326 IPC, however, the injury report is not available in the case record. Ms. Tang has further drawn attention of this Court to the statement of the petitioner No. 1 (accused) recorded under Section 161 Cr.P.C., wherein, he had admitted to have stabbed the petitioner No. 2 twice, with a knife.

6. On scrutiny of the records of Sessions Case No. 10/2016, it appears that the injury report has neither been mentioned as enclosed with the Charge Sheet that has been submitted by the Investigating Officer (I.O.) nor the injury report is otherwise available on the case record. Hence, it is difficult to infer that the petitioner No. 2 (victim) has sustained grievous injuries. On the other hand, the

statement of confession made by the accused, while in custody of police is not admissible in evidence.

7. In the case of **Narendra Singh & Ors. Vs. State of Punjab & Anr.** reported in **(2014) 06 SCC 466**, the Supreme Court, in paragraphs 12 and 29, has observed as under:

"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 flavour stand on a different footing for the purposes of quashing, particularly the offence 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 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."

The Court was categorical that in respect of serious offences or other offences of mental or other offences of mental depravity or offence of merely dacoity under special statute, like the Prevention of Corruption Act or the offences committed by Public Servant while working in that capacity. The mere settlement between the parties would not be a ground to quash the proceedings by the High Court and inasmuch as settlement of such heinous crime cannot have imprimatur of the Court.

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:

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

29.2. 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 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.

29.3 such a power is not 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.

29.4 On the other, 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 power, 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 an extreme injustice would be caused to them by not quashing the criminal cases.

29.6 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 therefore 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 weapon 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 proceeding 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.

29.7 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 event eh charge sheet has not been filed. Likewise, those cases where the charge is framed but he evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its power 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 he matter is t 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 position to decide the case finally on merits and of come a conclusion as of 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 be a ground of 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."

8. However, for better appreciation of the case, the amicable settlement reached among the petitioners reads as follows (operative portion) —

"FIRST PARTY

I shri Tadar Budh do hereby agreed that:-1. I shall compensate all the expenditure incurred by Shri Panye Kaha during his long treatment after the accident.

2. I am abiding by local panalties and customary laws frame by the society such as:-

(a) 200000

(b) in local panalties and custormary lawa

1., Three Mithun, 2, Local ornament like:-

Maji cost 4000 Rs/-

Maji cost 3000 Rs/-

Talu cost 2500 Rs/-

SECOND PARTY

I shri Panye Kaha do hereby accept that, I shall never register and file the same case in near future and I am agreed of received the medical or other expenditure as a compensation along with local customary laws bear by shri Tadar Budh.

This case has been amicably settled by the following judges and witness on 14th Sep. 2008."

9. Having heard to the submissions of the learned counsels for both parties and having noticed that the parties have already entered into a compromise among themselves outside the Court, there is likelihood that if the trial of the proceedings of the incident that occurred in 2008 is allowed to continue, in that event, it will be against the ends of justice and abuse of the process of Court. On the other hand, considering the restoration of good relation between the petitioners, who are now living as one family, I am of the considered opinion that this Court should not stand as a hindrance to the good and blooming relationships that has developed among the petitioners, after the instant old incident.

10. Since this is a case whereby chances of conviction have become bleak, the ratio of the judgment of the Supreme Court as rendered in the case of ***Madhavrao Jiwaji Rao Scindia Vs. Sabhajirao Chandrajirao Angre***, reported in ***AIR 1988 SC 709***, may be aptly quoted "*when the chances of conviction are bleak, in that event, the proceeding can be quashed by invoking inherent jurisdiction of the Court under Section 482 Cr.P.C.*"

11. On consideration of the aforesaid circumstances and having noted the principles laid by the Apex Court in the aforesaid judgments, it is desirable that

the Sessions Case No. 10/2016, under Sections 307/326 IPC (arising out of Nyapin P.S. Case No. 01/2008), needs to be set aside and quashed.

12. In view of the above and in absence of the injury report, the Sessions Case No. 10/2016, under Sections 307/326 IPC (arising out of Nyapin P.S. Case No. 01/2008) is hereby set aside and quashed.

13. The criminal petition accordingly stands allowed.

14. Registry is directed to send back the LCRs along with the copy of this judgment and order to the Court below immediately.

JUDGE

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