

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

ITANAGAR PERMANENT BENCH (NAHARLAGUN)

Crl.Ptn. 18(AP)2019

1. Shri Tumto Karga, S/o. Shri Litum Karga, a resident of D'Sector, Naharlagun, P.O/P.S-Naharlagun, Papum Pare District, Arunachal Pradesh.
2. Ms. Reman Loyi, D/o Binre Loyi, a resident of D'Sector, Naharlagun, P.O/P.S-Naharlagun, Papum Pare District, Arunachal Pradesh.

..... Petitioners.

– VERSUS –

The State of Arunachal Pradesh represented by Public Prosecutor,
Government of Arunachal Pradesh, Naharlagun.

..... Respondent.

Advocates for the Petitioners : Mr. M. Kato
Mr. B. Sora
Mr. B. Lingu
Mr. N. Sora
Mr. T. Noshi
Mr. T. Epa
Mr. M. Tanga
Mr. R. Karga

Advocates for the Respondent : Mr. S. Tapin, Sr. Govt. Advocate

::: BEFORE :::

HON'BLE MR. JUSTICE NANI TAGIA

Date of hearing : **06.03.2019.**

Date of Judgment : **06.03.2019.**

JUDGMENT AND ORDER (Oral)

Heard Mr. M. Kato, learned counsel for the petitioners and Mr. S. Tapin, learned Senior Govt. Advocate acting as Public Prosecutor for the State of Arunachal Pradesh.

2. This criminal petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the criminal proceeding in connection with Sessions Case No. 39/2017, pending before the learned Sessions Court, Yupia, under Sections 376/312/417 Indian Penal Code, corresponding to Itanagar Woman Police Station Case No. 36/2013 under Sections 376(1)/312/323/506/34 IPC on the ground that the accused and the victim, who are the petitioners No.1 and 2 respectively, have amicably settled their differences by a Deed of an Amicable Settlement Agreement signed between the parties on 13.02.2019, which has also been counter signed by the Executive Magistrate, Itanagar Capital Complex, Naharlagun on 18.02.2019.

3. The facts leading to filing of the present petition is that the petitioner No.2, who is the victim/informant had lodged an FIR before the Officer-in-Charge(WPS) Police Station, Itanagar on 19.08.2013 against the accused/petitioner No.1 along with two other persons. The First Information Report (FIR) dated 19.08.2013 is quoted herein below:

"To,

***The Officer-in-Charge(Woman Police)
Police Station, Itanagar,
Papum Pare District, Arunachal Pradesh.***

Sub: First Information Report against (1) Shri Tumto Karga, resident of D-sector Naharlagun, A.P. for forcing the victim to wash after conceived against the wishes and without the consent of the victim and for cheating and desertion of victim informant and (2) Miss. Tumngam Karga and (3) Smty Gumter Sora W/o Shri Lido Sora, both resident of D-sector Naharlagun A.P. for physical assault and criminal intimation to the victim informant.

Sir/Madam,

Most respectfully I beg to inform you that one shri Tumto Karga named above had made a promise and proposal that he shall marry me and both will live

as wife and husband in life and thereby he had made me to believe that he will marry me legally and will not desert and leave me in life.

That under above promise, faith and beliefs, we were living together and shri Tumto Karga has availed my virginity and I was conceived but against my wishes and without my consent and forcibly, he Shri Tumto Karga has washed it in April 2013 at Heema Hospital Itanagar, he still made a 2nd proposal and this time, he promised to marry me legally and promised to solemnize the marriage and to live together as lawful wife and husband in life and on this promises, I had believed him and we were living together at Pappu Nalla Naharlagun A.P. and shifted to D-sector Naharlagun A.P in last part of July 2013. But in D-sector Naharlagun, he has again for the 2nd time, broken his promises of marrying me legally and he has forced and insisted me to go back to my parent/uncle at Nirjuli Papum Pare District A.P. and thereby, he has destroyed my virginity, womanhood and deserted me. That also his sister Tumngam Karga and one smty Gumter Sora physically assaulted me on dated 17th Aug'13.

That therefore, most humbly I beg to lodge this First Information Report against above named accused Shri Tumto Karga, Miss Tumngam Karga and smty Gumter Sora to book and charge them under Section 34,120A,322,493 IPC and arrest and put them behind the bar and for your this acts of kindness I shall be highly obliged.

Yours faithfully,

Sd/-

Miss(Reman Loyi)

Victim/Informant

D/o Sh. Binre Loyi

C/o SHri Binki Loyi victim's uncle,

Nirjuli, A.P.

Copy to:

Chairman, State Woman Welfare Commission, Arunachal Pradesh,

Itanagar for necessary information and action please for the justice of the victim."

4. In pursuance of the aforesaid FIR, Itanagar WPS Case No. 36/2013 under Sections 376(i)/312/323/506/34 IPC was registered and on completion of the investigation, charge-sheet dated 29.05.2014 was filed against the accused petitioner No. 1 along with two other persons under sections 376(i)/312/323/506/34 IPC, the learned Sessions Judge, Yupia by an order dated 19.03.2018 had discharged two other accused of the case and on finding a *prima facie* evidence against the

petitioner No.1 charge under Sections 376/312/417 IPC was framed and accordingly, the trial is pending before the learned Sessions Judge, Yupia.

5. Mr. M. Kato, learned counsel for the petitioners submits that since the accused and the victim have amicably settled the differences and misunderstanding between the parties by a Deed of an Amicable Settlement Agreement dated 13.02.2019, the proceeding pending before the learned Sessions Judge against the petitioner No. 1 be quashed by this Court in exercise of power under Section 482 of the CrPC.

6. In support of his case, Mr. Kato, learned counsel has relied on three decisions of this Court passed in Criminal Petition No. 09(AP)/2017(Ms. Minpi Sora Vs State of Arunachal Pradesh) rendered on 15.03.2017 as well as Criminal Petition No. 39(AP)/2017(Ms. Techhi Opi & Ors. Vs. State of Arunachal Pradesh), rendered on 19.07.2017, wherein, submits Mr. Kato, the criminal proceeding pending trial under Section 376 IPC was quashed by this Court in exercise of power under Section 482 of the CrPC. Mr. Kato, learned counsel for the petitioners has also referred to a decision of this Court reported in **2016(4) GLT 460, (Jahirul Maulana @ Jahirul Islam (Md.) Vs. State of Assam & Ors.)**

7. On the other hand, Mr. S. Tapin, learned Senior Govt. Advocate acting as Public Prosecutor submits that the offence of 376 IPC is a serious offence which should not be quashed by this Court on the basis of mutual settlement arrived at between the parties.

8. The rival submissions advanced at the bar have received due consideration of this Court. I have also perused the judgments relied on by the learned counsel for the petitioners.

9. The three Hon'ble Judges Bench of the Hon'ble Supreme Court in Criminal Appeal No. 349 of 2019, **State of Madhya Pradesh Vs. Laxmi Narayan & Ors.**, rendered on 05.03.2019, by taking note of the conflicting two Hon'ble Judges(Bench) decisions of the Supreme Court, rendered in **Narendra Singh Vs. State of Punjab**, reported in **2014(6) SCC 466** and **State Of Rajasthan Vs. Shambhu Kewat & Anr**, reported in **2014(4) SCC 149**, amongst others have held that the power conferred

under Section 482 of the Code of Criminal Procedure to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised if the offences have an overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire disputes amongst themselves. Such power, held by the Hon'ble Supreme Court, is not to be exercised in those prosecutions which involved 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.

10. In view of the law laid down by the Hon'ble Supreme Court in the case mentioned above namely, ***State of Madhya Pradesh Vs. Laxmi Narayan & Ors.(supra)*** not to quash the criminal proceeding which involves heinous and serious offences like rape, as in the present case, I am of the considered opinion that no case has been made out by the petitioners for quashing of the criminal proceeding pending against the petitioner No.1 under Sections 376/312/417 IPC before the learned Sessions Judge, Yupia.

11. Accordingly, the criminal petition is **dismissed** being devoid of merit. However, dismissal of the present criminal petition shall not be understood to mean in any way that this Court has expressed any opinion on the merit of the case.

12. With the above observations, this Criminal petition is disposed of.

JUDGE

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