

GAHC040003592023



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

Crl. Petion./42(AP)/2023

...PETITIONERS

VERSUS

- 1. The State of Arunachal Pradesh,**
represented by the Public Prosecutor.

...RESPONDENT

Advocate for the Petitioner : Mr. M. Bagra

Advocate for the Respondent : Mr. J. Tsering, P.P.

:::BEFORE:::

HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing & Judgment : 01.08.2023

JUDGMENT & ORDER (ORAL)

Heard Mr. M. Bagra, learned counsel for the petitioners. Also heard Mr. J. Tsering, learned Public Prosecutor for the State of Arunachal Pradesh.

2. This is an application under Section 482 Cr.P.C for quashing the Charge-Sheet No. 34/2022, under Section 376 IPC dated 23.09.2022 in corresponding to the Aalo P.S. Case No. 04/2022, under Section 376 IPC, which is pending at the stage of appearance and committal before the Chief Judicial Magistrate (CJM), Aalo, District West Siang, Arunachal Pradesh.

3. This is a joint petition filed by the informant and the accused of the

said Case praying for quashing and setting aside the above-mentioned charge-sheet and criminal proceeding. It is stated that both the petitioners belong to same family and they are both brother and sister from same parent and presently both the petitioners are having cordial relationship and residing peacefully.

4. On 28.01.2022, the petitioner No. 1 lodged an FIR before the Aalo Police Station alleging rape on her by the petitioner No. 2. The Case has been registered under Aalo Police Station, being Aalo P.S. Case No. 04/2022 under Section 376 IPC and after the investigation, the Case is also charge-sheeted against the petitioner No. 2 under the said Section of law. During the course of investigation, both the petitioners had verbally requested the Officer-In-Charge, Aalo Police Station, not to pursue the matter and they wanted to withdraw the case on the ground that the both the petitioners are from the same family. But the Officer-In-Charge did not consider the prayer of the petitioners and after examination of the witnesses, the case was Charge-Sheeted against the petitioner No. 2 on 10.02.2023. It is further stated that after the aforesaid alleged incident, both the petitioners mutually reconciled and compromised the matter with the help of their parents and accordingly one deed of mutual agreement is also executed on 03.03.2023 in presence of father of both the petitioners and it was duly executed before the Executive Magistrate, Capital, Naharlagun, on 03.03.2023. The petitioner No. 1 further stated that she has forgiven and forgotten the aforesaid illegal act and she wants to give another chance to the petitioner No. 2 for not doing any illegal acts with

her or with anybody and thus, the petitioner No. 1 does not want to pursue the case against the petitioner No. 2.

5. Further it is stated that as both the petitioners have mutually agreed to settle the matter and hence, chance of conviction is very bleak and remote even if the proceeding is allowed to be continued, rather it will be an abuse of the process of the Court. Further, even in the case the petitioner No. 2 gets convicted, it will also cause great injustice to the petitioner No. 1, as both the petitioners have already cleared their differences and misunderstanding and presently, they are maintaining peace and cordial relationship between them. As the case is registered and charge-sheeted under non-compoundable offence, the matter cannot be compounded before the Trial Court under Section 320 Cr.P.C, and hence, both the petitioners have jointly filed the present petition for quashing and setting aside the charge-sheet and the connected Aalo P.S. Case No. 04/2022, under Section 376 IPC, which is pending at the stage of appearance and committal before the Court of learned Chief Judicial Magistrate (CJM), Aalo, District West Siang, Arunachal Pradesh.

6. It is submitted by the learned counsel for the petitioners that as the case have already settled between the parties, there is no chance of adducing any evidence by the petitioner No. 1 against the petitioner No. 2 and if the further proceeding is allowed to be continued, it will be an abuse of the process of the Court and hence, it is a fit case where the exercise of Section 482 Cr.P.C can be invoked for setting aside and

quashing the criminal proceeding as well as the charge-sheet. He further submitted that as there is a mutual settlement between the parties and are also maintaining peace in their family and both the petitioners are also maintaining cordial relationship with each other and hence, in such a situation the Court should take into consideration in regard to the settlement between the parties while dealing with the petition for quashing under Section 482 Cr.P.C. Further he submitted that the present petition for quashing is also not filed at a belated stage rather the compromise took place between the parties much prior of filing to the charge-sheet.

7. In this context, the learned counsel for the petitioner relied on a decision of Hon'ble Apex Court passed in ***criminal appeal No. 1217/2022, Kapil Gupta Vs. State of NCT of Delhi and Anr.*** and mainly stressed on the paragraph 13 and 14 of the said judgment, which is read as under:

“13. It can thus be seen that this Court has clearly held that though the Court should be slow in quashing the proceedings wherein heinous and serious offences are involved, the High Court is not foreclosed from examining as to whether there exists material for incorporation of such an offence or as to whether there is sufficient evidence which if proved would lead to proving the charge for the offence charged with. The Court has also to take into consideration as to whether the settlement between the parties is going to result into harmony between them which may improve their mutual relationship.

14. The Court has further held that it is also relevant to consider as to what is stage of the proceedings. It has been observed that if an application is made at a belated stage wherein the evidence has been led and the matter is at the stage of arguments or judgment, the Court should be slow to

exercise the power to quash the proceedings. However, if such an application is made at an initial stage before commencement of trial, the said factor will weigh with the court in exercising its power”.

8. He also relied on the decision of the ***Hon’ble Punjab and Haryana High Court*** passed in ***CRM-M-12854-2021(Chandan Paswan vs. State of Punjab and Anr.)*** dated 13.04.2023, wherein also, following the judgment of the Apex Court passed in ***Gian Singh vs. State of Punjab and Anr.*** reported in ***2012 (10) SCC 303***, the Hon’ble High Court had quashed and set aside the FIR under Section 376 IPC. He further submitted that the present case also squarely covers by the judgment of Hon’ble Apex Court in the case of ***State of Madhya Pradesh-vs-Laxmi Narayan***; reported in ***(2019) 5 SCC 688. 9.***

The learned Public Prosecutor Mr. J. Tsering raised objection and submitted that the present case stands in different footing that of the judgment passed in Hon’ble Apex Court in ***Kapil Gupta’s case.***

10. Herein the in the instant case, serious allegation of rape is brought against her own brother who resides in the same family and from the statement made by the victim/petitioner No. 1 recorded under Section 164 Cr.P.C as well as the confessional statement made by the accused, the present case is not at a fit case to quash the FIR as well as the charge-sheet, considering the nature of allegation brought against the petitioner No. 2, even though there is a settlement/compromise between the parties. Further the learned Public Prosecutor submitted that as per the guideline of the Hon’ble Apex Court passed in ***Laxmi Narayan’s case*** and as per

guideline No. 13 (ii), the power under Section 482 Cr.P.C is not to be exercised in those cases which involved heinous and serious offence or mental depravities or offence like murder, rape, dacoity etc. Such offences are not private in nature and have a serious impact on society. And, accordingly, the learned Public Prosecution has submitted that this is not at all a fit case to exercise power under Section 482 Cr.P.C to quash and set aside the criminal proceeding as well as the charge-sheet of the instant case.

11. After hearing the submission made by the learned counsels for both sides, I have perused the case record and the relevant annexures filed with the petition. It is a fact that both the accused and the informant jointly filed the present petition seeking quashing of the criminal proceeding registered against the petitioner No. 2 under Section 376 IPC. It is also a fact that both the parties have entered into a settlement agreement in presence of their father and other family members. But the nature of the offence, as alleged against the petitioner No. 2, is very heinous and serious in nature where the sister brought allegation of rape against her own brother who resides in the same family and in such a situation there may be compulsion on the parents of the petitioner No. 1 to compromise the matter as both the petitioners are sister and brother in relationship and hence, the intervention of the family members is also expected and the father being the parents of both the petitioners may insist the petitioner No. 1 to compromise the matter for the sake of reputation of the family. But considering the statement made by the

petitioner No. 1 under Section 164 Cr.P.C as well as the confessional statement made by the petitioner No. 2 before the Magistrate, I find that this is not a fit case to quash the criminal proceeding as well as the FIR and the charge-sheet against the petitioner No. 2, even if both the parties entered into a settlement agreement. The allegation that the brother committed rape on his own sister also have a serious impact on society and hence, I do not find it proper to quash criminal proceeding along with the FIR No. 04/2022 and the Charge-Sheet No. 34/2022, under Section 376 IPC filed against the petitioner No. 2 only on the basis of compromise agreement between the parties invoking the power under Section 482 Cr.P.C.

12. In the result, I find no merit in this criminal petition and accordingly, the same stands dismissed.

JUDGE

Comparing Assistant