

GAHC010045912022



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

Case No. : Crl.Pet./210/2022

DR. SUNMONI BHUYAN
SON OF SRI BHUPEN BHUYAN
R/O CHOUKHAMTING, P.S. SILAPATHAR, DIST. DHEMAJI, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE LEARNED PP, ASSAM

2:DR MARY KHANGIA
D/O SRI AMRIT KHANGIA
R/O VILL- HUDUPARA

P.S NAZIA
DIST. SIVASAGA

Advocate for the Petitioner : MR. P J SAIKIA

Advocate for the Respondent : PP, ASSAM

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
ORDER

30.04.2024

1. Heard Mr. PJ Saikia, learned Senior counsel for the petitioner, who has filed this application under Section 482 Cr.P.C. for quashing of GR case No. 2466/2021

corresponding to PRC case No. 188/2022 arising out of Dibrugarh PS case No. 1247/2021 under Section 376 IPC.

2. This court under its order dated 29.11.2023 on the submission of the learned counsel for the victim/ informant recorded that the victim has already got married and she will not pursue the proceeding initiated by FIR dated 27.06.2021, which was registered as Dibrugarh PS case No. 1247/2021 corresponding to PRC case No. 188/2022. However, the victim is having a condition to the effect that the other prosecution launched on the basis of FIR lodged by the present petitioner corresponding to PRC case No. 1793/2021 pending before the learned CJM, Dibrugarh is withdrawn by the petitioner inasmuch as it is agreed by both the learned counsels that they do not want to pursue the litigations against each other inasmuch as they have settled their life in their own way.
3. During the course of hearing, the learned counsel for the respondent/ informant has submitted that the respondent is a young doctor and she got married to a person and living happily. It is further contended that the respondent No. 2 feels that going through the trial of PRC case No. 188/2022, where she is the informant/ victim and in PRC case No. 1793/2021, where she is accused would rob the prime time of her family life. It is her further contention that such situation would lead to her agony. It is also contended that though there was a relation during student days with the petitioner, now she wants to come out of all this past dispute and lead her happy family life inasmuch as the FIR was lodged by her in sudden spur of a moment and out of agony. On the other hand, the learned counsel for the petitioner submits that the petitioner who is also a Doctor by profession is also not inclined to pursue the prosecution launched on the basis of complaint / FIR filed on his behalf.
4. The learned Senior counsel for the petitioner on instruction submits that the petitioner has decided to withdraw the prosecution being PRC No. 1793/2021 and if necessary file an application along with the respondent No. 2 for purpose of withdrawal and compounding the offences inasmuch as the offences

registered in PRC case No. 1793/2021 are compoundable offences, though the offences registered in connection PRC case No. 188/2022 are non-compoundable.

5. This court has considered the submissions advanced and also perused the contents of the FIRs, charge-sheet and the affidavits.
6. It is by now settled that a High Court in exercise of its power under Section 482 of Cr.P.C. can very well quash a criminal proceeding or a criminal complaint under Section 482 of Cr.P.C., but while doing so, the Court is to follow certain principles as enunciated by the Hon'ble Apex Court in ***Gian Singh –Vs- State of Punjab and Another*** reported in ***2012 10 SCC 303***, and in ***State of Madhya Pradesh –Vs- Laxmi Narayan and Others*** reported in ***2019 5 SCC 688***.
7. In the case of ***Laxmi Narayan***, (supra), the Hon'ble Supreme Court has laid down certain guidelines for exercise of powers under Section 482 Cr.P.C., it is submitted that instant case falls within the guidelines laid down by the Hon'ble Supreme Court.
8. For ready reference, paragraph-13 of ***Laxmi Narayan*** (Supra) is extracted herein below:

“13. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

- i) that the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having 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 dispute amongst themselves;*
- ii) such power 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;*
- iii) similarly, such power is not to be exercised for the offences under the special statutes like 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;

- iv) *offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. 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 framing 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. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

- v) *while exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc."*

9. The allegation levelled by the respondent No. 2 relates to the commission of offence under Section 376 IPC. It is well settled that this court should not normally exercise its power under Section 482 Cr.P.C. to quash offences of heinous nature having social impact on the basis of settlement between the parties. However, the Hon'ble Apex Court in the case of **Kapil Gupta Vs State of NCT of Delhi & Anr.** reported in **2022 SCC Online SC 1030** after dealing with the law laid down in this behalf has

concluded that though the court should be slow in quashing the proceeding 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. It was further held that the Hon'ble court has also to look into consideration as to whether the settlement between the parties is going to result into harmony between them which may improve their mutual relationship.

10. In the case in hand, from the material available on record, this court is of the view that the FIR lodged by the petitioner itself discloses existence of a relationship between the petitioner and the respondent No. 2 inasmuch as there were disputes out of their affair and accordingly both the parties had lodged the FIRs against each other. In view of the stand taken by both the parties, this court is also of the view that though allegation is serious, however, in the given facts of the present case quashing of the proceeding as prayed for shall not have any social impact.
11. Considering the factual background of the present case and also considering the nature of offence including the settlement arrived at between the parties, this Court is of the considered opinion that this is a fit case, where this Court should exercise its inherent power under Section 482 of Cr.P.C. to quash GR case No. 2466/2021 corresponding to PRC case No. 188/2022 arising out of Dibrugarh PS case No. 1247/2021 under Section 376 IPC.
12. Accordingly, this petition is allowed by setting aside and quashing the GR case No. 2466/2021 corresponding to PRC case No. 188/2022 arising out of Dibrugarh PS case No. 1247/2021 under Section 376 IPC. The petitioner is permitted to do the needful for withdrawal of PRC case No. 1793/2021 pending before the learned CJM, Dibrugarh.

JUDGE

Comparing Assistant