

HIGH COURT OF SIKKIM, GANGTOK
(Criminal Jurisdiction)

S.B. : HON'BLE SHRI SUNIL KUMAR SINHA, C.J.

Crl. M.C. No. 02 of 2015

1. Arjun Tamang,
S/o Shri Chandra Bdr. Tamang,
R/o Lower Nandok,
P.O. & P.S. Ranipool, East Sikkim.

At present residing at:

Class IV, Government Quarters,
Syari, P.O. Deorali & P.S. Sadar,
Gangtok, East Sikkim.

2. Anupama Tamang,
W/o Arjun Tamang,
Resident of Lower Nandok,
P.O. & P.S. Ranipool, East Sikkim.
3. Bikash Subba,
S/o Shri Ram Bahadur Subba,
Resident of SNT Area,
P.O. & P.S. Gangtok, East Sikkim

... PETITIONERS

Versus

State of Sikkim.

... RESPONDENT

Petition under Section 482 of Code of Criminal Procedure, 1973.

Appearance:

Mr. Jigmi P. Bhutia and Ms. Rajani Rizal, Advocates
for the Petitioners.

Mr. Arjun Tamang (Petitioner No. 1/ Accused Husband)
Mrs. Anupama Tamang (Petitioner No. 2/Wife) and Mr.
Bikash Subba (Petitioner No. 3/ Brother of wife/
Complainant), all in person.

Ms. Pollin Rai, Asstt. Public Prosecutor for the State.

ORDER (Oral)

(14.09.2015)

SUNIL KUMAR SINHA, CJ.

1. Petitioner No. 2, Anupama Tamang, is wife of Petitioner No. 1, Arjun Tamang. They were married on 10.07.2000. They have a female child, Smriti Tamang, aged about 13 years. She is studying in 7th standard. Petitioner No. 1 is working as Driver in the Department of Sikkim Legislative Assembly. He has been allotted a Government accommodation in Syari, Gangtok.

2. The case of the prosecution is that on 21.06.2014 at about 07.00 PM, Petitioner No.1 threw boiling tea on the face of Petitioner No.2, who sustained facial burns (injuries) which were simple in nature. First Information Report (FIR) was lodged by the brother of the victim, Bikash Subba, Petitioner No.3 herein. Copy of the FIR and the medical examination report have been filed as Annexures- P-I and P-III.

3. After filing of the charge-sheet, the Chief Judicial Magistrate, East Sikkim at Gangtok took cognizance on 22.11.2014 and ultimately charges were framed under Section 324 IPC on 17.03.2015 (Annexure P-VI).

4. The Petitioners herein, i.e. accused, victim and the complainant, then entered into compromise on 25.06.2015 and

executed a Joint Compromise Deed (Annexure P-VII) on the said date.

5. The Petitioners, thereafter, have filed this petition for quashing of the criminal proceedings vide G.R. Case No.414/2014 (State of Sikkim vs. Arjun Tamang), pending in the Court of Chief Judicial Magistrate, East Sikkim at Gangtok.

6. Mr. Jigmi P. Bhutia, learned Counsel for the Petitioners, submits that Petitioners 1 and 2 are husband and wife; they are residing together in the Government accommodation provided to Petitioner No.1; their daughter is also residing with them and is studying in 7th standard; they have settled all their disputes; in fact, the incident took place in heat of anger in which Petitioner No.1 did not use any weapon; and no fruitful purpose will be served in prosecution of the criminal case, as there is hardly any possibility of conviction, therefore, the proceedings of the said criminal case may be quashed. He relied on the decisions of **Gian Singh vs. State of Punjab and Another : (2012) 10 SCC 303** and **Tara Rai vs. The State of Sikkim and Another : 2014 Cr. L.J. 735**.

7. On the other hand, Ms. Pollin Rai, learned Assistant Public Prosecutor, appearing on behalf of the State, opposes the said arguments. However, she does not dispute the relationship as also the fact that a Compromise Deed was executed between the parties on 25.06.2015.

8. I have heard learned counsel for the parties and have also ascertained the facts relating to execution of the Compromise Deed and that the husband and wife are residing together in their Government accommodation and, now, the wife does not want to prosecute this proceeding against her husband. Petitioner No. 3 namely, Bikash Subba, brother-in-law of Petitioner No. 1, has also supported the Compromise Deed and has prayed for quashing of the criminal case.

9. It appears that as Section 324 IPC is not compoundable under Section 320 Cr. P.C., therefore, the parties have resorted to the provision of Section 482.

10. The position of law, in this regard, has been clarified by the Supreme Court in **Gian Singh** (supra), wherein it was held that 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 Cr. P.C. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. It was further held that 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. It was further held that 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 the 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 predominatingly civil flavour 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 dispute 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 the 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.

11. In **Tara Rai** (supra), the case was under Section 324 IPC, where the two real brothers entered into assault by a deadly weapon. After execution of Compromise Deed, a petition under Section 482 Cr. P.C. was filed in the High Court and ultimately the High Court quashed the proceedings on the above plea.

12. In the instant case, as it appears from the contents of the FIR (Annexure P-I), on the fateful day at about 07.00 PM, the husband and wife (accused and victim) were present in their house and on some trivial issue the husband (accused) threw hot tea on the face of the wife (victim), which caused simple burn injuries. It is told to the Court that, thereafter, the wife was residing separately for some time, but she again returned back to the company of the husband and now they are residing peacefully in the Government accommodation provided to the husband. The above chronological incidents have also been supported by Petitioner No. 3, who is none else than the real brother of the victim, who lodged the FIR. It is, thus, clear that, now, the family is residing peacefully with a daughter aged about 13 years, who is studying in 7th standard and they have fully settled the matter between them. They admitted all these facts before this Court. Therefore, on account of compromise entered into between the parties, now a possibility of conviction is remote and continuation of criminal case does not appear to be reasonable and logical. The offence alleged in the present matter is

not a heinous offence like murder, rape, dacoity, etc. nor even in commission of this offence, any weapon was used. The offence, thus, as it appears, is an outcome of family dispute between husband and wife after a long time of marriage, in which the parties have entered into compromise.

13. In view of all these, I find it to be a fit case for quashing of the criminal proceedings pending against Petitioner No. 1 (husband) under Section 324 IPC.

14. Accordingly, the Petition is allowed and criminal prosecution pending against Petitioner No. 1 (husband) vide G.R. Case No. 414/2014 (State of Sikkim vs. Arjun Tamang) before the Court of Chief Judicial Magistrate, East Sikkim at Gangtok, is hereby quashed.

Sd/-
Chief Justice
14.09.2015

Approved for Reporting : Yes/~~No.~~
 Internet : Yes/~~No.~~