

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Jurisdiction)

DATED : 12th MAY, 2016

SINGLE BENCH : HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

Crl.M.C. No.05 of 2016

Petitioners : 1. Wangchuk Bhutia,
S/o Dorjeela Bhutia,
R/o Swastik, Upper Burtuk,
Gangtok, East Sikkim.

2. Sonam Lachenpa,
S/o Thanden Lachenpa,
R/o Swastik, Upper Burtuk,
Gangtok, East Sikkim.

3. Pratap Gurung,
S/o Late S. B. Gurung,
R/o Swastik, Upper Burtuk,
Gangtok, East Sikkim.

versus

Respondent : State of Sikkim

Application under Section 482 of the
Code of Criminal Procedure, 1973

Appearance

Mr. Zangpo Sherpa, Advocate with Ms. Doma Lepcha and Ms. Mon Maya Subba, Advocates for the Petitioners.

All the Petitioners in person.

Mr. Karma Thinlay Namgyal, Additional Public Prosecutor with Mr. S. K. Chettri and Mrs. Pollin Rai, Assistant Public Prosecutors for the State-Respondent.

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O R D E R

Meenakshi Madan Rai, J.

1. By preferring this Application under Section 482 of the Code of Criminal Procedure, 1973 (for short “Cr.P.C.”) the Petitioners seek quashing of the FIR bearing No.39/2015 in Sadar Police Station Case dated 08-02-2015 under Sections 324/34 of the Indian Penal Code, 1860 (for short “IPC”), against the Petitioners No.1 and 2 in the Complaint filed by the Petitioner No.1 and consequently, the General Register Case No.191 of 2015 pending before the Learned Chief Judicial Magistrate, East and North Sikkim at Gangtok, at the stage of appearance of the Petitioners No.1 and 2.

2. The facts briefly stated are that on 08-02-2015, the Petitioner No.3 lodged an FIR before the Sadar Police Station, Gangtok, to the effect that the Petitioners No.1 and 2 had assaulted him on his head with stones within his residential premises at Upper Burtuk, Gangtok. The Complaint was registered as FIR No.39 of 2015 and during investigation, the Petitioners No.1 and 2 were taken into custody and later released on bail. Charge-sheet was submitted before the Court of the Learned Chief Judicial Magistrate, East and North Sikkim at Gangtok, where it was registered as G. R. Case No.191 of 2015, whereupon the Petitioners No.1 and 2 were summoned to appear before the Court on 08-09-2015. That in the

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interregnum, the Petitioners amicably settled the matter and the Petitioner No.3 does not seek to pursue Prosecution and desires to withdraw the case against the Petitioners No.1 and 2, towards which a Compromise Deed was drawn up by all the three Petitioners on 09-02-2015. The Petitioners it emerges, are co-villagers and known to each other with no previous rivalry nor has any motive been attributed to the Petitioners No.1 and 2. However, the G. R. Case before the Learned Chief Judicial Magistrate is under Sections 324/34 of the IPC and is not compoundable in view of the provisions of Section 320 of the Cr.P.C., hence, the instant Application praying for the above reliefs. While making his submission before this Court, Learned Counsel for the Petitioners submitted that the Petitioners have settled the matter amicably amongst themselves and no fruitful purpose would be achieved by pursuing the Prosecution in view of the above stated circumstances. It is submitted that this Court has powers under Section 482 of the Cr.P.C. to quash the proceedings, there being a legal bar under Section 320 of the Cr.P.C. to compound the offence. To fortify his submissions, Learned Counsel for the Petitioners has placed reliance on the following decisions;

- (i) ***Shiji alias Pappu and Others vs. Radhika and Another : AIR 2012 SC 499,***
- (ii) ***Tara Rai vs. The State of Sikkim and Another : 2014 CRI.L.J. 735 (Sikkim),***

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- (iii) ***Tshwang Norbu Sherpa and Others vs. State of Sikkim : MANU/SI/0014/2015,***
- (iv) ***Narinder Singh and Others vs. State of Punjab and Another : (2014) 6 SCC 466,*** and
- (v) ***Yogesh Rai and Others vs. State of Sikkim : MANU/SI/0101/2015.***

3. Mr. Karma Thinlay Namgyal, Learned Additional Public Prosecutor, on his part, submits that since the parties have amicably settled the matter and reliance has been placed on a decision of this Court where the FIR has been quashed in a case involving Section 324 of the IPC, being ***Tara Rai vs. The State of Sikkim and Another (supra)***, he has no objection to the Application.

4. I have heard Learned Counsel for the parties at length and given due consideration to the submissions put forth. I have also perused the documents on record.

5. Section 320 of the Cr.P.C. deals with compounding of offences. Section 320(1) provides that the offences punishable under the Sections of the IPC (45 of 1860) specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table. Section 320(2) provides that the offences punishable under the Sections of the IPC (45 of 1860) specified in the first two columns of the Table next following may, with the permission of the Court before which any Prosecution for such offence is pending, be compounded by the

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persons mentioned in the third column of that Table. The Tables both under Sections 320(1) and 320(2) of the Cr.P.C. have been provided. A perusal of the Tables would clearly indicate that Section 324 of the IPC finds no place therein thereby making the offence under the said Section, i.e., voluntarily causing hurt by dangerous weapons or means, a non-compoundable offence.

6. However, by a series of decisions of the Hon'ble Apex Court it has been held that the High Court may quash Prosecution even where the offence with which the accused has been charged was non-compoundable by invoking the provisions of Section 482 of the Cr.P.C. subject to certain contingencies. In ***Shiji alias Pappu and Others vs. Radhika and Another*** (supra) the Hon'ble Apex Court has while observing that the inherent powers of the High Court under Section 482 of the Cr.P.C. are not for that purpose controlled by Section 320(2) of the Cr.P.C., hastened to caution that the plenitude of the power under Section 482 of the Cr.P.C. by itself, makes it obligatory for the High Court to exercise the same with utmost care and caution. That the width and nature of the power itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the Prosecution would be nothing but an abuse of the process of Law.

7. We may also usefully refer to the decision of ***Gian Singh vs. State of Punjab and Another*** : (2012) 10 SCC 303 where it was

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opined that in different situations the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power under Section 482 on either of the twin objectives, i.e., to prevent abuse of the process of any Court or to secure the ends of justice is a *sine qua non*. It was also observed that quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. It went on to hold that strictly speaking, the power of compounding of offences given to a Court under Section 320 of the Cr.P.C. is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the Court is guided solely and squarely thereby, while on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power, although the ultimate consequence may be acquittal or dismissal of indictment.

8. It was further held that in what cases power to quash the criminal proceeding or complaint or FIR may be exercised where

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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.

9. On the touchstone of the principles enunciated above, coming to the case at hand, the facts reveal that the Petitioner No.3 was assaulted with stones by the Petitioners No.1 and 2 who were evidently intoxicated at the relevant time. The FIR was lodged on 08-02-2015 and immediately on the following day, i.e., 09-02-2015, the matter was compromised between the Petitioners and the Compromise Deed drawn up by the Petitioners in the presence of their respective parents, the Municipal Councillor and independent witnesses. There is no allegation that the injuries were serious in nature. As the Petitioners were present in the Court room, on query from the Petitioner No.3, he stated that the matter was amicably settled without any duress on him by either the Petitioners No.1 and 2 or any other person, and he seeks a closure to the matter.

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10. In consideration of the facts and circumstances put forth, I am of the clear view that it would be an exercise in futility to indulge in a protracted trial as in all probability no fruitful result would yield, the Petitioners No.1 and 2 having already settled the matter with the Petitioner No.3. Thus weighing the facts and circumstances of the instant matter, I am of the opinion that it would be advisable to truncate the proceedings thus the compromise between the parties be and is accordingly accepted.

11. In the result, Application under Section 482 of the Cr.P.C. is allowed. The FIR No.39 of 2015 dated 08-02-2015 registered with Police Station Sadar Police Station, Gangtok, is hereby quashed and consequently, the G.R. Case No.191 of 2015 before the Learned Chief Judicial Magistrate, East and North Sikkim at Gangtok, is also quashed.

12. A copy of this Order be sent to the Learned Chief Judicial Magistrate, East and North Sikkim at Gangtok,

13. Certified copies be made available to the parties as per the Rules.

(Meenakshi Madan Rai)

Judge

12-05-2016

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Approved for reporting : **Yes**

Internet : **Yes**

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