
(2018) 06 GAU CK 0045
In the Gauhati High Court
Case No : Criminal Petition 532 of 2018

Mayna Mia Mazumder

APPELLANT

Vs

State Of Assam And Anr.

RESPONDENT

Date of Decision : 12-06-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 320, 482

Indian Penal Code, 1860 — Section 34, 143, 325, 342, 354, 427, 436, 457

Citation : (2018) 06 GAU CK 0045

Hon'ble Judges : AJIT BORTHAKUR, J

Bench : Single Bench

Advocate : A.M. Borbhuyan, T.K. Mishra

Final Decision : Disposed Off

Judgement

1. By this petition under Section 482 Cr.P.C., the petitioners have prayed for setting aside and quashing of the impugned proceeding of G.R. Case No.

2336/2015, pending in the court of learned Addl. Chief Judicial Magistrate, Karimganj.

2. The petitionersâ?? case, in a nut-shell, is that on 30.07.2015, the mother of the present accused/petitioner No. 1, namely, Rafizun Nessa, the

respondent No. 2 herein lodged an F.I.R., with the Officer-in-charge of Algapur P.S. against Moznu Mia and his four sons, namely, Abdul Motlib,

Abdul Mukit, Sahid Ahmed and Hason Ali and thereupon, Algapur P.S. Case No. 242/15 under Sections 143/427/436/325/342 IPC (corresponding to

G.R. Case No. 1536/15) was registered. The petitioners have contended that due to misunderstanding for filing of the aforesaid F.I.R., which was

lodged by mother of the present accused/petitioner No. 1 (Afia Begum Mazumder), subsequently the daughter-in-law of the accused No. 1 of the said

F.I.R. (Rafizun Nessa), who is the wife of the accused No. 3 of the said case, being informant lodged the present impugned F.I.R., on 11.10.2015,

with the Officer-in-charge of Badarpur P.S. against the present/petitioner No. 1, who is a son of the informant (Afia Begum Mazumder) adding the

other accused persons. Accordingly, the said F.I.R. was registered as Badarpur P.S. Case No. 453/15 under Sections 457/354/325/436/34 IPC

(corresponding to G.R. Case No. 2336/2015). The petitioners have further contended that the actual fact is that there was a land dispute between the

parties since long and on 10.10.2015, a conciliation meeting was held by the elderly persons of both sides to amicably settle their land disputes and its

consequential Algapur P.S. Case No. 242/15 (corresponding to G.R. Case No. 1536/2015). However, due to differences in opinion, the matter could

not be settled and that led to filing of another F.I.R. whereupon, Badarpur P.S. Case No. 453/2015 (corresponding to G.R. Case No. 2336/2015)

mentioned was registered.

3. The petitioners have stated that subsequently on 21.06.2016, the said Algapur P.S. Case No. 242/15 and Badarpur P.S. Case No. 453/15 along

with their connected land disputes were amicably settled between the parties in a village meeting, which was duly communicated to the Officer-in-

charge of both the said Police Stations. But ignoring their amicable settlements, in both the cases, the charge-sheets were submitted by the

investigating officers vide Algapur P.S. charge-sheet No. 94/2016, dated 31.08.2016 and Badarpur P.S. Charge-sheet No. 453/15 respectively,

showing the accused petitioners to be absconding. Thereafter, this court by an order, dated 23.11.2017, passed in Crl. Petition No. 742/2017, under

Section 482 Cr.P.C. set aside and quashed Algapur P.S. Case No. 242/15 (corresponding to G.R. Case No. 1536/2015), on the ground of amicable

settlement reached between the parties. Hence, the instant petition is filed praying as stated above.

4. The respondent No. 2, in her affidavit-in-opposition admitted the contentions made by the petitioners and averred that all the disputes between the

parties are amicably settled and they are living peacefully maintaining friendly relations and as such, as she has no grievance any more against the

petitioners, she has no objection against setting aside and quashing of Badarpur P.S. Case No. 453/15 under Sections 457/354/325/436/34 IPC

(corresponding to G.R. Case No. 2336/2015).

5. Heard Mr. A.M. Borbhuyan, learned counsel for the petitioners and Mr. T.K.Mishra, learned Addl. Public Prosecutor for the State respondent No.

1. Mr. A.M. Borbhuyan, learned counsel for the petitioners, has reiterated the grounds cited in the petition, while Mr. T.K. Mishra, learned Addl.

Public Prosecutor submits that in the above backdrop of facts and to secure the ends of justice to both the parties, the case may be quashed as prayed for.

6. In *Gian Singh v. State of Punjab & anr.*, reported in (2012) 10 SCC 303, the Supreme Court, in para 61, held as herein below extracted:

¶61. 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 of the Code. 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. 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. 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 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 disputes 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 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. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question (s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

The Apex Court in *Central Bureau of Investigation v. Narendra Lal Jain*, (2014) 5 SCC 364 also while dealing with the scope and ambit of quashing a criminal proceeding on compromise observed that "it must be remembered that continuance of a criminal proceeding which is likely to become oppressive or may partake the character of a lame prosecution would be good ground to invoke the extra ordinary power under Section 482 Cr.P.C."

7. Perusal of the Badarpur P.S. charge-sheet No. 453/15 (corresponding to G.R.Case No. 2336/15) pending in the Court of learned Addl. Chief

Judicial Magistrate, Karimganj, it appears that both the present petitioners are accused of commission of the offences under Sections

457/354/325/436/34 IPC, out of which the offences under Sections 457/436 are non-compoundable under Section 320 Cr.P.C. The other case being

Algapur P.S. Case No. 242/2015 under Sections 143/427/436/325/342 IPC, between the same parties, has already been set aside and quashed vide

the judgment and order, dated 23.11.2017, passed in Crl.Pet No. 742/2017 under Section 482 Cr.P.C.

8. Now by the instant petition, the accused/petitioners have averred that the above two cases were filed out of misunderstandings arising out of land

disputes. The informant/respondent No. 2 by filing an affidavit, while admitting the contentions made by the petitioners averred that she has no

objection against quashing of the case, as prayed for. Therefore, this court finds

that it would be an abuse of the process of court, as the witnesses, in all likelihood will turn their back from the allegations. Therefore, in that event the learned court will be left with no option, but to acquit the accused/petitioners.

9. Consequently, to secure the ends of justice and applying the principles provided in the Apex Court judgments, stated above, G.R. Case No.

2336/2015 (corresponding to Badarpur P.S. Case No. 453/15 under Sections 457/354/325/436/34 IPC), pending in the Court of learned Addl. Chief

Judicial Magistrate, Karimganj is hereby set aside and quashed.10.

10. Accordingly petition stands disposed of.