
(2018) 07 GAU CK 0058
In the Gauhati High Court
Case No : Criminal Petition No.1019 Of 2017

Proshidha Ranjan Neog	Vs	APPELLANT
State Of Assam And Anr.		RESPONDENT

Date of Decision : 19-07-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 397, 482
Information Technology Act, 2000 — Section 66E, 66F, 67, 67A, 77A
Indian Penal Code, 1860 — Section 292(2), 506

Citation : (2018) 07 GAU CK 0058

Hon'ble Judges : AJIT BORTHAKUR, J

Bench : Single Bench

Advocate : C. Boruah, B. Gogoi

Final Decision : Disposed Off

Judgement

1. Heard Mr. C. Boruah, learned counsel for the petitioner and Mr. B. Gogoi, learned Addl. Public Prosecutor, Assam for State/respondent No. 1.

Â Â None appeared for the informant/respondent No. 2.

2. This is a petition under Section 482 read with Section 397 Cr.P.C. praying for setting aside/quashing of the proceeding of G.R. Case No. 75/2014

under Section 67 of the Information Technology Act, 2000, (For short â??IT Actâ??) pending adjudication in the court of learned Judicial Magistrate,

1st Class, Dhansiri at Sarupathar, Golaghat.

3. The petitionerâ??s contention, inter-alia, is that he is prosecuting B. Tech course in Dibrugarh University and aged about 25 years. The

informant/respondent No. 2, who is aged about 23 years, is prosecuting the Hotel Management Course. The respondent No. 2 had lodged an F.I.R.,

on 23.02.2014, before the Officer-in-Charge of Sarupathar Police Station alleging

that on 19.02.2014, she saw her naked photograph in the Facebook and after enquiry, she came to know that her said photograph was uploaded by the accused petitioner, with whom she was having love affair, but their relationship broke down later on for his having maintained love affair with another girl.

4. Based on the above F.I.R., Sarupathar P.S. Case No. 29/14 under Sections 292 (2)/506 of the IPC read with Sections 66E/67-A of the IT Act, 2000

was registered and in connection with the said case, the accused petitioner underwent custody for 45 days till he was released on bail. On completion

of investigation, the police laid a charge-sheet and a case being G. R. Case No. 75/2014 is registered. As the offence under Section 66 (f) of the I.T.

Act is exclusively triable by the Court of Session, the case was committed to the court of learned Sessions Judge, Golaghat for trial. On perusal of the

materials on the case diary and hearing the learned counsel of both sides, the learned Sessions Judge, Golaghat framed a charge under Section 67 of

the I.T. Act, 2000 and as the said offence is triable by the court of Judicial Magistrate, 1st Class, remanded the case to the learned Judicial

Magistrate, 1st Class, Dhansiri, Sarupathar, Golaghat for trial.

5. The petitioner has further contended that the informant/respondent No. 2 adduced her evidence on 13.10.2016, wherein, she, inter-alia, stated that

she had love affairs with the accused petitioner and both of them clicked some controversial photographs and she felt that those photographs were

uploaded in the Facebook. She also stated that after having broken down of relationship with the accused petitioner, she is now maintaining love

affairs with another youth and that the case was filed after becoming sentimental over the incident and as such, she does not want to continue with the

case.

Â Â Â The petitioner also contended that the informant/respondent No. 2 and the accused petitioner have amicably settled their case outside the

court executing a Deed of Compromise, on 29.09.2017 before the Notary Public, Golaghat, Assam, wherein the respondent No. 2 unequivocally

declared her unwillingness to continue with the case, realizing their mistake and expressed regret for filing the false case.

6. Mr. C. Boruah, learned counsel for the petitioner, submits that the informant/respondent No. 2 has no objection against quashing of the proceeding

of G.R. Case No. 75/2014 as the matter has already been amicably settled between the parties and although the offence under Section 67 of the I.T.

Act, 2000 is a non-compoundable offence, Section 77 A of the said Act provides for compounding of offences under the Act. Therefore, Mr. Boruah

submits that the court of competent jurisdiction may compound offences other than the offences for which punishment prescribed is imprisonment for

life or imprisonment for a term exceeding 3 years.

7. Mr. B. Gogoi, learned Addl. Public Prosecutor, Assam concurred with the submission of the learned counsel for the petitioner and submits that

keeping in consideration of the compromise reached between the parties and further, their age factor, the prayer for quashing of the petition may be

allowed.

Â Â Â In *Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandojirao Angre*²⁹, reported in (1998) 1 SCC 692, the Hon'ble Supreme Court held:

â??The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to

whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features

which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the

basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and,

therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the

special facts of a case also quash the proceeding even though it may be at a preliminary stage.â??

Again in *Gian Singh v. State of Punjab & anr.* reported in (2012) 10 SCC 303, the Hon'ble Apex Court observed:

â??54. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled

although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the

case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor.

No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens wellbeing of

society and it is not safe to leave the crime- doer only because he and the victim have settled the dispute amicably or that the victim has been paid

compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like

murder, rape, dacoity, etc; or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like Prevention of

Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no

legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile,

commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family

dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact

that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding

or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not

quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each

case will depend on its own facts and no hard and fast category can be prescribed.â??

8. Now, perusal of the contentions made in the petition, it appears that the informant/respondent No. 2 had love affairs with the accused petitioner and

admittedly they clicked some controversial photographs, which were only uploaded in the Face book allegedly a fake Facebook account in the

electronic media. The informant/respondent No. 2 has now snapped her love affair with the accused petitioner and started developing love affairs with

another youth as she stated in her judicial evidence in the proceeding.

Perusal of the Deed of Compromise, dated 29.09.2017, executed between both the parties, inter-alia, stipulates the following terms:-

â??1. The FIRST PARTY has decided not to continue the aforesaid GR Case pending before the Honâ??ble Judicial Magistrate 1st Class, Dhansiri,

Sarupathar, considering the future life of both of them.

2. The SECOND PARTY also will not make any inconvenience to FIRST PARTY by filing any other legal proceeding against her after compromise.

3. BOTH FIRST PARTY and SECOND PARTY have realized their mistake rather FIRST PARTY regrets giving false case against the SECOND

PARTY.

4. The FIRST PARTY is ready to co-operate with the SECOND PARTY if SECOND PARTY files any application before the Honâ??ble High

Court for quashing the aforesaid GR Case No. 75/2014, State-Vs-Prasiddha Ranjan Neog.â??

9. Having thus considered the averments made in the petition and the arguments made by the learned counsel as above and further, the contents of the

Deed of Compromise, this court is convinced that further proceeding with the above case will be an abuse of the process of court and the chance of

conviction of the accused petitioner is very bleak as the material witnesses very likely turn back of the prosecution case. Therefore, the ground reality

over the entire matter needs to be accepted.

10. For the above stated reasons, the petition stands allowed and accordingly G.R. Case No. 75/2014 of the court of learned Judicial Magistrate, 1st

Class, Dhansiri at Sarupathar, Golaghat is set aside and quashed as prayed for.

Accordingly, the petition stands disposed of.

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