GAHC020003812021

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

Case No. : CRL.REVN 5/2021

1:MR. LIMHATHUNG
S/O PILAMO LOTHA, RESIDING AT KENUOZOU, DISTRICT - KOHIMA, NAGALAND

VERSUS

1:THE STATE OF NAGALAND
KOHIMA, NAGALAND

Advocate for the Petitioner : N. MOZHUI

Advocate for the Respondent : GOVT ADV NL

BEFORE

THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. N Mozhui, Mrs. K Kire,
Ms. N Rupreo, Mr. P. Mere, Advocates.

For the respondents : Mr. K Angami, PP, State of Nagaland.

Date of hearing :15.03.2022
Date of Judgment/ Order :24.03.2022

JUDGMENT & ORDER(CAV)

Heard the learned counsel for the petitioner as well as the learned Public

Prosecutor for the State of Nagaland.

2. The present application is filed under Section 482 Cr.P.C. for quashing of FIR dated 06.10.2016 registered as Kohima (N) PS Case No. 0074/2016 and for quashing of criminal proceeding in GR No. 196/2016 presently pending before the court of District and Sessions Judge, Kohima, Nagaland.

3. The background fact leading to filing of the present petition is that on 15.10.2016, the respondent No. 2 herein lodged an FIR before the Officer-in-Charge, Kohima (N) Police Station, inter-alia, alleging that while his daughter was on her way home, the present petitioner dragged the minor daughter of the petitioner to an isolated place to attempted to molest and murder his daughter,. On the basis of the aforesaid ejahar, the Kohima (N) PS case No. 0074/2016 under Section 354A (2)/307 read with Section 18 of the POCSO Act.

4. Thereafter, during the course of investigation, the petitioner was arrested. Subsequently, the petitioner was released on bail. After completion of the investigation, the I.O. filed charge-sheet. When the matter was pending before the trial court, on 22.11.2016, the family of the informant and the petitioner's family decided to compromise the matter so as to put to an end to the matter.

5. On the basis of such compromise, the petitioner has approached this court for quashing the entire criminal proceeding as well as the FIR dated 15.10.2016. The only ground taken and urged in the present proceeding for quashing the aforesaid criminal proceeding is the compromise so entered. The respondent No. 2, the father of the alleged victim has entered appearance in the present proceeding and filed an affidavit-in-opposition, wherein he has admitted the

compromise and the deed of compromise dated 22.11.2016.

6. The learned counsel for the petitioner taking clue from the said affidavit more particularly the paragraph 4 of the said affidavit submits that as the parties have compromised the matter, it will be a futile exercise to continue with the trial. Accordingly, the learned counsel for the petitioner prays for quashing the FIR dated 15.10.2016 as well as charge-sheet and the entire criminal proceeding being GR case No. 196/2016.

7. The learned State counsel vehemently opposes such prayer on the ground that such heinous crime cannot be compromised inasmuch as law is well settled in this regard.

8. I have given anxious consideration to the submissions made by the learned counsel for the parties. I have also perused the materials available on record as well as the compromise document.

9. The law is by now well settled that courts can compound cases in exercise of its power under Section 320 of the Code of Criminal Procedure. Law is also well settled that High Court in exercise of its power under Section 482 Cr.P.C. can quash criminal proceeding involving non-compoundable offences, considering fact and circumstances of the case more particularly when disputes are amicably settled and the victim is having no objection to such compromise.

10. Under what circumstances and in which cases the High Court can exercise such power will depend on the fact and circumstances of each case. It is also

settled that offences which involve moral turpitude and grave offences like rape, murder etc. even if compromised cannot be quashed in exercise of High Court's power under Section 482 Cr.P.C. inasmuch as such offences are against the State and cannot be restricted to two individuals or groups.

11. In the case in hand, the offences are grave in nature involving minor victim. The allegations are under Section 354A (2)/307 read with Section 18 of the POCSO Act. Therefore, when the offences are grave in nature and allegation is of an attempt of rape of a minor, such allegation and criminal proceeding cannot be quashed on the basis of a compromise entered into between the families of the victim and accused inasmuch when it is a sexual offence involving a minor, the parents, in the considered opinion of this court, cannot give consent on behalf of the minor to compromise such serious offences.

12. In view of the aforesaid findings, discussions and reasons, this revision petition is dismissed. The learned court below is directed to proceed with the trial forthwith.

Sd/-
JUDGE

Comparing Assistant