**THE GAUHATI HIGH COURT**
**(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)**

**ITANAGAR PERMANENT BENCH**

**Crl. Petn. No. 10 (AP)/2017**

1. SHRI SAWAN YANGFO,
S/o Lt. Gungte Yangfo,
R/o Bebo Colony, Seppa,
P.O. & P.S.- Seppa, East Kameng District,
Arunachal Pradesh.
2. SHRI GENGU LOMBI,
S/o T. Lombi,
R/o Upper Police Colony, Naharlagun,
P.O. & P.S.- Naharlagun,
District Papumpare,
Arunachal Pradesh. .....Petitioners

-Versus-

State of Arunachal Pradesh represented through the Public Prosecutor.

.....Respondent

**BEFORE**
**HON'BLE MR. JUSTICE KALYAN RAI SURANA**

Advocates for the Petitioners : Mr. R. Sonar, Mr. P. Tatam, Mr. T. Shiva,
: Mr. N. Begang, Mr. L. Tapa.

Advocates for the Respondents : Ms. M. Tang, APP.

Date of hearing & Order : 08.05.2017

**JUDGMENT AND ORDER (Oral)**

Heard Mr. R. Sonar, learned counsel for the petitioner as well as Ms. M. Tang, learned Additional Public Prosecutor.

**2)** With the consent of the both side, the matter is taken up for final disposal.

**3)** The case projected by the learned counsel for the petitioners is that Sri Sawan Yangfo, the petitioner No. 1 is presently serving as an Assistant Teacher at Mebua, Government M.E. School, East Kameng District, and Sri Gengu Lombi, the petitioner No. 2 is presently serving in the Department of Tax and Excise, Government of Arunachal Pradesh and posted at Hollongi, Check Gate, Papumpare District. It is further projected that on 19.04.2002, the petitioner No. 2 had lodged an FIR before the Officer-in-Charge, Naharlagun Police Station against two unknown persons wherein it was alleged that they had physically assaulted him at Doimukh Nirjuli short cut, while he was on duty at that time as a conductor in A.P.S.T. Bus, bearing registration No. AR-02/0266. Pursuant to the said FIR, the petitioner No. 1 was arrested in connection with Naharlagun P.S. Case No. 47/2002 under Section 382/34 IPC. However, the second accused remained untraceable could not be arrested in the case. Therefore, on completion of a part of the investigation, the concerned Police Station filed a charge-sheet No. 13/04 dated 19.01.2004 against the petitioner No. 1 and the other absconded accused before the learned Judicial Magistrate, First Class, Naharlagun in connection with the connected G.R. Case No. 56/2002 under Section 332/34 IPC, by which the petitioner No. 1 has been implicated for committing the offence under Section 332 IPC. The petitioner No. 1 had now received summon in the aforesaid case, which was sent up for trial before the said learned Court.

**4)** The petitioner No. 1 herein is the accused No. 1 in the said G.R. Case No. 56/2002 and the first informant in the said case has joined in this case as the petitioner No. 2. It has been submitted in this petition that the incident had occurred on 19.04.2002 and the present trial proceeding has commenced in the year 2017 after a lapse of about 15 years from the date of alleged offence.

On receipt of the summons to appear the petitioner No. 1 had approached the informant/petitioner No. 2 and tendered his apology and both the petitioners have amicably settled the matter and forgiven each and other and buried their differences. It is also submitted that the petitioners have no animosity against each and other and they have been maintaining very cordial and amicable relationship between them. It has been further stated that the parties have also entered into settlement by signing a written agreement i.e. Deed of Mutual Settlement/Agreement dated 04.05.2016 which has been annexed to this application as Annexure-3. Under the circumstances, both the informant/victim as well as the accused have jointly filed this application, invoking the jurisdiction of this Court under Section 482 of the Cr.P.C. for quashing the said criminal proceeding.

**5)** The learned counsel for the petitioner in support of his contention has relied on a case of *Central Bureau of Investigation v. Sadhu Ram Singla & Ors.,* judgment dated 23.02.2017 passed by the Hon'ble Supreme Court of India in Criminal Appeal No. 396/2017. As per the said order, the Hon'ble Apex Court had dismissed the appeal filed by the appellant therein against the order passed by the Hon'ble High Court of Punjab and Haryana in Criminal Miscellaneous No. M-2829/2011, by which the criminal proceeding against the respondent was quashed on the basis of settlement of disputes.

**6)** The learned Add. Public Prosecutor submits that as the complain is related to assault by the petitioner No. 2 on the petitioner No. 1, and since the parties have compromised the matter, therefore, the chances of any conviction has become very bleak.

**7)** On the perusal of the LCR, it appears that in the meanwhile, one of the star witness, namely, Sri E.B. Thapa, driver of the bus in question had in the meantime expired and the Officer-in-Charge of Naharlagun Police Station had

produced the death certificate of the said person in connection with the order passed by the learned Trial Court in G.R. Case No. 54/2016.

**8)** Having considered the submissions made by the learned counsel for the petitioner as well as the learned APP, this Court in the quest of whether an offence which is not compoundable under the provisions of Section 320 of the Criminal Procedure Code can be quashed under Section 482 of the said code, is of the view that it would be relevant to quote paragraph 52 to 61 of the case of *Gian Singh v. State of Punjab, (2012) 10 SCC 303* which is as follows:

> *"52. The question is with regard to the inherent power of the High Court in quashing the criminal proceedings against an offender who has settled his dispute with the victim of the crime but the crime in which he is allegedly involved is not compoundable under Section 320 of the Code.*
>
> *53. Section 482 of the Code, as its very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior court to prevent abuse of the process of any court or otherwise to secure the ends of justice. It begins with the words, 'nothing in this Code' which means that the provision is an overriding provision. These words leave no manner of doubt that none of the provisions of the Code limits or restricts the inherent power. The guideline for exercise of such power is provided in Section 482 itself i.e., to prevent abuse of the process of any court or otherwise to secure the ends of justice. As has been repeatedly stated that Section 482 confers no new powers on High Court; it merely safeguards existing inherent powers possessed by High Court necessary to prevent abuse of the process of any Court or to secure the ends of justice. It is equally well settled that the power is not to be resorted to if there is specific provision in the Code for the redress of the grievance of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the express bar of law*

*engrafted in any other provision of the Code.*

*54. 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) to prevent abuse of the process of any court or (ii) to secure the ends of justice, is a sine qua non.*

*55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. Ex debito justitiae is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection.*

*56. It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a straitjacket formula regulating the exercise of inherent powers under Section 482. No precise and inflexible guidelines can also be provided.*

*57. 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.*

*Strictly speaking, the power of compounding of offences given to a court under Section 320 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.*

*58. 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 well-being 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.*

*59. B.S. Joshi[2], Nikhil Merchant[3], Manoj Sharma[4] and Shiji[35] do illustrate the principle that High Court may quash criminal proceedings or FIR or complaint in exercise of its inherent power under Section 482 of the Code and Section 320 does not limit or affect the powers of the High Court under Section 482. Can it be said that by quashing criminal proceedings in B.S. Joshi[2], Nikhil Merchant[3], Manoj Sharma[4] and Shiji[35], this Court has compounded the non-compoundable offences indirectly? We do not think so. There does exist the distinction between compounding of an offence under Section 320 and quashing of a criminal case by the High Court in exercise of inherent power under Section 482. The two powers are distinct and different although ultimate consequence may be same viz., acquittal of the accused or dismissal of indictment.*

*60. We find no incongruity in the above principle of law and the decisions of this Court in Simrikhia[15], Dharampal[17], Arun Shankar Shukla[18], Ishwar Singh[25], Rumi Dhar[30] and Ashok Sadarangani[36]. The principle propounded in Simrikhia[15] that the inherent jurisdiction of the High Court cannot be invoked to override express bar provided in law*

*is by now well settled. In Dharampal[17], the Court observed the same thing that the inherent powers under Section 482 of the Code cannot be utilized for exercising powers which are expressly barred by the Code. Similar statement of law is made in Arun Shankar Shukla[18]. In Ishwar Singh[25], the accused was alleged to have committed an offence punishable under Section 307, IPC and with reference to Section 320 of the Code, it was held that the offence punishable under Section 307 IPC was not compoundable offence and there was express bar in Section 320 that no offence shall be compounded if it is not compoundable under the Code. In Rumi Dhar[30] although the accused had paid the entire due amount as per the settlement with the bank in the matter of recovery before the Debts Recovery Tribunal, the accused was being proceeded with for commission of offences under Section 120-B/420/467/468/471 of the IPC along with the bank officers who were being prosecuted under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act. The Court refused to quash the charge against the accused by holding that the Court would not quash a case involving a crime against the society when a prima facie case has been made out against the accused for framing the charge. Ashok Sadarangani[36] was again a case where the accused persons were charged of having committed offences under Sections 120- B, 465, 467, 468 and 471, IPC and the allegations were that the accused secured the credit facilities by submitting forged property documents as collaterals and utilized such facilities in a dishonest and fraudulent manner by opening letters of credit in respect of foreign supplies of goods, without actually bringing any goods but inducing the bank to negotiate the letters of credit in favour of foreign suppliers and also by misusing the cash-credit facility. The Court was alive to the reference made in one of the present matters and also the decisions in B.S. Joshi[2], Nikhil Merchant[3] and Manoj Sharma[4] and it was held that B.S. Joshi[2], and Nikhil Merchant[3] dealt with different factual situation as the*

*dispute involved had overtures of a civil dispute but the case under consideration in Ashok Sadarangani[36] was more on the criminal intent than on a civil aspect. The decision in Ashok Sadarangani[36] supports the view that the criminal matters involving overtures of a civil dispute stand on a different footing.*

*61. The position that emerges from the above discussion can be summarised thus: 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 F.I.R may be exercised where the offender and 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 serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like 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 pre-dominatingly civil flavour stand on 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, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put 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 process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."*

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*(Cases cited above:*
*2. B.S. Joshi v. State of Haryana, (2003) 4 SCC 675*
*3. Nikhil Merchant v. CBI, (2008) 9 SCC 677*
*4. Manoj Sharma v. State, (2008) 16 SCC 1*
*15. Simrikhia v. Dolley Mukherjee, (1990) 2 SCC 437*
*17. Dharampal v. Ramshri, (1993) 1 SCC 435*
*18. Arun Shankar Shukla v. State of U.P., (1999) 6 SCC 146*
*25. Ishwar Singh v. State of M.P., (2008) 15 SCC 667*
*30. Rumi Dhar v. State of W.B., (2009) 6 SCC 364*
*35. Shiji v. Radhika, (2011) 10SCC 705*
*36. Ashok Sadarangani v. Union of India, (2012) 11 SCC 321).*

**9)** This Three Judge Bench decision of the Hon'ble Apex Court was relied upon by another Co-ordinate Bench of the Hon'ble Apex Court in the case of *Gopakumar B. Nair v. Central Bureau of Investigation & Ors., (2014) 5 SCC 800*, wherein the Hon'ble Apex Court has observed as follows:

*"13. What really follows from the decision in Gian Singh (supra) is that though quashing a non-compoundable offence under Section 482 CrPC, following a settlement between the parties, would not amount to circumvention of the provisions of Section 320 of the Code the exercise of the power under Section 482 will always depend on the facts of each case. Furthermore, in the exercise of such power, the note of caution sounded in Gian Singh (supra) (para 61) must be kept in mind. This, in our view, is the correct ratio of the decision in Gian Singh (supra)."*

**10)** Coming to the present case in hand, it is seen on the perusal of the LCR that at the bus stop, two persons were attempting to board the same bus, those were the two accused in the case and in the process there was a scuffle. As per the statement of the star witness Sri E.B. Thapa, since expired, the petitioner No. 2 was assaulted by both those passengers, one being the petitioner No. 1 and other being accused No. 2 (absconder). The petitioner No. 2 was assaulted when two accused were asked those to allow the passengers on the bus to get down. As per the statement of the complainant (petitioner No. 2) while the two accused were simultaneously trying to board the bus, he had asked the said accused to allow the passenger to get down, when they had assaulted the petitioner No. 1.

**11)** Under the circumstances, when the informant, namely, Sri Gengu Lombi, who has joined in this application as petitioner No. 2 and who has submitted that the alleged incident had occurred due to misunderstanding and at the heat of the moment and presently they are not against each and other, the chances of any conviction against the petitioner No. 1 is absolutely bleak. This Court is of the view that this is a case where the offence is of an assault between two private persons and as both the parties have forgiven each and other and that after 15 years, they have no grievance against each and other, in view of the ratio of *Gian Singh (supra),* this is a fit case for exercise of jurisdiction under

Section 482 of the Cr. P.C. to quash the proceeding of G.R. Case No. 56/2002 now pending for disposal before the Court of the learned Judicial Magistrate, First Class, Naharlagun, Arunachal Pradesh.

**12)** In that view of the matter, this application is allowed and the proceeding against the petitioner No. 2 , namely, Sri Sawan Yangfo, who is the accused No. 1 in connection with G.R. Case No. 56/2002 corresponding to Naharlagun P.S. Case No. 47/2002 under Section 332/34 of the Indian Penal Code is quashed.

**13)** It is made clear that this order is only in respect of the aforesaid petitioner /accused No. 1, namely, Sri Sawan Yangfo.

**14)** Let the LCR be returned forthwith.

**JUDGE**

*Mkumar*