

IN THE HIGH COURT OF SIKKIM : GANGTOK
(Criminal Jurisdiction)

Crl. M.C. No. 08 of 2019

Shri Krishna Lall Timsina
S/o Shri Megnath Timsina
R/o Yangang, South Sikkim.

...Petitioner

Versus

1. Kanu Priya Rai,
D/o Late Gyanendra Rai,
At present R/o Machong,
East Sikkim.

2. The State of Sikkim

...Respondents

For Petitioner : Mr. Simeon Subba, Advocate.

For Respondent No.1 : Mr. Mr. Jorgay Namka, Advocate.

For Respondent No.2 : Ms. Pollin Rai, Assistant Public Prosecutor.

WITH

Crl. M.C No.11 of 2018

Dr. Kanu Priya Rai
D/o Late Gyanendra Rai,
Medical Officer-cum-In-charge,
Yangang PHC,
Government of Sikkim, South Sikkim

...Petitioner

Versus

1. The State of Sikkim
Through the Chief Secretary,
Government of Sikkim, Gangtok, East Sikkim.

2. Shri Krishnalal Timsina,
S/o Meghnath Timsina,
R/o Yangyang Bazar,
P.O & P.S. Ravangla, South Sikkim

3. Shri Chatur Singh Rai,
Assistant Sub-Inspector
Yangang Out -Post, South Sikkim

4. Shri Chandrajit Adhikari,
Compounder Lingey,
Under Yangang PHC, South Sikkim

5. Shri Rup Narayan Sanjal,
Compounder Neya,
Under Yangang PHC, South Sikkim

...Respondents

For Petitioner : Mr. Jorgay Namka, Advocate.
For Respondent No.1 : Ms. Pollin Rai, Assistant Public Prosecutor.
For Respondent No.2 : Mr. Simeon Subba, Advocate.
For Respondent No.3 & 5: Mr. Mahendra Thapa, Advocate.
: Mr. Durga Pd. Luitel, Advocate.

Date: 02/12/2019

**BEFORE
HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CJ.**

O R D E R

Heard Mr. Simeon Subba, learned counsel appearing for the petitioner in Crl. M.C. No. 08 of 2019 and for respondent no.2 in Crl. M.C. No. 11 of 2018. Also heard Mr. Jorgay Namka, learned counsel for respondent no.1 in Crl. M.C. No. 08 of 2019 and petitioner in Crl.M.C. No.11 of 2018. Ms. Pollin Rai, learned Assistant Public Prosecutor, Sikkim for respondent no.2 in Crl. M.C. No. 08 of 2019 and for respondent no.1 in Crl. M.C. Case No.11 of 2019 is also heard along with Mr. Mahendra Thapa as well Mr. Durga Pd. Luitel, learned counsel for respondent nos. 3 and 5 in Crl. M.C. No. 11 of 2018.

2. In Crl. M.C. No. 08 of 2019, which is registered on an application under Section 482 of the Code of Criminal Procedure, 1973, for short, 'Cr. P.C.', the petitioner prays for quashing of G.R. Case No.105/2018 (*State of Sikkim vs. Krishna Lall Timsina*) pending in the Court of learned Judicial Magistrate, Yangang Sub-Division, South Sikkim.

3. On the basis of a complaint filed by respondent no.1 in Crl. M.C. No. 08 of 2019, Ravangla Police Station Case No. 16 of 2017 was registered under Section 509/186/353 IPC and subsequently, G.R. Case No. 105/2018 was registered. On completion of investigation,

Charge-sheet under Sections 353/186/290/509/506/500 IPC was laid against the petitioner in Crl. M.C. No. 08 of 2019.

4. Learned trial Court, by an order dated 11.02.2019, framed charges, as indicated in the Charge-sheet, and the said order was challenged by the petitioner in Crl. M.C. No. 08 of 2019 by filing a revision application, registered as Criminal Revision Case No.01 of 2019, before the learned Sessions Judge at Namchi, South Sikkim.

5. Learned Sessions Judge, by an order dated 12.06.2019, held that there was no material to frame charge under Section 506 IPC, and with that modification the petition was disposed of.

6. The petitioner in Crl. M.C. No. 08 of 2019 had also filed a complaint before the Yangang Out Post, which was subsequently registered as Private Complaint Case No. 13 of 2018, against respondent no.1, which is now pending before the Court of Judicial Magistrate, South Sikkim at Namchi.

7. Against the orders dated 11.05.2018 and 28.05.2018, whereby summons was issued to respondent no. 1 in Crl. M.C. No. 08 of 2019, she had filed a revision application, registered as Criminal Revision Case No. 01 of 2018, before the learned Sessions Judge at Namchi and by an order dated 24.10.2018, the revision was dismissed.

8. Respondent no.1 in Crl. M.C. No. 08 of 2019 had assailed the said order by filing an application under Section 482 Cr. P.C., which is registered as Crl. M.C. No. 11 of 2018. By filing IA No. 01 of 2019, respondent no.1 in Crl. M.C. No. 08 of 2019, who is the petitioner in Crl. M.C. No. 11 of 2018, prays for withdrawal of Crl. M.C. No. 11 of 2018.

9. As agreed upon, both Crl. M.C. No. 11 of 2018 and Crl. M.C. No. 08 of 2019 are heard together and are being disposed of by this order.

10. Mr. Subba submits that the petitioner and respondent no.1 in Crl. M.C. No. 08 of 2019 have resolved their differences and a Deed of Compromise dated 04.11.2019 (Annexure-P6) was also entered into by and between them and in the said Deed of compromise, it was recorded that the petitioner will withdraw the Private Complaint Case No. 13 of 2018 and that respondent no.1 will not object to the application to be filed by the present petitioner under Section 482 Cr. P.C.. It is submitted by Mr. Subba that when the parties have resolved their differences, it will be in the interest of justice that G.R. Case No. 105 of 2018 is quashed.

11. Mr. Namka submits that IA No. 01 of 2019 was filed in Crl. M.C. No. 11 of 2018 for permitting the petitioner therein to withdraw the aforesaid Crl. M.C. No. 11 of 2018 so that the petitioner in Crl. M.C. No. 08 of 2019 can take appropriate step to withdraw the Private Complaint Case No. 13 of 2018 pending before the Court of Judicial Magistrate, Yangang Sub – Division, South Sikkim. He further submits that as both the parties have resolved the disputes between them, it would be appropriate that G.R. Case No. 105 of 2018 is given a quietus.

12. Ms. Pollin Rai, learned Assistant Public Prosecutor, Sikkim endorses the submission of Mr. Subba and Mr. Namka.

13. It is seen that the petitioner in Crl. M.C. No. 08 of 2019 is facing trial under Sections 353/186/290/500/509 IPC. Offences under Sections 353/186/290 IPC are non-compoundable offences.

14. In ***Gian Singh vs. State of Punjab and another***, reported in **(2012) 10 SCC 303**, which is referred to by both Mr. Subba and Mr. Namka, the Hon'ble Supreme Court had laid down that it will be permissible for the High Court to quash a criminal proceeding although the offences are not compoundable, if the High Court is of the opinion that continuation of the criminal proceeding 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, thereby, securing the ends of justice. Hon'ble Supreme Court, however, sounded a note of caution that 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., as also offences under special statutes like the Prevention of Corruption Act, 1988 or the offences committed by public servants while working in that capacity cannot be quashed even if the parties have entered into any settlement.

15. In the FIR filed by the respondent no.1 in Crl. M.C. No. 08 of 2019, it is stated that while a training programme was going on, the petitioner suddenly barged into the training hall and hurled abuses at her and there was a possibility of the petitioner hitting her. In the complaint filed by the petitioner in Crl. M.C. No. 08 of 2019, it is stated that he was not aware that any meeting was going on and he had only entered the hall to request the respondent no.1, a doctor, to attend to a patient, namely, Poonam Limboo, who was his daughter's classmate and whose condition was critical.

16. Having regard to the facts and circumstances of the case, I am of the considered opinion that the allegations being not heinous and serious and as the parties have amicably resolved their differences it

would be unfair and contrary to the interest of justice to continue with the criminal proceeding.

17. Taking that view, criminal proceeding in G.R. Case No. 105 of 2018, presently pending in the Court of Judicial Magistrate, Yangang is quashed. Crl. M.C. No. 08 of 2019 is, accordingly, disposed of.

18. On the prayer of Mr. Namka, Crl. M.C. No. 11 of 2018 is also disposed of on withdrawal. IA No. 01 of 2019 also stands disposed of.

19. At this stage, Mr. Subba submits that the petitioner in Crl. M.C. No. 08 of 2019 will take immediate steps for withdrawal of Private Complaint Case No. 13 of 2018 as steps could not be taken earlier in that regard in view of pendency of Crl. M.C. No. 11 of 2018 before this Court.

Chief Justice

Approved for reporting : Yes.

jk/