GAHC040004742025

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

Case No. : Crl.Petn./63/2025

Kipa Nargish Charu and 2 Ors
Wife of Charu Akey, permanent resident of Palin, PO and PS Palin, Kra Daadi District, Arunachal Pradesh.

VERSUS

The State of AP
represented by the PP of AP

Advocate for the Petitioner : Tayum Son, Nabam Taro

Advocate for the Respondent : P P of AP,

BEFORE

THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
ORDER

01.05.2025

Heard Mr. T Torum, learned counsel for the petitioners. Also heard Mr. T Ete, learned Additional PP, Arunachal Pradesh.

2. This is an application filed under Section 528 of the BNSS, 2023 praying for setting aside and quashing the criminal proceeding of Papu Hill Police Station Case No. 98/2024 under Section 74/324(5)/118(1)3(5) of

BNS read with Section 27/25(9) of Arms Act, 1959.

3. In the F.I.R. it is disclosed that the petitioner No. 1 and petitioner No. 2 are two wives of petitioner No. 3. The petitioner No. 1 lodged the FIR against the petitioner Nos. 2 and 3 alleging assault on her. Subsequently, they have entered into a deed of mutual agreement.

4. This present petition is jointly filed by the informant and the accused person, who are husband and wife, on the ground that they have amicably settled the matter. It is also on record that the petitioners have amicably settled vide settlement deed dated 01.03.2025 and out of misunderstanding the petitioner No. 1 lodged the FIR against the petitioner Nos. 2 & 3. Accordingly, it is contended that as the complainant and the accused had settled the matter amicably between them and therefore, this court in exercise of power under Section 528 of BNSS should quash the criminal prosecution inasmuch as the offences charged are not compoundable under the provision of BNSS.

5. The power under Section 528 of BNSS, 2023 is an inherent power and such inherent power can be exercised to quash a criminal proceeding or a criminal complaint but while doing so the court is to follow certain principles. Such power can be exercised, amongst others, when the offences alleged are overwhelmingly and predominantly civil in character or when such dispute arises out of matrimonial relationship or family disputes and the parties have resolved the entire disputes amongst themselves. While exercising such directory power it is to be seen that such offences if compromised shall not affect the society at large.

6. Though there is allegation of commission of offence under Arms Act,

which shall be dealt at later part of this order, however, perusal of the material available on the record, it is seen that the nature of other allegations cannot be said to be heinous and very serious. From the agreement, it is also seen that all the petitioners have resolves to stay together as husband and wives and that the husband will provide equal love and affection to both the wives. In the aforesaid backdrop, the dispute, in the opinion of this court, is relatable to internal family dispute and that quashment of the same shall not have any impact on the society at large.

7. Therefore, in the considered opinion of this court, as the parties have amicably resolved the disputes and that the offences arises out of matrimonial relation and also that if the offences are allowed to be compounded that will have no serious impact on the society, the power under Section 528 of BNSS can be exercised in the given facts of the present case.

8. Now coming to the allegation made under Section 27/25(9) of the Arms Act, the case diary discloses that a Pistol ·32 (auto) was recovered from the possession of petitioner No. 3. However, it is also on record that such Pistol was a licensed one. Section 27 of the Arms Act, 1959 deals with punishment for using arms in contravention of Section 5. Section 5, amongst others, bars possession of any arms and ammunition without license. In the case in hand, the Pistol, which was allegedly possessed by the petitioner No. 3 was a licensed Pistol and the detail of such license is also available in the case diary. Therefore, from the material so far collected, no case under Section 5 is made out.

9. Now coming to the material so far relating to Section 25(9), the said Section relates to use of firearm in a rash or negligent manner on in celebratory gunfire endangering human life or personal safety of others, which is made punishable with an imprisonment for a term of two years. In the considered opinion of this court, this is also not a case as available on the case diary.

10. Taking note of the totality of the matter, more particularly, for the clinching material, which are available on record that the petitioner Nos. 1 and 2 were fighting on a street and somebody informed the petitioner No. 3 as regards such quarrel and accordingly, he reached the place with his gun, this court has found no material of commission of offence under Section 27/25(9) of the Arms Act.

11. Therefore, in the considered opinion of this court, as the parties have amicably resolved the disputes and that the offences arises out of matrimonial relation and also that if the offences are allowed to be compounded that will have no serious impact on the society, the power under Section 528 of BNSS can be exercised in the given facts of the present case.

12. Accordingly, this petition is allowed by setting aside and quashing the criminal proceeding being Papu Hill Police Station Case No. 98/2024 under Section 74/324(5)/118(1)3(5) of BNS read with Section 27/25(9) of Arms Act, 1959.

JUDGE

Comparing Assistant