

THE HIGH COURT OF SIKKIM: GANGTOK

(Criminal Jurisdiction)

SINGLE BENCH: HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

CrI. M.C. No. 02 of 2022

1. Sonam Dadul Bhutia,
S/o Late Sonam Tenzing Bhutia,
R/o Singyang,
West Sikkim.
2. Annick Lepcha,
S/o Shri Champa Lepcha,
R/o Singyang,
West Sikkim.
3. Ugendra Tamang
S/o Shri Aiman Tamang,
R/o Singyang,
West Sikkim.
4. Phuchung Bhutia
S/o Shri Tashi Chewang Bhutia,
R/o Lower Naku, Pelling,
West Sikkim. **Petitioners**

Versus

State of Sikkim, **Respondent**

Petition under Section 482 of the Code of Criminal Procedure, 1973.

(Quashing of General Register Case No.02 of 2022 titled State of Sikkim vs. Sonam Dadul Bhutia & Ors pending adjudication before the learned Chief Judicial Magistrate at Gyalshing).

Appearance:

Mr. Jorgay Namka, Advocate for the Petitioners.

Mr. S.K. Chettri, Additional Public Prosecutor for the State-Respondent.

04.07.2022

ORDER (ORAL)

Bhaskar Raj Pradhan, J.

1. The present petition has been preferred by the petitioners under Section 482 of the Code of Criminal

Procedure, 1973 (Cr.P.C.) to quash the criminal proceedings arising out of First Information Report (FIR) No.25/2021 dated 17.08.2021 lodged against the petitioner nos. 1, 2 and 3 by the brother of petitioner no.4 (the victim). In the FIR it was alleged that the petitioner nos. 1, 2 and 3 had hit the petitioner no.4 inside the hotel and thereafter, again with a rod and knocked him unconscious to the ground.

2. The charge-sheet filed by the prosecution indicated that the victim and the complainant Yapchung Bhutia are brothers. The victim and the petitioner nos. 1, 2 and 3 were well known to each other. On 16.08.2021 the petitioners had all gathered at a restaurant at lower Pelling, West Sikkim for playing cards. While doing so they had consumed alcohol. The victim and the petitioner no.1 indulged in a verbal spat while playing cards and abused each other. The restaurant owner intervened and asked them to go home after taking them out of the restaurant. However, they continued to indulge in verbal altercation which led to a physical assault on the victim. The petitioner no.2 attacked the victim with an iron rod resulting in injuries to him. The victim was thereafter evacuated to the district hospital where he was treated. Accordingly, the prosecution filed the charge-sheet finding *prima facie* case against the petitioner nos.1, 2 and 3 under Section 326/34 of the Indian Penal

Code, 1860 (IPC). On 25.02.2022 the learned Chief Judicial Magistrate framed charges against the petitioner nos. 1, 2 and 3 under Section 326/34 of the IPC. The examinations of the prosecution witnesses are yet to commence.

3. Section 326 IPC relates to voluntarily causing grievous hurt by dangerous weapons or means. The punishment prescribed for the offence is imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. The brutality of the offence would be the deciding factor to determine the quantum of sentence along with other relevant considerations.

4. This court has examined the probable evidence filed by the prosecution along with the charge-sheet which is yet to be tested through cross-examination. Some of the prosecution witnesses seem to have stated that the victim sustained the injuries due to fall. It is quite evident that the altercation both physical and otherwise took place in a drunken brawl due to consumption of alcohol while playing cards. The medical report of the victim also shown that he had consumed alcohol as well. All the petitioners seem to have known each other prior to the incident. This is not a case which would demand life sentence even if the charge is proved against the petitioner nos. 1, 2 and 3.

5. Keeping in mind all the above facts and circumstances, this court is of the view that the petitioners should be allowed to realise their mistakes, forgive each other and seek to live in harmony. A compromise deed dated 14.04.2022 has been filed in which it is stated that the petitioners with the help of their family members have amicably resolved their differences after having met on several occasions the victim is agreeable not to pursue this case any further. In fact the victim had filed a communication dated 23.03.2022 addressed directly to the learned Chief Judicial Magistrate, at Gyalsing, West Sikkim stating that the parties had decided to settle their disputes and not to fight against each other. In view of the same the compromise deed is taken on record and in view of the compromise entered upon FIR No.25/2021 dated 17.08.2021 and the proceeding pending before the learned Chief Judicial Magistrate at Gyalshing being General Register Case No.02 of 2022 titled **State of Sikkim vs. Sonam Dadul Bhutia & Ors** are hereby quashed.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting: **Yes/No**
Internet : **Yes/No**

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