

GAHC010248972025



undefined

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

Case No. : Crl.Pet./1393/2025

AMINUL HOQUE ALIAS AMINUR MIRDA
S/O MANNAT ALI ALIAS MANNAT ALI MIRDA, R/O VILL BOALKAMRI PT II,
P.O. BOALKAMRI, PS BILASIPARA, DIST DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:ISMIRA KHATUN (INFORMANT)
W/O SHOWKAT ALI ALIAS CHAKAT ALI
VILL PASHUARKHAL PT II
PO BARKANDA
PS BILASIPARA
DIST DHUBRI
ASSA

Advocate for the Petitioner : MR. N J DUTTA, MR. B HUSSAIN,MR A BASUMATARY,MR. A A
MONDAL,MR A ALAM

Advocate for the Respondent : PP, ASSAM, MR R A AHMED (R-2)

**Whether the pronouncement is of the
operative part of the Judgment?** : NA

**Whether the full Judgment has been
pronounced?** : Yes

Date of Hearing : 18.12.2025

Date of Judgment : 09.01.2026

**BEFORE
HONOURABLE MR. JUSTICE ANJAN MONI KALITA**

JUDGMENT & ORDER (CAV)

Heard Mr. N. J. Dutta, learned counsel appearing on behalf of the petitioner. Also heard Mr. P. Borthakur, learned Addl. P.P., representing for the State and Mr. R. A. Ahmed, learned counsel appearing for the respondent no. 2.

2. This is an application filed under Section 528 of the BNSS, 2023, praying for quashing the FIR, Charge-sheet and the entire proceedings of Sessions Case No. 52/2021 (GR Case No. 1207/2018, pending in the Court of learned Additional Sessions Judge, Bilasipara.

3. The respondent no. 2 (informant) had lodged an FIR before the Bilasipara Police Station on 17.07.2018, alleging, inter alia, that while her husband was not available in the house, the petitioner (accused no.1) often committed house trespass by entering into the house and committed rape on her several times against her will and threatened her not to disclose the matter before anyone; that on 15.07.2018, at about 11:30 PM, the petitioner committed house trespass again while her husband was not available in the house and forcefully raped her against her will; that local public caught the petitioner red handed and later on, the accused no. 2 as named in the FIR also tried to outrage her modesty.

4. Upon receipt of the FIR, the Bilasipara P.S. Case No. 844/2018 was registered under Sections 457/376/352/34 IPC against the accused persons including the petitioner and the petitioner was arrested.

5. After completion of the investigation, Charge-sheet was filed vide Charge-sheet No. 608/2018 dated 31.10.2018 against the petitioner (accused no.1), only under Sections 448/376 of the IPC, before the Court of learned SDJM (M), Bilasipara. Subsequently, the case was committed and forwarded to the Court of learned Addl.

Sessions Judge, Bilasipara, which was registered as Sessions Case No. 52/2021. Thereafter, on 17.01.2022, the learned Addl. Sessions Judge, Bilasipara framed charges against the petitioner (accused no.1), under Sections 448/376 of the IPC.

6. It is seen from the records that after framing of the charges, summons were issued to the witnesses including the informant and the matter was fixed on 10.02.2022 for evidence. However, on that day, none of the PWs were present, including the informant. Thereafter, on 30.08.2025, the learned Addl. Sessions Judge, Bilasipara, issued summons again to the PWs including the informant and fixed the matter on 05.12.2025 for evidence.

7. Mr. N. J. Dutta, learned counsel appearing for the petitioner submits that the informant was, in fact, in a love relationship with the petitioner and though she could not marry the petitioner, she maintained a secret relationship with the petitioner in spite of her marriage to her present husband. He submits that due to the aforesaid relationship, the petitioner and the informant used to meet secretly in absence of her husband and on one of such occasion, they were caught red handed by the relative of the husband. He submits that due to the pressure of the relatives of her husband, the informant had lodged the FIR alleging false allegations against the petitioner. He submits that no rape was committed by the petitioner on the informant and whatever sexual relationship they had, that was purely consensual and no forceful sexual offence was committed by the petitioner on the informant.

8. The learned counsel for the petitioner further submits that during the pendency of the trial, the informant called a village meeting on 20.06.2025 and in presence of villagers, both the petitioner and the informant agreed to come to a mutual agreement and thereby, closed the issue between them forever. Accordingly, the informant had executed an affidavit on 24.06.2025 at Bilasipara, stating that she had a love affair with the petitioner and in absence of her husband, the petitioner used to visit her. In one of the occasion, the relatives of the husband caught them red handed and compelled her to file

the false FIR against the petitioner. The informant stated that she is happily married with the present husband and she has three children out of the wedlock and to save her conjugal married life, she, without any pressure from any corner, would like to compromise the issue amicably with the petitioner and close the trial proceeding of Sessions Case No. 52/2021, pending against the petitioner. She further stated and declared that a prayer would be made before the Hon'ble Court to quash/set aside the proceeding of the aforesaid Sessions Case No. 52/2021 as she is not interested to go ahead with the case. She has admitted that the FIR was subsequently filed due to the pressure from the relatives of her husband. She stated that she has taken the decision in her sound mind and health and without any undue influence of others.

9. In view of the aforesaid affidavit and agreement between the petitioner and the informant, the learned counsel for the petitioner submits that there will be no purpose in taking ahead the trial pending before the Addl. Sessions Judge, Bilasipara, in Sessions Case No. 52/2021. The learned counsel further submits that the PWs including the informant is not willing to co-operate with the trial as is evident from their absence from the trial Court though summons were received by them. He further submits that since the informant is already married and having a happy married life, continuation of the trial against the petitioner (accused no.1) would affect her conjugal married life and would also affect the lives of her young children. Therefore, the learned counsel submits that the proceeding pending before the Sessions Court should be set aside and quashed by allowing the instant petition filed by the petitioner.

10. The learned counsel appearing for the petitioner has referred to the case of **Kapil Gupta Vs. State of NCT of Delhi & Anr. (Criminal Appeal No. 1217/2022)**, decided by the Hon'ble Supreme Court on 10.08.2022, wherein, at Paragraph-17, the Hon'ble Supreme Court has held as under: -

“17. In that view of the matter, we find that though in a heinous or serious crime like rape, the Court should not normally exercise the powers of quashing the proceedings,

in the peculiar facts and circumstances of the present case and in order to give succor to respondent no. 2 so that she is saved from further agony of facing two criminal trials, one as a victim and one as an accused, we find that this is a fit case wherein the extraordinary powers of this Court be exercised to quash the criminal proceedings.”

11. The learned counsel for the petitioner has also referred to the case of **Afsarul Islam and Anr. Vs. The State of Assam and Anr., (Crl.Pet./1030/2023)**, decided by the Hon’ble Gauhati High Court on 17.05.2024, wherein, in a similar case against the petitioner accused of raping the informant, when they amicably settled the matter between them, being distant relatives, the Hon’ble High Court has found the case right to exercise the extraordinary powers under Section 482 of the Cr.P.C. while quashing the proceeding against the petitioner/accused.

12. Mr. R. A. Ahmed, learned counsel for the respondent no. 2 (informant) supported the statements made by the petitioner. He further submits that no fruitful result will be borne out of the present trial pending before the Court of learned Addl. Sessions Judge as parties have agreed to close the issue. He submits that since the PWs are not appearing before the learned Trial Court, the conviction of the petitioner is also very doubtful. In view of the aforesaid, he submits that this petition should be allowed as the informant and the petitioner have jointly and amicably settled their disputes. He submits that since FIR has been filed falsely by the respondent no. 2 (informant) against the petitioner, the instant trial against the petitioner should not be allowed to go ahead as the same will cause injustice to the petitioner as well as the respondent.

13. Mr. P. Borthakur, learned Addl. P.P., appearing for the State submits that since the parties have already settled the issue between them, the Court may consider the matter for a closure.

14. This Court has heard the submissions made by the learned counsel appearing for the respective parties as well as gone through the materials available in the record.

15. This Court has also considered the case laws that have been referred to by the

learned counsel appearing for the petitioner.

16. Both the counsel appearing for the respective parties submitted that the parties, during the course of the trial and with passage of time, have amicably resolved all the disputes and misunderstandings and the informant has, in fact, signed an affidavit on oath citing that she would not like to take the trial ahead and would like to close the proceeding against the petitioner. It is also seen that the informant had categorically made her statement in her affidavit that she had been forced to implicate the petitioner of rape, rather, and she used to meet him when her husband was not present at home. It is also seen from the records that the PWs including the informant, in the instant case, have not appeared before the Trial Court though they have received summons.

17. In the case of **Shiji alias Pappu and Ors., Vs. Radhika and Another, reported in (2011) 10 SCC 705**, the Hon'ble Apex Court, in paragraph-17 has held as under: -

“17. It is manifest that simply because an offence is not compoundable under Section 320 Cr.P.C. is by itself no reason for the High Court to refuse exercise of its power under Section 482 Cr.P.C. That power can in our opinion be exercised in cases where there is no chance of recording a conviction against the accused and the entire exercise of a trial is destined to be an exercise in futility. There is a subtle distinction between compounding of offences by the parties before the trial court or in appeal on the one hand and the exercise of power by the High Court to quash the prosecution under Section 482 Cr.P.C. on the other. While a court trying an accused or hearing an appeal against conviction, may not be competent to permit compounding of an offence based on a settlement arrived at between the parties in cases where the offences are not compoundable under Section 320, the High Court may quash the prosecution even in cases where the offences with which the accused stand charged are non-compoundable. The inherent powers of the High Court under Section 482 Cr.P.C. are not for that purpose controlled by Section 320 Cr.P.C.”

18. While in the case of **Jagdish Chanana and Ors. Vs. State of Haryana and Another, reported in (2008) 15 SCC 704**, the Hon'ble Apex Court in paragraph nos. 2

& 3 has held as under: -

“2. During the pendency of these proceedings in this Court Crl. Misc. Petition No. 42 of 2008 has been filed putting on record a compromise deed dated 30-4-2007. The fact that a compromise has indeed been recorded is admitted by all sides and in terms of the compromise the disputes which are purely personal in nature and arise out of commercial transactions, have been settled in terms of the compromise with one of the terms of the compromise being that proceedings pending in Court may be withdrawn or compromised or quashed, as the case may be.

3. In the light of the compromise, it is unlikely that the prosecution will succeed in the matter. We also see that the dispute is a purely personal one and no public policy is involved in the transactions that had been entered into between the parties. To continue with the proceedings, therefore, would be a futile exercise. We accordingly allow the appeal and quash FIR No. 83 dated 12-3-2005, PS City Sonapat and all consequent proceedings.”

19. In the case of **Parbatbhai Aahir and Ors. Vs. State of Gujarat and Another, reported in (2017) 9 SCC 641**, the Hon’ble Apex Court, after discussing several judicial pronouncements of the Hon’ble Apex Court, including the case of **Gian Singh Vs. State of Punjab**, reported in **(2012) 10 SCC 303** and **Narinder Singh Vs. State of Punjab**, reported in **(2014) 6 SCC 466** in similar circumstances, has laid down the following principles which are quoted herein below: -

“16. The broad principles which emerge from the precedents on the subject. may be summarised in the following propositions:

16.1. Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

16.2. The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at

between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

16.3. In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

16.4. While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.

16.5. The decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.

16.6. In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim has settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

16.7. As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.

16.8. Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

16.9. In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction his remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

16.10. There is yet an exception to the principle set out in propositions 16.8. and 16.9. above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.”

20. In this connection, it may be relevant to refer to the propositions laid down by the Hon’ble Apex Court in the case of **Gian Singh (supra)**. The relevant portion of paragraph-61 of the aforesaid judgment passed by the Hon’ble Apex Court is reproduced herein below: -

“61. But the criminal cases having overwhelmingly and pre-dominantly civil flavor 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 the 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....”

21. In the instant case also, it is seen that the dispute between the parties is primarily of personal and private nature, not involving any other person or society at large and as stated above, the parties have already come to a mutual agreement by settling all their disputes and differences by executing the affidavit.

22. In the case of **State of Madhya Pradesh Vs. Laxmi Narayan and Ors.**, reported in **(2019) 5 SCC 688**, the Hon'ble Apex Court, after taking into account the fact that the dispute between the parties arose from their marital relationship and that they had already resolved their entire disputes among themselves, even if, the proceedings are allowed to be continued, the chance of conviction is very remote and bleak, for ends of justice, allowed the petition for quashing. It may be relevant herein, to reproduce paragraph-15.5 of the aforesaid case.

“15.5. While exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused, the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc.”

23. In the instant case in hand, it is seen that the allegations against the petitioner is personal in nature without having any possible influence on the society at large. It is also seen from the facts and in view of the settlement arrived at between the parties, the possibility of conviction of the petitioner (accused no.1) is remote and therefore, the continuation of such criminal proceeding would be a futile exercise and wastage of time, if the informant herself does not participate in the trial.

24. In view of the aforesaid discussions and after consideration of the submissions made by the learned counsel for the respective parties as well as the materials available on record and taking into account the principles laid down by the Hon'ble Apex Court in the aforesaid cases, this Court is of the considered opinion that the ends of justice would be served if the instant criminal petition is allowed by quashing and setting aside of the FIR, Charge-sheet and the entire proceedings of Sessions Case No. 52/2021 (GR Case No. 1207/2018, pending in the Court of learned Additional Sessions Judge, Bilasipara.

25. In view of the aforesaid findings, the instant criminal petition is allowed by quashing the FIR, Charge-sheet and the entire proceedings of Sessions Case No. 52/2021 (G.R. Case No. 1207/2018, pending in the Court of learned Additional Sessions Judge, Bilasipara.

26. Accordingly, the instant criminal petition is disposed of in terms of the directions given above.

JUDGE

Comparing Assistant