

GAHC040002412025



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

Case No. : Crl.Petn./30/2025

Kipa Kasung and Anr
Son of Shri Kipa Rungma, present resident of Gohpur, Itanagar, PO and PS Itanagar,
Papum Pare District, Arunachal Pradesh 2: Nabam Budh
Age:
Occupation :
Son of Shri Nabam Nyajung
permanent resident of Samuk Juli
PO and PS Balijan
Papum Pare District
Arunachal Pradesh

VERSUS

The State of AP
represented by the PP of AP

Advocate for the Petitioner : Taja Garam, Byabang Mema

Advocate for the Respondent : P P of AP,

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

18.03.2025

Heard Ms. B. Mema, the learned counsel appearing for the petitioners. Also heard Mr. T. Ete, the learned Addl. Public Prosecutor, State of Arunachal Pradesh.

2. This is a joint application under Section 528 of the BNSS, 2023, praying for quashing and setting aside the criminal proceedings arising out of FIR No. 0017 of 2023 dated 04.04.2023, registered by Chimpur Police Station, pending in the Court of Chief Judicial Magistrate (Sr. Division), Yupia.

3. On 4th April, 2023, the petitioner Nabam Budh was doing his duty as Traffic Constable at Gohpur Tuesday Market. At about 7.30 A.M., the other petitioner Kipa Kasung arrived there and parked his Scooter bearing Registration No.AR-01N-6124 inside the bike line on the National Highway. This act caused problem for other vehicles passing through that area. Therefore, Constable Nabam Budh asked the other petitioner to remove his Scooter from that place.

4. On that issue, both the petitioners had a quarrel. It is alleged by Nabam Budh that the other petitioner had punched on his face whereby he sustained injuries on his face.

5. Now, both the petitioners have come together to this Court. While Nabam Budh states that it was only an unfortunate incident and since the other petitioner Kipa Kasung has been co-operating with the law enforcement agency and since he has also assured that such an incident would not happen in future, he has prayed for quashing

the criminal proceedings.

6. The learned Addl. Public Prosecutor Mr. Ete has raised his objection on the ground that the petitioner Kipa Kasung had assaulted a public servant on duty, and therefore, he deserves to be punished.

7. I have considered the submissions made by the learned counsel of both sides.

8. The Section 528 of the BNSS, 2023 is the old Section 482 of the CrPC. The guidelines for consideration of a petition under Section 482 of the CrPC has been laid down by the Hon'ble Supreme Court in *State of Haryana v. Bhajan Lal*, AIR 1992 SC 604. Paragraph 102 of the judgment reads as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the

Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

9. Reverting to the case in hand, the offences committed by Kipa Kasung are not heinous and serious offences of mental depravity. Even then, this Court has some reasons to agree with Mr. Ete that the offences involved in this case, are not private in nature. This Court also has the reason to hold that the offence committed by Kipa Kasung had no serious impact on the society. The offences committed by him are not offences under statutes like, Prevention of Corruption Act. It was a simple quarrel with a Traffic Constable. Since the Traffic Constable himself has decided to come to this Court for quashing his FIR, this Court is of the opinion that there is no possibility of future conviction of the petitioner Kipa Kasung in this case. Under this circumstance, allowing the criminal proceeding to continue before the trial court, would be nothing but an abuse of the process of the court.

10. This is a fit case for exercising power under Section 528 of the BNSS, 2023. Therefore, the criminal petition is allowed.

11. Considering the matter in its entirety, the criminal proceedings arising out of FIR No. 0017 of 2023 dated 04.04.2023, registered by Chimpu Police Station, pending in the Court of Chief Judicial Magistrate (Sr. Division), Yupia, are quashed and set aside.

The Criminal Petition is disposed of.

JUDGE

Comparing Assistant