



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

Case No. : Crl.Petn./101/2023

Tam Tania @ Tarh and Anr.
S/o Lt. Tam Tale,
Resident of Dobum Village, Banderdewa, PO/PS Banderdewa, District Papum Pare
(AP)
Contact No. 09436058000

2: Tam Tado
Age: Occupation : Resident of Dobum Village Banderdewa PO/PS Banderdewa
District Papum Pare (AP)

VERSUS

THE STATE OF AP
Represented through Public Prosecutor, State of Arunachal Pradesh.

Advocate for the Petitioner : T J Dogum

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MR. JUSTICE NANI TAGIA

ORDER

Date : 16-08-2023

Heard Mr. T. Johnney, learned counsel for the petitioners and Ms. T. Jini, learned Additional Public Prosecutor for the State of Arunachal Pradesh.

2. This is an application under Section 482 of the Code of Criminal

Procedure, 1973, read with Article 227 of the Constitution of India, for quashing of the G. R. Case No. 564/2016, under Sections 498(A)/325 IPC arising out of Itanagar Women P. S. Case No. 73/2016, under Section 498 (A)/324 IPC.

3. The petitioner no. 1 is the husband of the petitioner no. 2.

4. The petitioner no. 2 had lodged an F.I.R. on 05.08.2016, against the petitioner no. 1 before the Officer-in-Charge of the Women Police Station, Itanagar (A.P), alleging that the petitioner no. 1, who is her husband, since the month of March, 2016, has been constantly giving her mental harassment, torture and physical assault, after the petitioner no. 1 had developed illicit relationship with another women (name is withheld, though it has been reflected in the F.I.R.) and that the petitioner no. 1 has stopped economically supporting her and her 2 (two) children, who are aged about two and half years and one and half year, respectively. It is further alleged in the F.I.R. that on 07.06.2016, at about 11:00 am, the petitioner no. 1 assaulted her by hitting her with a wooden stick due to which, she sustained injury on her right shoulder and her right shoulder was dislocated and again on 15.07.2016, at about 10.00 pm, the petitioner no. 1 assaulted her by pelting stone due to which her left hand was badly injured and also fractured.

5. On the basis of the aforesaid FIR, Itanagar Women P.S. Case No. 73/16, under Section 498A/324 IPC was registered and upon completion of the investigation, Charge-Sheet under Section 498 A/325 IPC was filed on 11.10.2016 before the Court of the Chief Judicial Magistrate First Class, Yupia, and the case thereafter, is pending trial before the Judicial Magistrate

First Class on being endorsed to it by the Chief Judicial Magistrate. In the Charge-sheet filed, it has been stated that during the course of investigation, the complainant cum victim was examined and her statement was recorded. The complainant was also medically examined and as per the medical report of the complainant, "*fractured shaft of 4th meta central bone and dislocated coraco acromial joint*" has been found. It has further been stated in the Charge-sheet that on 05.08.2016, the accused/petitioner no. 1 appeared at the Women Police Station along with Interim Bail granted by the Sessions Court West Sessions Division in AB no. 69/16 and on such appearance of the accused/petitioner no. 1, he was examined and his statement was recorded, whereafter, the accused/petitioner no. 1 was formally arrested and released on execution of the bail bond, in terms of the interim bail granted by the Sessions Judge, West Division, in AB no. 69/16. On 19.09.2016, the complainant/petitioner no. 2 appeared at the Women Police Station Itanagar and reported that on 27.08.2016, the petitioner no. 1, her husband, again came to her house and assaulted her. On 16.09.2016, again the petitioner no. 1 assaulted her when she went to meet him in the house of his elder brother, for financial help for her son's medical check-up. Under the above facts and circumstances, the petitioner no. 1 was sent to trial under Section 498(A)/325 IPC instead of the earlier registered case under Section 498(A)/324 IPC.

6. The charges against the petitioner no. 1 were to be supported by the statement of 3 (three) witnesses, 2 (two) medical reports and 3 (three) number of photographs.

7. The learned counsel for the petitioners, Mr. T. Jhonney, praying for

quashing of the aforesaid G. R. Case No. 564/2016, under Sections 498 A/325 IPC, pending before the Judicial Magistrate First Class, Yupia, against the petitioner no. 1, has contended that since the aforesaid G. R. Case No. 564/2016 has been registered on the basis of a complaint lodged by the petitioner no. 2, and the petitioners no. 2 & 1, being the wife and husband and that the petitioners no. 1 & 2 have settled their differences by a Deed of Settlement Agreement, dated 02.06.2023 [Annexed as Annexure – IV (series) to the petition], proceeding of the G. R. Case No. 564/2016, under Sections 498 A/325 IPC, pending before the Judicial Magistrate First Class, Yupia, deserves to be quashed as the same arose out of a dispute between a husband and wife and therefore, it essentially arose out of a matrimonial dispute.

8. In support of his contention, Mr. Jhonney, learned counsel for the petitioners has relied upon the decision of the Hon'ble Supreme Court, rendered in the case of ***State of Madhya Pradesh Vs. Laxmi Narayan and Others***, reported in ***(2019) 5 SCC 688***, wherein in Paragraph -15.1, it has been held as under:

“15.1 That the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;”

9. Ms. T. Jini, learned Additional Public Prosecutor on the other hand by referring to the Deed of Settlement Agreement, dated 02.06.2023, has pointed out that the petitioners no. 1 & 2 appears to be engaged in many

disputes and by Clause – 6 of the Deed of Settlement Agreement, the petitioners have severed their matrimonial relationship and accordingly, she contends that since the petitioners have agreed to end their matrimonial relationship, the petitioners have wrongly projected themselves in the instant proceeding as husband and wife. The learned Additional Public Prosecutor, further submits that a perusal of the Deed of Settlement Agreement, dated 02.06.2023, does not indicate that the G. R. Case No. 564/2016, pending before the learned Judicial Magistrate First Class, Yupia, against the petitioner no. 1 has been settled by the petitioners, though there is an indication of settlement regarding judgment/decreed, dated 26.05.2022, passed by the Court of JMFC, Yupia, Papum pare District, but no number or the nature of case on which the judgment/decreed, dated 26.05.2023 is stated to have been passed has been mentioned and also some settlement regarding domestic violence and maintenance case of the parties. She therefore, has submitted that since there appears to be no indication of any mutual settlement arrived at between the petitioners, insofar as G. R. Case No. 564/2016, under Sections 498 A/325 IPC, pending before the Judicial Magistrate First Class, Yupia, is concerned, by the Deed of Settlement Agreement, dated 02.06.2023, the proceeding of the G. R. Case may not be quashed by this Court.

10. I have heard the learned counsels appearing for the parties.

11. There is no dispute with regard to the law laid down by the Hon'ble Supreme Court in the Case of **Laxmi Narayan** (supra), that the Court under Section 482 of the Cr.P.C. may quash the criminal proceedings of the non-compoundable offences under Section 320 of the Cr.P.C., in a dispute having overwhelmingly and predominantly civil character, particularly those arising

out of commercial transactions or arising out of matrimonial relationship or family disputes, when the parties have resolved the entire disputes among themselves. Quashing of criminal proceedings involving non-compoundable offences under Section 320 of the Cr.P.C., which had arisen out of commercial transactions or matrimonial relationship or family disputes, in exercise of power under Section 482 of the Cr.P.C., therefore, pre-supposes that the parties have resolved their entire disputes among themselves.

12. To appreciate as to whether the petitioners have amicably settled the dispute between them insofar as the G. R. Case No. 564/2016, under Sections 498 A/325 IPC, pending in the Court of the learned Judicial Magistrate First Class, Yupia, vide the Deed of Settlement Agreement, dated 02.06.2023, the Deed of Settlement Agreement, dated 02.06.2023 [Annexed as Annexure – IV (series) to the petition] is reproduced hereinbelow, for ready reference:

Deed of A Settlement Agreement

This deed of settlement agreement is made on this 2nd day of June 2023.

-Between-

Smti. Tam Tado, w/o. Tam Tania, age about 45 years, Resident of Dobum village Banderdewa, PO/PS Banderdewa, Papum pare: District, Arunachal Pradesh, hereinafter called THE PARTY TO THE FIRST PART (Herein referred as Plaintiff/Complainant).

-AND-

Shri Tam Tania @ Tarh Tania, C/o Tam Lalu, age about 49 years, resident of D-sector near polo park Naharlagun, PO/PS Naharlagun, Papum pare: District, Arunachal Pradesh hereinafter called THE PARTY TO THE SECOND PART (herein referred as Defendant/Respondent/Accuse person).

Whereas, the parties have with full knowledge and consent have without any undue influence, threat, coercion, fraudulent or malice etc have signed and delivered before relatives and family members on the day and date above mentioned. The contents and averments made are well explained and understood to the language they are well known.

Now these witnessed the parties have agreed to the following terms and conditions:

1. *That the party to the first part and second part are both husband and wife and they have amicably settled their disputes arising out of there wedlock they were bless with two siblings namely Shri Tam*

Mangkum and Miss Tam Angkung who are minor, and has not attend the age of major and misunderstanding has unconditionally agreed to withdraw/disposed mutually the instant case which are filed before the court as well as outside of the court.

2. *That the party to the first part and second party has amicably settled their differences arising of their misunderstanding as per their local traditions and customs prevalent in society.*
3. *That the party to the First part and second part out of compassionate and moral ground have paid sum of Rs. 1 Lakh (one lakh) has given to the First part as per judgment/decreed dated 26.05.2022 passed by the Hon'ble JMFC, Yupia, Papum pare district, Arunachal Pradesh.*
4. *The parties have agreed further not to continue any legal proceeding about the said dispute in near future anymore in any court or proceedings.*
5. *That the parties have made their consent on full and free consent and knowledge on free will and acknowledged the same without any undue influence, coercion, threat from any individual or any one and the contents of this agreement they have been explained and the same have been read over and the same have been translated to the language they the same has been understood by both the parties.*
6. *That the First Party and Second Party shall have no any marital relationship except that the First Party shall allowed the Second Party to meet their child as father of the children.*
7. *That the defendant/respondent accuse person is willing to bear the expenses for children which covers all necessities, including medical expenses, basic necessities fooding and cloathing, and educations, amounting to Rupees 15,000/- per month (fifteen thousand) only (or will be paid wholesome annually) which shall be applicable to both Domestic Violence and Maintenance case of the parties.*

In witnesses:

Smti Tam Tado

1. *Bengia Tang*

(THE PARTY TO THE FIRST PART)

2.

3. *Biri Umesh*

(THE PARTY TO THE SECOND PART)

Shri. Tam Tania @ Tarh Tania

13. In the instant case, a perusal of Deed of Settlement Agreement, dated 02.06.2023, [Annexed as Annexure – IV (series) to the petition], which is the basis on which, the petitioners are seeking quashing of the G. R. Case No. 564/2016, under Sections 498 A/325 IPC, pending before the Judicial Magistrate First Class, Yupia, I do not find that the petitioners by the aforesaid Deed of Settlement Agreement, dated 02.06.2023, have amicably settled their differences/dispute, for which, the G. R. Case No. 564/2016, under Sections 498 A/325 IPC was registered and the same is pending trial

before the Judicial Magistrate First Class, Yupia. Since, the resolution of the dispute or the amicable settlement of the dispute between the parties is the pre-requisite for quashing any criminal proceedings involving non-compoundable offences, that may have arisen out of commercial transactions or matrimonial relationship or family disputes, in the absence of any resolution or amicable settlement between the parties, insofar as, dispute relating to the G. R. Case No. 564/2016, under Sections 498 A/325 IPC, pending before the Judicial Magistrate First Class, Yupia, vide the Deed of Settlement Agreement, dated 02.06.2023, which is the basis of the petitioners' seeking quashing of the G. R. Case No. 564/2016, under Sections 498 A/325 IPC, pending before the Judicial Magistrate First Class, Yupia, I am of the considered view that the power under Section 482 of the Cr.P.C cannot be exercised by this Court in the facts and circumstances of this case, quashing the proceeding of the G. R. Case No. 564/2016, under Sections 498 A/325 IPC, pending before the Judicial Magistrate First Class, Yupia.

14. For the reasons stated hereinabove, this criminal petition lacks merit and the same is hereby dismissed.

15. Interim order passed on 12.06.2023 stands vacated.

JUDGE

Comparing Assistant