

GAHC010003252008



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

Case No. : Crl.Rev.P./194/2008

SHAKEEL AHMED
S/O LT. MAHMUD AHMED R/O PARSURAMPUR ISLAMPUR NEAR MASJID
WARD NO. 2 MUGALSARAI, P.S. ALINAGAR DIST. CHANDALI U.P..

VERSUS

RAZIA PARVEEN and ANR
W/O SHAKEEL AHMED R/O RLY OLD COLONY Q.NO. T/49, BONGAIGAON
P.S. and DIST. BANGAIGAON, ASSAM.

2:THE STATE OF ASSAM
REPRESENTED BY P.P. BONGAIGAON

Advocate for the Petitioner : A M MAZUMDAR

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 11-10-2023

1. Heard Mr. S A Ahmed, learned counsel for the petitioner and also heard Ms. S H Bora, learned Addl. PP, appearing for the State respondent. None appears for the respondent No.1, wife.
2. The present application is filed assailing the judgment and order dated 11.07.2007 passed by the learned SDJM (S), Bongaigaon

in Complaint Case No.366^c/2006, whereby the petitioner was convicted and sentenced under Section 498(A)/34 IPC and sentenced to undergo simple imprisonment for a period of 6 (six) months and also to pay a fine of Rs.1,000/-.

3. Such conviction of the petitioner was upheld by the learned Additional Sessions Judge, (FTC), Bongaigaon under its judgment and order dated 30.04.2008 in Criminal Appeal No.20(3)/2007.

4. It is submitted that the petitioner is still on bail, previously granted by the learned Trial Court as well as the Appellate Court. It is submitted by the learned counsel for the petitioner that in the meantime his wife i.e., the informant got divorced from the present petitioner and got married to one Mazaharul Hoque and both the petitioner and the victim wife have amicably settled the dispute amongst themselves and accordingly, entered into an agreement and got it registered before the Sub Registrar Bongaigaon vide Deed No.2025 dated 03.12.2014.

5. The learned counsel for the petitioner has produced the original of the aforesaid deed of agreement. As none represented the respondent wife in the proceeding, this court under its order dated 10.09.2023 requested the learned Addl. PP to obtain instructions from the Sub Registrar, Bongaigaon regarding execution and genuineness of the said deed No.2025 dated 03.12.2014 and the learned Addl. PP Ms. S H Bora has obtained information from the office of the Deputy Registrar, Bongaigaon which is quoted below:

“ With reference to the subject cited above, I have the honour to inform you that the Deed No.2025 dated 03.12.2014 was verified

with the book and found the number 2025 is recorded as Memorandum in the name of Rezia Parveen."

6. Also perused the Memorandum of Understanding dated 03.12.2014. The relevant portion of which is quoted herein below:

I. That it is agreed by the both parties that both parties shall withdraw their respective cases by themselves.

II. That it is agreed by the both parties that they shall not claim/demand anything in the name of maintenance or compensation or any other cases to each other in future for self or other from this day and shall not demand any arrear if any for past days.

III. That it is agreed by the both parties the 1st party shall not claim anything from the 2nd party and the 2nd party shall not claim anything from the 1st party if anything were given during the time of marriage or after marriage to each other.

IV. That it is agreed by both the parties if any other cases are pending against any party that should be withdrawn by the concerned party.

V. That it is agreed by both parties it is required to present and signature of anyone before the Hon'ble Court in regard to withdrawing the pending cases then they shall be appear to do so.

VI. That it is agreed by the both parties that in regard to the minor daughter of the aforesaid both parties that where the minor daughter wants to stay the other party shall be allowed the minor daughter to stay at her will and wish without interference and the party concerned shall be full responsible to provide all kinds of maintenances, education and marriage.

7. It is by now settled that a High Court in exercise of its power under Section 482 of Cr.P.C. can very well quash a criminal proceeding or a criminal complaint under Section 482 of Cr.P.C., but while doing so, the Court is to follow certain principles as enunciated by the Hon'ble Apex Court in ***Gian Singh –Vs- State of Punjab and***

Another reported in **2012 10 SCC 303**, and in **State of Madhya Pradesh –Vs- Laxmi Narayan and Others** reported in **2019 5 SCC 688**.

8. In the case of **State of Madhya Pradesh & Laxmi Narayan**, (supra), the Hon'ble Supreme Court has laid down certain guidelines for exercise of powers under Section 482 Cr.P.C., it is submitted that instant case falls within the guidelines laid down by the Hon'ble Supreme Court.

9. For ready reference, paragraph-13 of **Laxmi Narayan** (Supra) is extracted herein below:

“13. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

i) 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;

ii) ii) such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

iii) iii) similarly, such power is not to be exercised for the offences under the special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely

on the basis of compromise between the victim and the offender;

iv) offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under Section 307 IPC.

For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

v) 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.”

10. Considering the factual background of the present case that both the accused and the victim had amicably settled their disputes and they are now leaving peacefully and also considering the nature of offence including the sentence awarded and settlement arrived at between the parties, this Court is of the considered opinion that this is a fit case, where this Court should exercise its inherent power under Section 482 of Cr.P.C. to set aside the judgment and order dated 11.07.2007 passed by the learned SDJM (S), Bongaigaon in Complaint Case No.366^c/2006. This court has also considered that neither the alleged offence can be said to be heinous one and nor setting aside the same shall have any serious impact on the society, in the given facts of the present case.

11. Accordingly, this petition is allowed by setting aside the judgment and order dated 11.07.2007 passed by the learned SDJM (S), Bongaigaon in Complaint Case No.366^c/2006.

12. Send down the LCR.

JUDGE