

GAHC010013562023



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

Case No. : Crl.Pet./113/2023

VAIBHAV KALYANI AND 2 ORS.

S/O SHRI NARAYAN PRASAD KALYANI, R/O S-48, SUBASH NAGAR
SHOPPING CENTRE, NEAR HOTEL GHOONGHAT, JAIPUR-302016,
RAJASTHAN

2: NARAYAN PRASAD KALYANI
S/O LATE RAMESHWARLAL KALYANI
R/O S-48
SUBASH NAGAR SHOPPING CENTRE
NEAR HOTEL GHOONGHAT
JAIPUR-302016
RAJASTHAN

3: SMTI. MADHU KALYANI
W/O SHRI NARAYAN PRASAD KALYANI
R/O S-48
SUBASH NAGAR SHOPPING CENTRE
NEAR HOTEL GHOONGHAT
JAIPUR-302016
RAJASTHA

VERSUS

SMT. SAKSHI SHARDA AND ANR.
W/O SHRI VAIBHAV KALYANI, D/O SHRI DINESH KUMAR SHARDA, R/O
HOUSE NO. 82-A, BYE LANE 6, ABRTHAKUR MILL ROAD, ULUBARI,
GUWAHATI-781007, DIST-KAMRUP (M), ASSAM

2:STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSA M

Advocate for the Petitioner : MR. B DEKA

Advocate for the Respondent : PP, ASSAM
MR V K Chopra

Linked Case : Crl.Pet./1282/2022

DIVYA SOMANI AND ANR.
W/O SHRI ANKIT SOMANI
R/O 34 B
LIC COLONY
VAISHALI NAGAR
AJMER -305004
RAJASTHAN
AND/OR
C/OMR. ANKIT SOMANI
OPPOSITE SAVITRI COLLEGE
CIVIL LINES
AJMER-305001
RAJASTHAN
PH. NO. 97722-11292/9829745560

2: MR VIJAY KUMAR TOTLA
S/O LT. PARASRAM TOTLA
R/O C/O VIJAY KUMAR TOTLA AND CO.
P.O. RENWAL-303603 JAIPUR
(RAJASTHAN)
MOBILE NO. 94145-18748
VERSUS

SAKSHI SHARDA AND ANR.
W/O SHRI VAIBHAV KALYANI
D/O SHRI DINESH KUMAR SHARDA
R/O HOUSE NO. 82-A
BYE LANE 6
BARTHAKUR MILL ROAD
ULUBARI
GUWAHATI-781007
DIST. KAMRUP (M)
ASSAM
MOBILE NO. 9707904776

2:STATE OF ASSAM
REP. BY THE PP
ASSAM

Advocate for : MR. K K BHUYAN
Advocate for : PP, ASSAM
MR V K Chopra

Linked Case : I.A.(Crl.)/1170/2023

VAIBHAV KALYANI AND 2 ORS.
S/O SHRI NARAYAN PRASAD KALYANI
R/O S-48, SUBASH NAGAR SHOPPING CENTRE
NEAR HOTEL GHOONGHAT
JAIPUR-302016, RAJASTHAN.

2: NARAYAN PRASAD KALYANI
S/O LATE RAMESHWARLAL KALYANI
R/O S-48
SUBASH NAGAR SHOPPING CENTRE
NEAR HOTEL GHOONGHAT
JAIPUR-302016
RAJASTHAN

3: SMTI. MADHU KALYANI
W/O SHRI NARAYAN PRASAD KALYANI
R/O S-48, SUBASH NAGAR SHOPPING CENTRE
NEAR HOTEL GHOONGHAT
JAIPUR-302016, RAJASTHAN

VERSUS

SMT. SAKSHI SHARDA
W/O SHRI VAIBHAV KALYANI
D/O SHRI DINESH KUMAR SHARDA
R/O HOUSE NO. 82-A
BYE LANE 6
ABRTHAKUR MILL ROAD
ULUBARI
GUWAHATI-781007
DIST-KAMRUP (M), ASSAM

Advocate for : MR. K K BHUYAN
Advocate for : MR. V K CHOPRA appearing for SMT. SAKSHI SHARDA

With

I.A.(CrI.)/1171/2023

DIVYA SOMANI AND ANR.
W/O SHRI ANKIT SOMANI,
R/O 34 B, LIC COLONY, VAISHALI NAGAR, AJMER -305004,
RAJASTHAN, AND/OR
C/OMR. ANKIT SOMANI,
OPPOSITE SAVITRI COLLEGE, CIVIL LINES, AJMER-305001,
RAJASTHAN, PH. NO. 97722-11292/9829745560

2: MR VIJAY KUMAR TOTLA
S/O LT. PARASRAM TOTLA
R/O C/O VIJAY KUMAR TOTLA AND CO.
P.O. RENWAL-303603 JAIPUR
(RAJASTHAN)
MOBILE NO. 94145-1874

VERSUS

SAKSHI SHARDA
W/O SHRI VAIBHAV KALYANI D/O SHRI DINESH KUMAR
SHARDA R/O HOUSE NO. 82-A, BYE LANE 6, BARTHAKUR
MILL ROAD, ULUBARI, GUWAHATI-781007, DIST. KAMRUP
(M), ASSAM, MOBILE NO. 9707904776

Advocate for the Petitioner : MR. K K BHUYAN

Advocate for the Respondent : MR. V K CHOPRA

BEFORE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

07.12.2023

Heard Mr M B Choudhury, learned counsel appearing on behalf of Mr B Deka, learned counsel for the petitioner. Also heard Mr J Chopra, learned counsel for the respondent No. 1.

2. The petitioners in these cases are 1) Shri Vaibhav Kalyani, 2) Shri Narayan Prasad

Kalyani and 3) Smti. Madhu Kalyani, 4) Smt Divya Somani and 5) Mr Vijay Kumar Totla.

3. The respondents in this cases are Smt. Sakshi Sharda, respondent No. 1 and the State of Assam, respondent No. 2, represented by the Additional Public Prosecutor, Mr D P Goswami.

4. All the petitioners were accused by the respondent No. 1 and they have been arrayed as accused in CR Case No. 3561^c/2021, under Section 498A IPC, pending before the learned JMFC, Kamrup (Metro). The case was pending at the stage of appearance. At that stage, the petitioners had preferred these petitions with prayer to quash the proceeding of the Complaint Case, i.e. CR Case No. 3561^c/2021. Now, both the parties have amicably settled their dispute. The allegation leveled against the petitioners is that Sri Vaibhav Kalyani, being the husband of the respondent No. 1 and the other accused, petitioners herein, being the relatives of Sri Vaibhav Kalyani, subjected the respondent No. 1 to cruelty. At this stage, both the petitioners and the respondent No. 1 have amicably settled their dispute and they have filed two interlocutory applications, being IA(Crl.) No. 1170/2023 and IA(Crl.) No. 1171/2023. Through the IA(Crl.) No. 1170/2023 and IA (Crl.) No. 1171/2023, it is submitted that several rounds of litigations have been going on between the parties in different Courts and in due course of time, both the parties have mutually settled the matter, effecting a memorandum of mutual settlement on 03.10.2023 between them on agreed terms and conditions. The litigations are mentioned hereinbelow-

1) DV Case No. 147/2021

2) FC (Crl.) No. 439/2021

3) FC (Civil) No. 1246/2021

4) Petition No. 1431/2021

5. It is submitted that the respondent No. 1 has no objection if the proceeding relating to CR Case No. 3561^c/2021, which is pending for disposal in the Court of learned JMFC, Kamrup (Metro), at Guwahati, is quashed.

6. I have considered the submissions at the Bar with circumspection.

7. This is a family dispute, which has been resolved by the parties. The slew of cases initiated by the parties against each other have also been withdrawn mutually and several cases have been settled amicably. The petitioners have buried the hatchet and they are willing to maintain peace and harmony. The possibility of conviction appears to be remote and bleak. As both the parties have amicably settled all their disputes, further proceeding will indeed be an abuse of the process of law.

8. The proceeding was also pending at the initial stage of appearance.

9. In the case of *State of MP -vs- Laxmi Narayan*; reported in (2019) 5 SCC 688, Hon'ble the Supreme Court discussed and considered the power of this Court in respect of quashing of non-compoundable offences on the basis of the compromise executed between the parties and observed as follows:-

"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) 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) 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. In the light of the decision of Hon'ble the Supreme Court in *Laxmi Narayan (supra)*, further proceeding of CR Case No. 3561^c/2021, is hereby set aside and quashed.

11. In terms of the above observations, Criminal Petition No. 113/2023, Criminal Petition No. 1282/2022, Interlocutory Application (Criminal) No. 1170/2023 and Interlocutory Application (Criminal) No. 1171/2023 are disposed of.

JUDGE

Comparing Assistant