

GAHC010200992021



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

Case No. : Crl.Pet./699/2021

ISMATARA BEGUM AND ANR
W/O MD. JIYABUR RAHMAN
PERMANENT RESIDENTS OF VILL- NAMANI CHENGCHENG BILL
(CHENGCHENG BILL), P.O. SILDUBI PIN-782448, P.S. KHERONI, DIST. WEST
KARBI ANGLONG, ASSAM

2: MD. JIYABUR RAHMAN
S/O LATE NUR ALI
PERMANENT RESIDENTS OF VILL- NAMANI CHENGCHENG BILL
(CHENGCHENG BILL)
P.O. SILDUBI PIN-782448
P.S. KHERONI
DIST. WEST KARBI ANGLONG
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. R BORA

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

Date : 05-06-2023

Heard Mr. R. Bora, learned counsel for the petitioners. Also heard Mr. P. S. Lahkar, learned Additional Public Prosecutor for the State respondent.

2. This is an application filed under Section 482 of the Code of Criminal Procedure, 1973, *read with* Article 226 of the Constitution of India, praying for setting aside and quashing of the impugned order dated 31.01.2020 bearing Charge-Sheet No.03/2020, filed in connection with Kheroni Police Station Case No.03/2020, registered under Section 498-A/325 of the Indian Penal Code *read with* Section 4 of the Dowry Prohibition Act, 1961, and all its subsequent proceedings.

3. A brief facts leading to the filing of the present petition is that the petitioner No.1/wife lodged an FIR *inter alia* alleging demand of dowry by the petitioner No.2/husband and his mother and brother and also alleged physical and mental assault. Thereafter, the FIR dated 02.01.2020, was registered vide Kheroni P.S. Case No.03/2020, under Section 498-A/325 of the IPC *read with* Section 4 of the Dowry Prohibition Act, 1961. Accordingly, the concerned I.O. started the investigation and after completion of the said investigation, the impugned Charge-Sheet bearing C.S. No.03/2020 dated 31.01.2021, under Section 498-A/325 IPC read with Section 4 of the Dowry Prohibition Act, 1961, was laid against the present petitioner No.2 before the Court of Judicial Magistrate, 1st Class, West Karbi Anglong, in connection with Kheroni P.S. Case No.03/2020.

4. During the investigation the petitioner No.1/informant/wife was cross-examined and her statement was recorded under Section 161 Cr.P.C. The statements of the other witnesses were also recorded under the said Sections. As per the investigation, no evidence or involvement in the alleged occurrence was found against the FIR named accused Jitika Khatun and Md. Saidur Rahman and as such, they were released from the present case. However, Charge-Sheet was laid against the FIR named accused Md. Jiyabur Rahman/petitioner No.2.

5. After filing of the Charge-sheet dated 31.01.2020, the aforesaid case has been registered as PRC Case No.182/2020, before the Court of learned Judicial Magistrate First Class, West Karbi Anglong at Hamren and the said Court took cognizance of the present case against the petitioner No.2, and also issued process against the present petitioner No.2.

6. Both the petitioners are living happily as husband and wife and there is no complaint, whatsoever against the petitioner No.2 including his family members. It is also stated that the petitioner Nos. 1 and 2 got married in the year 2014, and they have two children born out of their wedlock. During the pendency of the present case the petitioners were blessed with their daughter Amina. However, due to some misunderstanding between the parties, the petitioner No.1 lodged an FIR against the petitioner No.2 along with other family members. The petitioner No.1 further submits that on the intervention of their family members and also considering the future of their children, the petitioners herein decided to settle their dispute amicably and accordingly, they have entered into a verbal compromise. The petitioner No.1 also reiterates and re-

affirms that there was no demand of dowry or cruelty inflicted upon her by the petitioner No.2 and his family members as alleged in the FIR.

7. After lodging of the impugned FIR dated 02.01.2020 against her husband/petitioner No.2 due to misunderstanding and anger, the petitioner No.1 regretted and also requested the I.O. to drop the case against the petitioner No.2. However, the request was not acceded and the concerned I.O., after completion of investigation filed the Charge-Sheet and accordingly, the learned Trial Court passed the cognizance order against the petitioner No.2.

8. It is submitted by the learned counsel for the petitioners, that the dispute in question has already been amicably settled between the parties, and also there is no chance of success of prosecution and chance of conviction of the petitioner No.2. is also very remote. Therefore, no fruitful purpose will be served, if the criminal proceeding in question is continued. More so, the compromise between the parties has been arrived with their free consent, without any threat or pressure or coercion or undue influence and as such, the petitioner No. 1 has no objection if the present case is set aside and quashed.

9. Further, it is also submitted that an offence committed under Section 325 IPC is compoundable, but Section 498-A IPC and Section 4 of the Dowry Prohibition Act are non-compoundable offence, which cannot be compounded by the Court by exercising the power of Section 320 Cr.P.C. However, the present petition can be quashed by the High Court by exercising its power under Section 482 Cr.P.C., having regard to the fact that the dispute between the parties is matrimonial dispute or family dispute and the parties have amicably

settled their dispute and the victim/petitioner No.1 has no objection, rather, she herself appeared as a petitioner.

10. Accordingly, the petitioner Nos. 1 and 2 jointly preferred this petition praying for setting aside and quashing of the entire proceedings arose out of the FIR dated 02.01.2021 by excising the power under Section 482 of the Code of Criminal Procedure, 1973.

11. In this context, Mr. P. S. Lahkar, learned Additional Public Prosecutor has submitted that, as the matter has been settled amicably between the petitioner Nos. 1 and 2, thus, he raised no objections on the prayer made by the petitioners.

12. After hearing the submission made by the learned Advocates of both sides and also after perusing the record, it is found that the statements of the petitioner No.1 as well as the other accused persons were recorded under Section 161 Cr.P.C. It is also observed that during the investigation no evidence was found against the other accused persons and accordingly, they were released, though the Charge-Sheet was filed against the petitioner No.2. The parties have compromised the matter and in pursuant to the settlement both the petitioner Nos. 1 & 2 and respondent deposed before the Court that they are not willing to proceed with this case further. And accordingly, I find that there is no chance of conviction even if the proceeding is allowed to be continued as the informant/petitioner No.1/wife is not interested to proceed with this case and also there is no possibility of making any statement against the petitioner No.2 even if the proceeding is allowed to be continued.

13. In this context, the decision of the Hon'ble Supreme Court in the case of **State of Madhya Pradesh vs. Laxmi Narayan**, reported in **(2019) 5 SCC 688**, can be relied on, wherein, in para 13 thereof, it has been held as under:

“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) 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 impart 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.

14. So considering the view of the decision made by the Hon'ble Apex Court in the case of Laxmi Narayan (*Supra*) as well as the view that the matter was settled amicably between the parties, which is a matrimonial dispute, I am of the view that is a fit case where the provision under Section 482 Cr.P.C. can be invoked.

15. Accordingly, the FIR dated 02.01.2020 in connection with Kheroni Police Station Case No.03/2020, registered under Section 498-A/325 of the Indian Penal Code *read with* Section 4 of the Dowry Prohibition Act, and Charge-Sheet No.03/2022 dated 31.01.2020, and proceeding in PRC case No.182/2020, in respect of the petitioner namely, Md. Jiyabur Rahman, stands set aside and quashed.

16. With above observations, this Criminal petition stands dispose of.

JUDGE

Comparing Assistant