

GAHC020007092022



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

Case No. : Crl. Pet./31/2022

SHRI. DILIP BAHURIA @ BABUL (ACCUSED) AND ANR
S/O LT. SHUKUDEP BAHURIA,
VILLAGE - SINGPUR, JASPUR,
P/S - SUPFOZOU COLONY, KOHIMA, NAGALAND

2: SMTI. BAHURIA @ BABUL (COMPLAINANT)

VERSUS

THE STATE OF NAGALAND
NAGALAND, KOHIMA

Advocate for the Petitioner : ANUNGLA LKR

Advocate for the Respondent : GOVT ADV NL

BEFORE
HONBLE MR JUSTICE KARDAK ETE

JUDGMENT & ORDER (ORAL)

Date : 10-04-2023

Heard Mr. Toshitemjen Pongener, learned counsel for the petitioners, and also heard Mr. V. Zhimomi, learned Public Prosecutor for the State of Nagaland.

2. This application under Section 482 of the CrPC, 1973 has been filed

jointly by the petitioner nos. 1 and 2 seeking quashment of the criminal proceedings which is pending before the court of the learned Judicial magistrate First Class in GR Case No. 30/2022, Kohima Women P.S. Case No. 03/2022 under Sections 323/354B/498A IPC, 1860.

3. The facts of the case is that both the petitioners herein are husband and wife. The petitioner no. 2, on 21.03.2022 had lodged an FIR before the Officer-in-charge, Women PS, Kohima, Nagaland against the petitioner no. 1 *inter alia* alleging that the petitioner no. 1 has been physically, sexually, economically and mentally abusing her for years. Accordingly, FIR was registered being Kohima Women PS Case No. 03/2022 under Sections 323/354B/498A IPC. Thereafter, on the basis of the FIR, the petitioner no. 1 was arrested on the same day.

4. After completion of the investigation the Investigating Officer filed a Charge sheet, bearing Charge sheet No. WPS C/No. 0042/2022 dated 18.04.2022 under Sections 323/354B/498 IPC and the cognizance was accordingly taken on 29.06.2022 by the learned JMFC, Kohima, Nagaland. The petitioner no. 1 was enlarged on bail by the JMFC on 25.04.2022.

5. On 18.04.2022 the petitioner no. 2 made a declaration by affidavit that on 18.03.2022 she has lodged an FIR before the Kohima Women PS against the petitioner no. 1, who is her husband and they have 9 children and were living happily as husband and wife; however, during past few days there arose some misunderstanding between them and out of enrage she alleged him on multiple allegations at the time of registering the FIR. She further declared that she had made the allegation against the

petitioner no. 1 out of anger and frustration, however she would withdraw the case as she had forgiven in good gesture as they would continue to live together as spouse in the future days.

6. The learned counsel for the petitioners submits that after the petitioner no. 1 was released on bail, both the petitioners are living peacefully helping each other in all situations and will continue to live in harmony wherein both have forgiven and forgotten to each other and accordingly a Compromise Deed dated 30.09.2022 was executed between them as the parties have been living happily. The learned counsel for the petitioners submits that they have approached the learned JMFC for discharge, which was heard on 09.11.2022. The learned JMFC has rejected the discharge petition while dropping the charge under Section 323 IPC on the ground that since the offence is compoundable and the parties have executed the deed of Compromise, held that since Section 354B and 429A of IPC are not envisaged for compounding under the tables provided under Section 320 of CrPC, same cannot be compounded and the Compromise deed could be taken into consideration as mitigating factor during the hearing on quantum of punishment in the event the case ends in conviction.

7. The learned counsel for the petitioners relying on the case of ***Yogendra Yadav and Ors. Vs. State of Jharkhand and Anr.***, reported in (2014) 9 SCC 653 submits that the offences which are not compoundable cannot be compounded by the Court as the Courts has the power of compounding offences from Section 320 of the CrPC. However, in the given case, the High Court can quash the criminal proceedings in

exercise of its inherent power under Section 482 of the CrPC having regard to the fact that parties have amicably settled their disputes and the victim has no objection even though the offences are non-compoundable. Therefore, since both the petitioners have executed a Compromise deed being husband and wife having 9 children out of their wedlock and are happily living together, prays for quashing and setting aside of the criminal proceedings, being GR Case No. 30/2022, Kohima Women P.S. Case No. 03/2022 under Sections 323/354B/498A IPC, 1860, pending before the learned JMFC, Kohima.

8. Mr. V. Zhimomi, learned PP for the State of Nagaland, while drawing the attention of this Court to the order dated 09.11.2022 passed by the learned JMFC in GR Case No. 30/2022, Kohima Women P.S. Case No. 03/2022 under Sections 323/354B/498A IPC, 1860 submits that the provisions which are not envisaged for compounding under tables provided under Section 320 CrPC cannot be compounded and the case relied on (Yogendra Yadav and Ors. Supra) by the learned counsel for the petitioner is concerned with the quashing of case by virtue of Section 482 CrPC and as held by the learned JMFC that Compromise deed can be taken into consideration as a mitigating factor during the hearing on quantum of punishment in the event the case ends in conviction.

9. I have considered the submissions made by the learned counsel for the petitioners and also the learned PP for the State. And I have also carefully perused the materials available on record.

10. Quashment of criminal proceeding of non-compoundable offences on

the basis of the Compromise under Section 482 of CrPC has been enunciated by the Hon'ble Apex Court. After consideration of the earlier decisions the Hon'ble Supreme Court in the case of the ***State of Madhya Pradesh Vs. Lakshmi Narayan and Ors.***, reported in (2019) 5SCC 688 has held which is reproduced herein below:

"15. 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:

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;

15.2. 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;

15.3. 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;

15.4. 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;

15.5. 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.”

11. On consideration of the materials available on record in the instant case, this court finds that both the petitioners are husband and wife having 9 children out of their wedlock. The petitioner no. 2 (wife) made a declaration by way of affidavit on 18.04.2022 that she had lodged the FIR against the petitioner no. 1, who is her husband, made the allegation out of anger and frustration which arose out of misunderstanding between them and out of enrage. She had declared that they would continue to live together as spouses in the future days. Thereafter, on 30.09.2022, both the petitioners have entered into and executed a Compromise deed and both the petitioners have decided and resolved their personal differences and misunderstandings and to live happily forever and the petitioner no. 2 had made the complaint out of anger. Both are also having 9 children out of their wedlock and now they are living happily and peacefully with their 9 children.

12. One of the points enunciated by the Hon'ble Supreme Court is that the power conferred under Section 482 of the Code to quash criminal proceedings for non-compoundable offences under Section 320 of the Code can be exercised having overwhelming and predominant civil

character, particularly those arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves.

13. Having regard to the facts and circumstances of the present case and considering the fact that both the petitioners are husband and wife having 9 children and entered and executed a compromise deed and also in view of the decision of the Hon'ble Supreme Court this Court is of the considered view that the present case is one of the cases where inherent power under Section 482 of the CrPC can be invoked. Consequently, the GR Case No. 30/2022, Kohima Women P.S. Case No. 03/2022 under Sections 323/354B/498A IPC, 1860 pending before the learned JMFC, Kohima is hereby quashed and set aside.

14. Accordingly, this criminal petition is allowed.

JUDGE

Comparing Assistant