

GAHC040002442024



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

Case No. : Crl.Petn./23/2024

Jilpa Nima Dulom and Anr
Wife of Karjum Nima Dulom, resident of DFO Colony Banderdewa, PO and PS
Banderdewa, Papumpare District, Arunachal Pradesh. 2: Karjum Nima Dulom
Age:
Occupation

VERSUS

The State of AP
represented by the PP of AP

Advocate for the Petitioner : Vijay Jamoh

Advocate for the Respondent : P P of AP

Date of Order: 23.02.2024

BEFORE
HONBLE MR. JUSTICE N. UNNI KRISHNAN NAIR

JUDGMENT & ORDER (Oral)

Heard Mr. V. Jamoh, learned counsel for the petitioners. Also heard Ms. L. Hage, learned Additional Public Prosecutor for the State.

2. The petitioners, who are the husband and wife, have jointly instituted the

present proceedings praying for quashing of the FIR, dated 25.07.2021 lodged by the petitioner no. 1 (wife) against the petitioner no. 2 (husband), leading to registration of Itanagar Women Police Station Case No. 98/2021, under Sections 498(A)/323 of the IPC and the corresponding G.R. Case No. 668/2021 presently pending before the Court of learned Chief Judicial Magistrate, Capital Complex, at Yupia.

3. The petitioner no. 1 had lodged an First Information Report (FIR) on 25.07.2021 against the petitioner no. 2 alleging therein that she was beaten up and abused on the said day at around 5:00 am at public place by the petitioner no. 2. On receipt of the said FIR, a case being Itanagar Women Police Station Case No. 98/2021, under Sections 498(A)/323 of the IPC came to be lodged. The police on conclusion of the investigation submitted a Charge-sheet being Charge-sheet No. 177/2021 under G.R. Case No. 668/2021, under Sections 498(A)/323 of the IPC.

4. The case is now pending before the Court of learned Chief Judicial Magistrate, Capital Complex, Yupia and charges are yet to be framed in the matter.

5. The facts leading to the lodging of the said FIR dated 25.07.2021 by the petitioner no. 1 was that on 24.07.2021, the petitioner no. 2 had stayed awake all night to mourn the death of the owner of the premises wherein they were staying as tenants and had consumed alcohol and got drunk. Thereafter, on reaching home in the earlier hours of 25.07.2021, the petitioner no. 2 wanted to make love to the petitioner no. 1, who denied such approach, being pregnant in 1st trimester. On such refusal, the petitioner no. 2 has assaulted the petitioner no. 1 and

thereafter went and slept in a different room. The petitioner no. 1 as projected in the criminal petition, in the heat of the moment and on being so instigated by her elder cousin sister, lodged the said FIR on 27.01.2021 before the Banderdewa Police Station, which was forwarded to the Itanagar Women Police Station being a case involving crime against women and accordingly, Itanagar Women Police Station Case No. 98/2021, under Sections 498(A)/323 of the IPC came to be registered.

6. It is stated that the petitioners even after the lodging of the said FIR dated 25.07.2021 by the petitioner no. 1, had not separated, but were living together as husband and wife and their relationship had become more stronger after the birth of their second child. It is stated that the matter was amicably settled between them and the petitioner no. 1 is not willing to pursue the criminal proceeding instituted by her which was so instituted without knowing the future legal consequences of the same.

7. The petitioners having resolved their differences have entered into a mutual deed of agreement on 21.02.2024 and therein, have resolved that the criminal proceeding pending against the petitioner no. 2 shall not be pursued by the petitioner no. 1.

8. The Sections involved being not compoundable under Section 320 of the Cr.P.C., the petitioners have jointly instituted the present proceedings praying for quashing of the criminal proceeding now pending against the petitioner no. 2.

9. Mr. V. Jamoh, learned counsel for the petitioners by reiterating the facts as narrated herein above had submitted that the institution of the FIR dated 25.07.2021 was an action taken by the petitioner no. 1 in the heat of the moment and also upon instigation by her cousin sister without understanding the future legal consequences in the matter. It was contended that the deed of mutual agreement by and between the parties on 21.02.2024 was with the view to reduce into writing, the reconciliation already arrived at, between the parties and the same was signed voluntarily by the parties without any undue influence and in sound state of mind in the presence of witnesses. It is stated by the learned counsel for the petitioner that even after lodging of the said FIR dated 25.07.2021, the petitioners were living together as husband and wife and thereafter, no issue whatsoever had ever arisen between them.

10. In the above premises, Mr. V. Jamoh, learned counsel for the petitioners prays that the petitioners having reconciled their differences and having also reduced the same by executing a deed of mutual agreement dated 21.02.2024, this Court may be pleased to quash the criminal proceeding pending against the petitioner no. 2 in exercise of its power conferred under Section 482 of the Cr.P.C.

11. Ms. L. Hage, learned Addl. P.P. for the State, in view of the facts involved in the present matter and the categorical averments made by the petitioners in the criminal proceeding and the deed of mutual agreement dated 21.02.2024 signed by the petitioners, of having resolved their differences and having reconciled were living together as husband and wife even after the lodging of the FIR dated 25.07.2021, has required this Court to pass appropriate order(s) as may be deemed fit and proper in the matter.

12. I have considered the submissions advanced by the parties and also considered the materials available on record.

13. The issue arising in the present proceedings is as to whether this Court has the power, under Section 482 of the Cr.P.C. to quash criminal proceedings involving non-compoundable offences in view of the compromise arrived at between parties. The said issue, more particularly, with regard to matrimonial dispute/offences was considered by the Hon'ble Supreme Court in the case of **B. S. Joshi V. State of Haryana & Another** reported in **(2003) 4 SCC 675** and the Hon'ble Apex Court categorically held that the exercise of jurisdiction under Section 482 of the Code could not be inflexible or could there be lying a rigid formula to be followed by the Courts. Exercise of such power would depend upon the facts and circumstances of each case, but with the sole purpose to prevent abuse of the process of any Court or otherwise to secure the ends of justice. It was further held that it is well settled that these powers have no limit, of course, where there is more power; it becomes necessary to exercise utmost care and caution while exercising such powers. Having held so, the Hon'ble Apex Court observed and concluded as follows:-

“12. The special features in such matrimonial matters are evident. It becomes the duty of the Court to encourage genuine settlements of matrimonial disputes.

13. The observations made by this Court, though in a slightly different context, in [G.V. Rao v. L.H.V. Prasad &Ors.](#) [(2000) 3 SCC 693] are very apt for determining the approach required to be kept in view in matrimonial dispute by the courts, it was said that there has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counseled and brought about rapprochement are rendered

helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their "cases" in different courts.

14. There is no doubt that the object of introducing Chapter XX-A containing [Section 498A in the Indian Penal Code](#) was to prevent the torture to a woman by her husband or by relatives of her husband. [Section 498A](#) was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hyper-technical view would be counter productive and would act against interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object [of Chapter XXA of Indian Penal Code](#).

15. In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and [Section 320](#) of the Code does not limit or affect the powers under [Section 482](#) of the Code."

14. The decisions rendered by the Hon'ble Apex Court in the case of **B. S. Joshi (supra)** came to be doubted when the Special Leave Petition in **Gian Singh V. State of Punjab** came up for hearing before a two bench Judge and accordingly the matter was referred to a larger bench. The larger bench of the Hon'ble Supreme Court in its decision in the case of **Gian Singh V. State of Punjab and Anr.**, Reported in **(2012) 10 SCC 303** has held that the case of **B. S. Joshi (supra)** was correctly decided and held as follows:-

"58. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which

have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under [IPC](#) or offences of moral turpitude under special statutes, like [Prevention of Corruption Act](#) or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed.

61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under [Section 320](#) of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like [Prevention of Corruption Act](#) or the offences committed by public servants while working in that capacity etc; cannot provide for

any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

15. Having considered the law laid down by the Hon'ble Apex Court in the context of the power of this Court to quash proceedings involving non-compoundable Sections in exercise of its power under Section 482 Cr.P.C., the issue involved in the present proceedings are hereby considered.

16. It is a settled law that the offences which are non-compoundable cannot be compounded by a criminal Court in purported exercise of its powers conferred under Section 320 Cr.P.C. Any such attempt by the court would amount to alteration, addition and modification of Section 320 Cr.P.C., which is the exclusive domain of legislature. Nevertheless, the limited jurisdiction to compound an offence within the framework of Section 320 Cr.P.C. is not an embargo against invoking inherent powers by the High Court vested in it under Section 482 Cr.P.C.

This Court, keeping in view of the particular facts and circumstances of the case and for justifiable reasons can invoke the provisions of Section 482 Cr.P.C. in aid to prevent abuse of the process of any Court and/or to secure the ends of justice.

17. This Court, therefore, having regard to the nature of offence and the fact that the parties have amicably settled their dispute and the victim has willingly consented to the nullification of criminal proceedings, can quash such proceedings in exercise of its power under Section 482 Cr.P.C., even if the offences are non-compoundable.

18. This Court, can indubitably evaluate the consequential effects of the offence beyond the body of an individual and thereafter adopt a pragmatic approach, to ensure that the felony, even if goes unpunished, does not tinker with or paralyze the very object of the administration of criminal justice system. Criminal proceedings involving non-heinous offences or where the offences are pre-dominantly of a private nature can be annulled irrespective of the stage the criminal proceedings are at.

19. Having noticed the powers available to this Court, under the provisions of Section 482 of the Code, the weighing upon the peculiar facts and circumstances involved in the present proceedings, I am inclined to invoke the inherent powers of this Court, under Section 482 Cr.P.C., and quash the criminal proceedings existing against the petitioner no. 2 for the following reasons:-

(1) *Firstly*, the occurrence involved in the present proceedings can be categorized as pure matrimonial disputes having overtones of criminal proceedings of private nature.

(2) *Secondly*, the nature of injuries incurred, by the petitioner no. 1 on account of assault by the petitioner no. 2, does not appear to exhibit mental depravity of the petitioner no. 2 or the commission of the said offence cannot be said to be of such a serious nature that quashing of which would override public interest.

(3) *Thirdly*, even after lodging of the said FIR dated 25.07.2021, the petitioners have continued to co-habit as husband and wife having reconciled their differences and they on their own volition, without any coercion or compulsion, willingly and voluntarily have buried their differences which was also reduced in writing by executing a deed of mutual agreement dated 21.02.2024.

(4) *Lastly*, the cause of administration of criminal justice system would remain un-effected on acceptance of the amicable settlement between the parties; more so looking at their present age.

20. In view of the conclusions reached herein above and having considered the offence involved in the matter and the reconciliation arrived at between the petitioners, this Court, in exercise of the powers conferred under Section 482 of the Cr.P.C. quash the criminal proceedings pending before the Court of learned Chief Judicial Magistrate, Capital Complex, Yupia against the petitioner no. 2, consequently, the G.R. Case No. 668/2021, under Sections 498(A)/323 of the IPC (arising out of Itanagar Women P.S. Case no. 98/2021) along with the FIR dated 25.07.2021 and the charge-sheet being Charge-sheet no. 177/2021, stands quashed.

21. The criminal revision petition is accordingly allowed in terms of the above.

JUDGE

Comparing Assistant