

GAHC010073942024



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

Case No. : Crl.Pet./404/2024

JINTU MONI TALUKDAR AND 2 ORS
S/O UMESH TALUKDAR
R/O VILL- BONGARA (TALUKDARPARA)
OPPOSITE MAA DHABA, P.O. BONGARA, P.S. PALASHBARI
DIST. KAMRUP, ASSAM
PIN-781015

2: SRI UMESH TALUKDAR
S/OLATE MAHENDRA TALUKDAR
R/O VILL- BONGARA (TALUKDARPARA)
OPPOSITE MAA DHABA
P.O. BONGARA
P.S. PALASHBARI
DIST. KAMRUP
ASSAM
PIN-781015

3: SMTI. JYOTSNA TALUKDAR
W/O SRI UMESH TALUKDAR
R/O VILL- BONGARA (TALUKDARPARA)
OPPOSITE MAA DHABA
P.O. BONGARA
P.S. PALASHBARI
DIST. KAMRUP
ASSAM
PIN-78101

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PP, ASSAM

2:SMTI. KAKALI KUMARI
W/O JINTU MONI TALUKDAR

D/O SRI MOHAN CH. KUMAR
R/O SUNDARBARI NEAR MASJID
JALUKBAR
P.O. GAUHATI UNIVERSITY

P.S. JALUKBARI
DIST. KAMRUP (M)
ASSAM
PIN-78101

Advocate for the Petitioner : MR. P P BORTHAKUR

Advocate for the Respondent : PP, ASSAM (R1)

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 01.05.2024

Heard Mr. P.P. Barthakur, learned counsel for the petitioner. Also heard Mr. R.J. Baruah, learned Additional Public Prosecutor for the State; Mr. S. Das, learned counsel for the respondent No. 2; Ms. K. Kumari, the respondent No. 2-in-person.

2. By filing this application under Section 482 Cr.P.C., the petitioners have prayed for quashing of the FIR lodged by the informant/respondent No.2 in connection with Palashbari P.S. Case No. 372/2022 under Section 498(A) IPC.

3. The background of the case is that the marriage between the petitioner and the respondent No. 2 was solemnized in the year 2022. After their marriage, they lived together as husband and wife at the residence of the petitioner No.1. Subsequently, some differences developed between the petitioner No. 1 and respondent No. 2 and accordingly, the respondent No. 2 has left her matrimonial home and started to live along with her parents. Thereafter, the FIR has been lodged against the present petitioners.

4. It was urged by the learned counsel for the petitioners that after filing this criminal case, the respondent No. 2 also filed some other cases before the Principal Judge, Family Court, Kamrup(M), one for decree of divorce and another for monthly maintenance. Accordingly, the petitioner No.1 has appeared before the Principal Judge, Family Court and the matter has been referred for mediation/conciliation. Thereafter, both the parties have appeared before the counselor of Family Court and the petitioner No. 1 and the respondent No. 2, during counseling have realized that their minds set are totally different, due to which it is virtually not possible for them to lead a peaceful conjugal life.

5. It is further submitted that both petitioner No. 1 and respondent No. 2 have decided to go for mutual divorce by filing petition before the Family Court. Accordingly, it was decided that the respondent No. 2 has withdrawn all such criminal cases against the petitioners. It is further submitted that after negotiation, the quantum of permanent alimony for respondent No. 2 was fixed at Rs.5,50,000/-(Rupees Five Lakh Fifty Thousand) out of which the petitioner No. 1 has already paid a sum of Rs.4,00,000/-(Rupees Four Lakh). It was also decided between the parties that as per mutual divorce application, the respondent No. 2 has filed her no objection for quashing of Palashbari P.S. Case No. 372/2022.

6. In pursuance to the agreement for mutual divorce, the respondent No. 2 has filed affidavit-in-opposition, wherein she stated that as per terms of the mutual divorce petition, the petitioner No. 1 has paid permanent alimony of Rs.4,00,000/- (Rupees Four Lakh) which she had received. The petitioner No. 1 also handed over all the belongings to the respondent No. 2 which were in her matrimonial home. She has already withdrawn F.C.(Civil) Case No. 447/2023 from the court of Principal Judge, Family Court, Kamrup(M). Since this criminal petition is pending and in terms of the mutual divorce petition, she has no any objection if this Court pass an order for quashing of the FIR dated 30.09.2022 lodged by the respondent No.2 in connection

with Palashbari P.S. Case No. 372/2022 under Section 498(A) IPC.

7. Mr. Baruah, learned Additional Public Prosecutor for the State also has submitted that though the offence under Section 498(A) IPC is non compoundable in nature, considering the background of the case relating to matrimonial offence, this Court has the power to compound the offence in exercising the jurisdiction under Section 482 Cr.P.C.

8. I have considered the submissions of learned counsel for the parties.

9. Admittedly, the dispute is purely matrimonial dispute and both parties have amicably settled their dispute and compromise has been executed between the parties. In pursuance of the settlement made between the parties, the respondent No. 2 has withdrawn the cases filed against the petitioners and the respondent No. 2 has also received Rs.4,00,000/-(Rupees Four Lakh) as per permanent alimony in terms of the mutual divorce petition.

10. In the Case of ***Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and others Vs. State of Gujarat and another***, reported in ***AIR 2017 SC 4843***, the Hon'ble Supreme Court has summarized the ratio of all the cases decided earlier with respect to quashing of F.I.R./charge-sheet/criminal proceeding on the ground of settlement between the parties and expounded the ten categories in which application under Section 482 could be entertained for quashing the F.I.R./charge-sheet/criminal proceeding on the basis of compromise, which is reproduced below:-

"15. (i) Section 482 preserves the inherent power of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

(ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised;(i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and the victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(vi) In exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot approximately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned;

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(x) There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

11. The learned counsel for the respondent No. 2 has nodded the factum of compromise entered into between the parties and the respondent No. 2 has no objection if the present petition is decided finally on the basis of the said compromise. With assistance of the aforesaid guidelines given in the case of Parbatbhai Aahir(supra), keeping in view the nature or gravity and severity of the offence, which are more particular in private dispute, it is deemed proper that in order to meet the ends of justice, the present proceeding should be quashed. No useful purpose would be served to keep the present matter pending.

12. In view of the aforesaid pronouncements of the Hon'ble Apex Court and in the light of the compromise arrived at between the parties, the FIR dated 30.09.2022 in connection with Palashbari P.S. Case No. 372/2022 against the present petitioners is hereby quashed.

12. In view of the above, the criminal petition is allowed and disposed of accordingly.

JUDGE

Comparing Assistant