

GAHC010127952024



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

Case No. : Crl.Pet./748/2024

FARIDUL ISLAM AND ANR
S/O ABDUL SATTAR, R/O WARD NO. 2, SAPATGRAM TOWN, P.S.-
SAPATGRAM, DIST-DHUBRI, ASSAM

2: DELOWARA AZMAISH
W/O FARIDUL ISLAM
R/O WARD NO. 2
SAPATGRAM TOWN
P.S.-SAPATGRAM
DIST-DHUBRI
ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR S M ABDULLAH P

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND
ORDER

27.06.2024

Heard Mr S M Abdullah P, learned counsel for the petitioners, 1) Faridul Islam, and
2) Delowara Azmaish.

2. The petitioner No. 1 is the husband of the petitioner No. 2. They have jointly filed this application under Section 482 of the Code of Criminal Procedure, 1973, praying for setting aside and quashing the PRC Case No. 346/2023, arising out of Sapatgram PS Case No. 114/2022, registered under Sections 498(A)/506 of the Indian Penal Code, 1860 (IPC, in short).

3. Heard Mr D P Goswami, learned Additional Public Prosecutor for the State of Assam.

3. The learned Additional Public Prosecutor has accepted notice on behalf of respondent No. 1 and thus, no formal notice is required to be issued.

4. The genesis of the case is that an FIR was lodged by the respondent No. 2 against the petitioner No. 1, which was registered under Sections 498(A)/506 IPC. It was alleged through the FIR that the petitioner No. 1 cheated the petitioner No. 2. He indulged in an extra-marital affair. The petitioner No. 2 also went to United Kingdom to settle down with her husband, i.e., the petitioner No. 1. Thereafter, they returned in the year 2010 and started residing at Sapatgram. She was then subjected to cruelty by the petitioner No. 1 and his mother to meet their illegal demand of dowry of Rs. 60 lacs. The accused No. 4, i.e., the domestic help of the petitioners maintained an illicit relationship with the petitioner No. 1. When the petitioner No. 2 confronted the petitioner No. 1, he apologized. It is further alleged through the FIR that the accused Nos. 1, 2 and 3, which also includes the petitioner No. 1, attempted to commit murder of the petitioner No. 2.

The petitioner No. 1 also demanded divorce from the petitioner No. 2 and did not allow the petitioner No. 2 from entering into her matrimonial home. Finally, on 07.12.2022, the petitioner No. 1 assaulted the petitioner No. 2 and drove her out of the house.

5. It is submitted on behalf of both the petitioners that, at present, both the petitioners have amicably settled their dispute and they are staying together as husband and wife peacefully and they are before this Court with prayer to quash the entire proceedings of PRC Case No. 346 of 2022. It is further submitted that this case is pending at the stage of appearance.

6. Annexure-2 is the affidavit sworn in by the petitioner No. 2, that she has no grievances against the petitioner No. 1 and they have settled their dispute and she has no objection if the petitioner No. 1 is acquitted from the charges levelled against him.

7. The learned counsel for the petitioner has relied on the decision of Hon'ble the Supreme Court in *B S Joshi and Others –Vs- State of Haryana and Another*; reported in (2003) 4 SCC 675, wherein it has been observed that-

“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.”

8. The learned counsel for the petitioner has also relied on the decision of this Court in *Submit Saikia and Others –Vs- State of Assam and Another*; reported in 2022 SCC OnLine Gau 2306, wherein it has been held and observed that-

“6. It is to be noted here that in the case of State of Madhya Pradesh vs. Laxmi Narayan and others, reported in (2019) 5 SCC 688, the Hon’ble Supreme Court has held: “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.

8. It is also to be noted here that in a non-compoundable offence, when the parties have approached the Court for quashing the proceeding, on the basis of settlement, the guiding factor for the Court would be: (i) to secure the ends of justice or (ii) to prevent the abuse of the process of any Court. Here in this case, since the matter is between the husband

and the wife and since they have resolved the entire disputes between themselves and living together as husband and wife, to the considered opinion of this Court, ends of justice will be meted out, if the petition is allowed. Moreover, if the case is allowed to continue in the Court of learned Court below, then also the respondent No. 2 is unlikely to depose against the petitioners and in such event, allowing the case to continue will be an abuse of the process of the Court.”

9. Reverting back to this case, I have considered the submissions at the Bar with circumspection. Both the petitioners have jointly filed this application for quashing the entire proceeding. The informant who has brought up a case under Section 498-A/506 IPC against her husband, is not willing to proceed. It is apparent that the informant will not incriminate her husband if her evidence is recorded. Both the parties have amicably settled their dispute and they are staying together peacefully.

10. It appears that possibility of conviction appears to be remote and bleak. The parties have buried their hatchet and they are willing to lead a harmonious marital life. Indeed, further proceeding will be an abuse of the process of the Court. This appears to be a fit case to invoke the inherent jurisdiction under Section 482 CrPC. I have also relied on the decision of Hon'ble the Supreme Court in ***B S Joshi's case (supra)*** and the decision of this Court in ***Submit Saikia's case (supra)***.

11. In the wake of the foregoing discussions, further proceeding of the PRC Case No. 346/2023, arising out of Sapatgram PS Case No. 114/2022, registered under Sections

498(A)/506 IPC, is hereby set aside and quashed.

12. In view of the above observations, the petition stands disposed of.

JUDGE

Comparing Assistant