

GAHC010138322022



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

Case No. : Crl.Pet./672/2022

SAILEN BARUAH AND 2 ORS
S/O LATE KHARGESWAR BARUAH
R/O HOUSE NO. 18, ARUN NAGAR, BYE LANE NO. 2, GUWAHATI- 781005,
UNDER BHANGAGARH POLICE STATION, IN THE DISTRICT OF KAMRUP
(METRO), ASSAM.

2: SMTI. BABY BARUAH
W/O SRI SAILEN BARUAH
R/O HOUSE NO. 18
ARUN NAGAR
BYE LANE NO. 2
GUWAHATI- 781005
UNDER BHANGAGARH POLICE STATION
IN THE DISTRICT OF KAMRUP (METRO)
ASSAM.

3: SRI TRIDEEP BARUAH
SON OF SRI SAILEN BARUAH
R/O HOUSE NO. 18
ARUN NAGAR
BYE LANE NO. 2
GUWAHATI- 781005
UNDER BHANGAGARH POLICE STATION
IN THE DISTRICT OF KAMRUP (METRO)
ASSAM

VERSUS

UPASANA BORAH
W/O SRI TRIDEEP BARUAH
D/O LATE ANANDA CHANDRA BORAH
R/O HOUSE NO. 29, JONAK NAGAR, RODALI PATH, KAHILIPARA,
GUWAHATI-19, UNDER DISPUR POLICE STATION, IN THE DISTRICT OF
KAMRUP (METRO), ASSAM.

Advocate for the Petitioner : MR P KATAKI, MRS R BEGUM

Advocate for the Respondent : MR. S SHARMA, MS G M THAKUR

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

29/08/2024

Heard Mr. P Kataki, learned counsel for the petitioners and Mr. N Thakuria, learned counsel for the sole respondent.

2. The petitioner No.3 and the sole respondent were married on 11.05.2012 at Lakhimpur following the Hindu rights and rituals and they lived together as husband and wife at Guwahati in the first floor of the house of petitioner No.1 and 2, parents of petitioner No.3 and in-laws of the sole respondent. Out of their conjugal life a male child was born to them after four years of their marriage. On 15.10.2019, an altercation took place between the respondent and the petitioner No.3 allegedly on the ground that the respondent demanded an extra room for her in her matrimonial home. As a result of such altercation, the respondent on 15.10.2019 itself left her matrimonial home with her minor son and started living with her mother and brother at Kahilipara, Guwahati.

3. The respondent on 16.10.2019 lodged a written FIR before the officer-in-charge of Bhangagarh Police Station alleging that her husband (petitioner No.3) and her in-laws (petitioner Nos.1 & 2) physically and mentally harassed her demanding dowry since long and that on the night of 15.10.2019, she was physically assaulted and harassed by her husband and in-laws threatening her to takeaway her landed and paternal property. In such compelling situation, she had to leave her matrimonial home on the night of 15.10.2019 itself and lodged the said FIR. The said FIR of respondent was registered as Bhangagarh Police Station Case No. 461/2019 under Sections 498A/34 IPC in which the petitioners obtained anticipatory bail.

4. Subsequent to that the respondent on 13.11.2019 as a complainant filed a complaint petition before the learned Chief Judicial Magistrate, Kamrup (Metro), Guwahati being Complaint Case No. 4494^C/2019 against the present petitioners alleging that the accused persons have misappropriated her Streedhan properties and thereby committed offences under Sections 420/406/120(B) of the IPC. Later, the learned CJM, Kamrup (Metro), Guwahati transferred the said Complaint Case No. 4494^C/2019 to the Court of learned Judicial Magistrate, First Class, Kamrup (Metro), Guwahati for disposal.

5. After recording the statement of the complainant under section 200 CrPC and that of her mother as well as her brother under section 202 CrPC, respectively, the learned JMFC, Kamrup (Metro), Guwahati in said Complaint Case No. 4494^C/2019 by order dated 29.11.2019 took cognizance of the offences under Sections 420/406/120(B) IPC against the accused persons, i.e., present petitioners and issued summons to them.

6. Aggrieved with the same, the petitioners have preferred this criminal petition praying amongst others to set aside and quash the impugned order dated 29.11.2019 passed by the learned JMFC, Kamrup (Metro), Guwahati taking cognizance of the offences under Sections 420/406/120(B) IPC in said Complaint Case No. 4494^C/2019 filed by the complainant/sole respondent herein.

7. Notice in this case was issued on 03.08.2022. Thereafter, the respondent has entered appearance in the matter through her engaged counsels.

8. It is submitted by Mr. Kataki, learned counsel for the petitioners as well as Mr. Thakuria, learned counsel for the sole respondent/ complainant that during pendency of this criminal petition, both the complainant, i.e., sole respondent and the petitioner No. 3, her husband have settled their disputes outside the Court and have entered into an agreement on 07.02.2024 that was sworn before the Notary at Kamrup (Metro), Guwahati clarifying that the respondent shall file its no objection before the Court relating to the petition for quashing of said Complaint Case No. 4494^C/2019, that is pending before the Court of learned JMFC, Kamrup (Metro), Guwahati and that the complainant i.e., respondent herein, shall have no other claim on her in laws, parents of the petitioner No. 3, i.e., the present petitioner Nos. 1 and 2.

9. Mr. Thakuria, learned counsel for the sole respondent/ complainant on instruction

submitted that the respondent/complainant has no objection if the proceeding of her said Complaint Case No. 4494^C/2019 pending before the learned Court of JMFC, Kamrup (Metro), Guwahati is quashed, as she and the petitioner No. 3, in the meanwhile, have mutually and amicably settled their disputes outside the Court.

10. Law is well settled that — While exercising inherent power of quashing under Section 482 CrPC, it is for the High Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. Where, in the opinion of the court, chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may, while taking into consideration the special facts of a case, also quash the proceedings. The special features in such matrimonial matters are evident. It becomes the duty of the court to encourage genuine settlements of matrimonial disputes. [Madhavrao Jiwajirao Scindia -Vs- Sambhajirao Chandrojirao Angre, reported in (1988) 1 SCC 692].

11. In the case of *Jitendra Raghuvanshi -Vs- Babita Raghuvanshi*, reported in (2013) 4 SCC 58, a three Judges Bench of the Hon'ble Supreme Court have held that — Even if the offences are non-compoundable, if they relate to matrimonial disputes and the Court is satisfied that the parties have settled the same amicably and without any pressure, for the purpose of securing ends of justice, Section 320 of the Code would not be a bar to the exercise of power of quashing of FIR, complaint or the subsequent criminal proceedings. The institution of marriage occupies an important place and it has an important role to play in the society. Therefore, every effort should be made in the interest of the individuals in order to enable them to settle down in life and live peacefully. If the parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law, in order to do complete justice in the matrimonial matters, the courts should be less hesitant in exercising their extraordinary jurisdiction.

12. The Court is aware of the fact and settled principles of law that the power under Section 482 CrPC should be exercised sparingly and with circumspection only and that exercise of such power would depend upon the facts and circumstances of each case and that it has to be exercised in appropriate cases in order to do real and substantial justice for the administration of which alone the courts exist.

13. On the basis of materials on record and since the husband (petitioner No.3) as well as the wife (sole respondent) have settled their matrimonial disputes amicably by mutual agreement, this Court is of the view that allowing the criminal proceeding between the parties herein relating to the Complaint Case No. 4494^C/2019 pending before the learned Court of JMFC, Kamrup (Metro), Guwahati, to continue would be an abuse of process of the Court and for the ends of justice, the said proceeding requires to be quashed.

14. On the basis of the above finding, this Court is of the opinion that it would be unfair and contrary to the interest of justice in continuation of said criminal proceeding of Complaint Case No. 4494^C/2019 pending between the parties it would tantamount to abuse of process of law despite settlement and compromise between them. For the reasons above, this Court in exercise of the power under Section 482 CrPC set aside and quash the proceeding of Complaint Case No. 4494^C/2019 between the parties pending before the Court of learned Judicial Magistrate, First Class, Kamrup (Metro), Guwahati to secure the ends of justice.

15. Consequently, the order dated 29.11.2019 passed by the learned Judicial Magistrate, First Class, Kamrup (Metro), Guwahati taking cognizance of the offences under Sections 420/406/120(B) IPC in said Complaint Case No. 4494^C/2019 against the petitioners is also set aside and quashed.

16. Accordingly, the interim order dated 03.08.2022 passed earlier in this proceeding, stands merged with this order.

17. Both the parties shall furnish certified copy of this order before the learned Judicial Magistrate, First Class, Kamrup (Metro), Guwahati by filing a necessary application for its needful.

18. With the above observation and direction, this criminal petition stands allowed.

JUDGE

Comparing Assistant