

GAHC010205092024



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

Case No. : Crl.Pet./1228/2024

NASRAT AKHTAR AND ANR
W/O SAJIDUL ISLAM
PERMANENT RESIDENT OF MEGHMALA RESIDENCY, S.NO. 52, G.M.
PALYA, C.V. RAMAN NAGAR,
OPPOSITE BEML HOSPITAL, NEW THIPPASANDRA,P.O. NEW
THIPPASANDRA, P.S. JEEVAN BIMA NAGAR, DIST. BENGALURU,
KARNATAKA, PIN-560075 AND CURRENTLY RESIDING AT BLOCK-1, G-3,
PRESTIGE TOWER, FAKHRUDDIN ALI AHMED ROAD, SIX MILE, P.O.
AMERIGOG, P.S. DISPUR, KAMRUP (M), PIN-781023

2: SAJIDUL ISLAM
S/O MD. NURUL ISLAM
PERMANENT RESIDENT OF MEGHMALA RESIDENCY S. NO. 52
G.M. PALYA
C.V. RAMAN NAGAR

OPPOSITE BEML HOSPITAL

NEW THIPPASANDRA
P.O. NEW THIPPASANDRA
P.S. JEEVAN BIMA NAGAR
DIST. BENGALURU
KARNATAKA
PIN-56007

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE LEARNED PP, ASSAM

Advocate for the Petitioner : A W AMAN, SAMIM RAHMAN,MR S A BARBHUYAN,MR.
SURAJIT DAS,MR SARFRAZ NAWAZ

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : -07.11.2024

Heard Mr. S. Nawaz, learned counsel for the petitioners. Also heard Mr. D.P. Goswami, learned Additional Public Prosecutor for the State.

2. By filing this petition u/s 528 of BNSS, 2023, the petitioners have prayed for quashing of entire proceedings of PRC case No. 1191/2024 pending in the court of CJM, Kamrup (M) on the ground of compromise between the parties.

3. The case of the petitioners is that the petitioner No. 2 is facing a criminal proceeding in PRC case No. 1191/2024 u/s 498 A/448/506 IPC on account of an FIR lodged by his wife i.e., the petitioner No. 1, because of a matrimonial dispute which arose between them. However, the petitioners have resolved their disputes amicably and the petitioner No. 1 is not willing to prosecute the petitioner No. 2 anymore. As the offence u/s 498 A IPC is non-compoundable, hence, the petitioners have jointly approached this court under section 528 of BNSS seeking quashment of the criminal proceeding of PRC case No. 1191 of 2024.

4. The learned counsel for the petitioners has submitted that the petitioners are husband and wife and after their marriage, they led conjugal life in the house of the petitioner No. 2 at Bengaluru. Out of their wedlock, two children were born. But on account of some differences crept up between them, the petitioner No. 1 came to Guwahati and started to live along with her daughters.

Thereafter, the petitioner No. 1 filed a case u/s 12 of Protection of Women from Domestic Violence Act, before the court of CJM, Kamrup (M).

5. Learned counsel for the petitioner also contended that subsequently the petitioner No. 2 i.e., the husband filed an application seeking custody of his two daughters before the court at Bengaluru.

6. According to learned counsel for the petitioners, both the petitioners have, thereafter, executed an agreement for settlement of their dispute on 09/04/2024 wherein they have decided to end all legal proceedings. Both the petitioners have agreed to continue to live separately and the petitioner No. 1 would retain the custody of their children with visitation rights by the petitioner No. 2.

7. The learned counsel for the petitioners also pointed out that the dispute between them is a private matrimonial dispute and the same has already been resolved. Both the petitioners have no grievances against each other and the petitioner No.1 is not desirous of prosecuting the petitioner No. 2. Hence, no fruitful purpose will be served by allowing the criminal proceedings to continue. As such learned counsel for the petitioners prays to quash the proceeding of PRC case no. 1191 of 2022.

8. The learned Additional PP for the State formally opposed the prayer.

9. On perusal of the aforesaid facts, it is evident that all the disputes were resolved mutually owing to which, the petitioner No. 1 does not want to prosecute the petitioner No. 2. In such circumstances, there are bleak chances of conviction in this case. The continuation of the prosecution against the petitioner No.2 would be mere abuse of the process of law in the instant case.

10. Hon'ble Supreme Court in ***Shiji @ Pappu and others v. Radhika & Anr***, reported in 2012 Cr.L.R. (SC) 69, has been ruled that where there is no chance of recording conviction against the accused persons and the entire exercise of a trial is destined to be an exercise in futility, the criminal case registered against the accused persons, though it may not be compoundable can be quashed by the High Court in exercise of powers under Section 482 of Cr.P.C.

11. Further, Hon'ble Supreme Court in ***Gian Singh Vs. State of Punjab and Another*** reported in (2012) 10 SCC 303 in para 61 has held as under:

"61. The position that emerges from the above discussion can be summarized 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 accordance with the guidelines 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 FIR may be exercised where the offender and the 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 a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the 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 predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, merchantile, 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, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the 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 the wrongdoer and whether to secure the ends of justice, it is appropriate that the

criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding".

12. Present case is the case of matrimonial dispute between the parties. Compromise has been entered into between the parties and they have submitted deed of compromise executed between the petitioners. It reflects from the record that the DV Act case filed by the petitioner No. 1 was dismissed on compromise and the Guardianship Act case filed by the respondent No. 2 was also dismissed for non prosecution.

13. Although Section 498A IPC is non-compoundable but taking into consideration of the facts and circumstances of the case that it is a matrimonial dispute between the parties and is being amicably settled between them and now the parties have decided to stay separately, as such in the interest of justice, this court finds no ground to continue the proceeding of PRC case No. 1191/2024. Hence, the entire proceeding of PRC case No. 1191/2024 pending in the court of CJM, Kamrup (M) is hereby quashed.

14. In the result, the criminal petition is allowed and disposed of accordingly.

JUDGE

Comparing Assistant