GAHC010151472024

2026:GAU-AS:11796

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

Case No. : Crl.Pet./940/2024

HITESH DAS AND ANR
S/O LATE SONESWAR DAS
R/O VILL MALOIBARI
P.O. KHETRI, P.S. KHETRI
DIST. KAMRUP (M), ASSAM

2: PHAGUNI DAS
D/O LATE JAYKUMAR DAS
R/O VILL HELAGOG
P.O. KHETRI, P.S. KHETRI
DIST. KAMRUP (M)
ASSAM
MOBILE NO. 97022-9884

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP, ASSAM

Advocate for the Petitioner : SIRAJ CHOUDHURY, MS. S SULTANA,B ALI SK

Advocate for the Respondent : PP, ASSAM,

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

18.08.2026

Heard Mr. Siraj Choudhury, learned counsel for the petitioners and also heard Ms.

B. Bhuyan, learned Senior counsel-cum-Additional Public Prosecutor, Assam, assisted by Ms. R. Saloi, appearing for the State respondent.

2. In this joint petition, under Section 528 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, the petitioners, namely, Hitesh Das (accused) and Smt. Munin Das (actual name withheld) (victim), have prayed for quashing of the proceeding of Sessions Case No.245/2022, arising out of PRC Case No.2156/2021 and Khetri P.S. Case No.100/2019, pending before the Court of learned Additional Sessions Judge (FTC) No.4, Kamrup(M) at Guwahati.

3. Mr. Choudhury, learned counsel for the petitioners submits that Khetri P.S. Case No.100/2019 was registered on the basis of one complaint lodged by the petitioner No.2 herein and he submits that the petitioner No.1 and the petitioner No.2 got married under the Special Marriage Act and a certificate of marriage was issued by the Marriage Officer on 05.06.2017 and thereafter, both the petitioners lived together as husband and wife and while they were living as husband and wife, marital discord surfaced between them and on 09.06.2019, the petitioner No.2 lodged a case against the petitioner No.1 and his family member, upon which the Khetri P.S. Case No.100/2019 has been registered and thereafter, both the parties entered into a deed of mutual separation, whereby they started living separately and one divorce case was also filed for dissolution of their marriage before the learned Principal Judge, Family Court, Kamrup(M), Guwahati, upon which F.C.(Civil) Case No.297/2021 has been registered and vide order dated 15.12.2021, the learned Principal Judge, Family Court-II, Kamrup(M), Guwahati, has granted the decree by dissolving the marriage between the petitioners on mutual consent.

4. Mr. Choudhury further submits that the allegation pertains to the year 2019 while they were living as husband and wife and as such, the offence under Section 376 IPC is not made out against them and since the parties have resolved to settle their disputes amicably and no longer willing to pursue the Sessions Case No.245/2022, the FIR dated 09.06.2019 and the proceeding may be quashed and in support of his submission, Mr. Choudhury has referred to a host of decisions of Hon'ble Supreme Court and also of this

Court, specially in **Narinder Singh and others vs. State of Punjab and another, in Criminal Appeal No.686/2014** and also the decision of a Three-Judge Bench of Hon'ble Supreme Court in the case of **State of Madhya Pradesh v. Laxmi Narayan and others**, reported in **(2019) 5 SCC 688** and also the decision of Hon'ble Supreme Court in the case of **Gian Singh v. State of Punjab**, reported in **(2012) 10 SCC 303**.

5. It is to be noted here that in the case of **Laxmi Narayan (supra)**, Hon'ble Supreme Court, referring to the decision of Hon'ble Supreme Court in the case of **Gian Singh (supra)** and also in the case of **Narinder Singh (supra)**, in paragraph Nos.11.3 and 11.4 has held as under:-

> **11.3.** In *Narinder Singh v. State of Punjab [Narinder Singh v. State of Punjab*, (2014) 6 SCC 466 : (2014) 3 SCC (Cri) 54] , after considering the decision in *Gian Singh [Gian Singh v. State of Punjab,* (2012) 10 SCC 303 : (2012) 4 SCC (Civ) 1188 : (2013) 1 SCC (Cri) 160 : (2012) 2 SCC (L&S) 988] , in para 29, this Court summed up as under: *(Narinder Singh case [Narinder Singh v. State of Punjab,* (2014) 6 SCC 466 : (2014) 3 SCC (Cri) 54] , SCC pp. 482-84)
>
> "29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:
>
> 29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.
>
> *29.2*. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:
>
> (*i*) ends of justice, or
>
> (*ii*) to prevent abuse of the process of any court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.3. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for the offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delicate parts of the body, nature of weapons used, etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the latter case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under

investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come to a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime."

11.4. In *Parbatbhai Aahir* [*Parbatbhai Aahir* v. *State of Gujarat*, (2017) 9 SCC 641 : (2018) 1 SCC (Cri) 1] , again this Court has had an occasion to consider whether the High Court can quash the FIR/complaint/criminal proceedings, in exercise of the inherent jurisdiction under Section 482 CrPC. Considering a catena of decisions of this Court on the point, this Court summarised the following propositions: (SCC pp. 653-54, para 16)

"*16.1*. Section 482 CrPC preserves the inherent powers 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.

16.2. 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 CrPC. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

6. In the instant case, it appears that this petition is filed jointly by the victim-cum-informant and also by the accused. Except Section 376 IPC, rest of the offences are compoundable under Section 320 IPC. Though the offence under Section 376 IPC is not compoundable, yet, it appears that the petitioners were husband and wife by virtue of the

Marriage Certificate No.2097, dated 05.06.2017, and the alleged occurrence of rape took place while they were living together as husband and wife and as such, this Court afraid the culpability of the offence under Section 376 IPC may not be attracted in the instant case, as the victim-cum-informant and the accused were living together as husband and wife. At best it would be a dispute arising out of matrimonial relationship as held in paragraph No.29.4 in the case of **Narinder Singh (supra)**.

7. Thus, taking note of the proposition laid down by Hon'ble Supreme Court in the case of **Gian Singh (supra)**, **Narinder Singh (supra)**, and **Laxmi Narayan (supra)**, this Court is of the view that further proceeding with the case would be an exercise in futility, besides being an abuse of the process of the Court, since the parties have settled the dispute and the victim is not willing to proceed with the same and if the petition is allowed, it will serve the end of justice.

8. Under the given factual and legal matrix, this Court is inclined to allow this petition. Consequently, the Sessions Case No.245/2022, pending before the Court of learned Additional Sessions Judge (FTC) No.4, Kamrup(M), Guwahati, pursuant to the FIR dated 09.06.2019, stands set aside and quashed.

9. In terms of above, the criminal petition stands disposed of.

Sd/- *Robin Phukan*
JUDGE

Comparing Assistant