

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.11177 of 2014

Arising Out of PS.Case No. -202 Year- 2012 Thana -SHASTRINAGAR District- PATNA

- =====
1. Vikesh Kumar Gautam Son Of Ram Udgar Singh R/O B-104, Pushpanjali Lok Apartment, Ashiana Nagar, Main Road, P.S. Rajeev Nagar, District Patna
 2. Ajeet Kumar @ Ajit Thakur Son Of Ramchandra Thakur @ Ram Swarup R/O Village Matihani, P.S. Khudwanpur, District Begusarai

.... Petitioner/s

Versus

1. The State Of Bihar
2. Vasundhara Sharma Wife Of Shri Rupesh Kumar Gautam, D/O Dr. Raghvendra Sharma R/O 207 Mamta Apartment, Shivpuri, P.S. Shastri Nagar, District- Patna

.... Opposite Party/s

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with

Criminal Miscellaneous No.19104 of 2014

Arising Out of PS.Case No. -202 Year- 2012 Thana -SHASTRINAGAR District- PATNA

- =====
1. Rita Devi W/o Ram Udgar Singh R/o B-104, Pushpanjali Lok Apartments, Ashiana Nagar Main Road, P.S. Rajeev Nagar, District - Patna.
 2. Ram Udgar Singh s/o Late Dhanraj Singh R/o B-104, Pushpanjali Lok Apartments, Ashiana Nagar Main Road, P.S. Rajeev Nagar, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Vasundhara Sharma W/o Shri Rupesh Kumar Gautam D/o Dr. Raghvendra Sharma R/o 207 Mamta Apartment, Shivpuri, P.S.- Shastri Nagar, District- Patna.

.... Opposite Party/s

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with

Criminal Miscellaneous No.21085 of 2014

Arising Out of PS.Case No. -202 Year- 2012 Thana -SHASTRINAGAR District- PATNA

- =====
1. Rupesh Kumar Gautam S/o Ram Udgar Singh, R/o B-104, Pushpanjali Lok Apartment, Ashiana Nagar Main Road, P.S. Rajeev Nagar, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Vasundhara Sharma, W/o Sri Rupesh Kumar Gautam, D/o Dr. Raghvendra Sharma, R/o 207 Mamta Apartment, Shivpuri, P.S.- Shastri

Nagar, District- Patna

.... Opposite Party/s

Appearance :

(In Cr.Misc. No.11177 of 2014)

For the Petitioner/s : Mr. Harsh Singh

For the Opposite Party/s : Mr. Arun Kumar (App)

(In Cr.Misc. No.19104 of 2014)

For the Petitioner/s : Mr. Harsh Singh

For the Opposite Party/s : Mr. Nityananad(App)

(In Cr.Misc. No.21085 of 2014)

For the Petitioner/s : Mr. Harsh Singh

For the Opposite Party/s : Mr. Lallan Kumar(App)

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

11 05-08-2015

Heard learned counsel for the parties.

All the three matters arise out of Shastri Nagar P.S. Case No. 202 of 2012 arising out of Complaint Case No. 1895C of 2012, hence all the three applications have been heard together.

Cr. Misc. No. 11177 of 2014 has been preferred by Vikesh Kumar Gautam and Ajeet Kumar @ Ajit Thakur, the brother and brother-in-law, respectively, of the husband of the informant against the order dated 01.02.2014 passed by learned SDJM, Patna in Shastri Nagar P.S. Case No. 202 of 2012, arising out of Complaint Case No. 1895C of 2012 whereby the petitioners' application for discharge under Sections 239 of the Cr. P.C. has been rejected.

Cr. Misc. No. 19104 of 2014 has been preferred

by Rita Devi and Ram Udgar Singh, the parents of the husband of the informant against the order dated 18.02.2014 passed by learned SDJM, Patna in Shashtri Nagar P.S. Case No. 202 of 2012 whereby petitioners' application for discharge under Sections 239 of the Cr. P.C. has been rejected.

Cr. Misc. No. 21085 of 2014 has been preferred by Rupesh Kumar Gautam, the husband of the informant, against the order dated 14.06.2013 passed by learned SDJM, Patna in Shastri Nagar P.S. Case No. 202 of 2012 whereby process was directed to be issued after cognizance being taken for the offences punishable under Sections 341, 323 and 498A of the IPC and Sections 3/4 of the Dowry Prohibition Act.

This is not in dispute that the charges have not been framed in the matter. The matter was heard by this Court on several occasions and lastly on 22.01.2015, the matter was adjourned for 27.01.2015 but the same could not be listed hence could not be taken up till date.

Short matrix of the case as alleged in the complaint is that the negotiation for marriage of the complainant with the petitioner Rupesh Kumar Gautam was finalized in June, 2011, thereafter the accused persons pressurized the complainant's



father to fulfill their demand of dowry, consequently he agreed for the same. Initial demand of dowry was for Rs. 11 lakhs in cash, gold jewellery worth Rs. 12 lakhs, silver utensils to be given in Tilak worth Rs. 1 lakh and other domestic appliances worth Rs. 50,000/-. The complainant's father had to fulfill the demand, being pressurized by the accused persons, prior to the marriage, which was solemnized on 20.11.2011. But the complainant's family members were abused during the reception ceremony, inspite of the demand having been fulfilled and further demand was made after marriage. The further accusation is that the husband of the complainant deciphered the passwords of the e-mail and facebook accounts of the complainant and unauthorizedly accessed the accounts, much prior to the marriage and continued doing so even after marriage. The complainant and her husband left for Bangalore in the month of November, 2011, where the complainant was working as Software Engineer, from before. Even at Bangalore mental torture was inflicted at the hands of the husband and further demand of luxurious items were made, for the fulfillment of which cash amount was transferred in the account of the complainant by her mother. The complainant alleges to have suffered abortion



due to the continuous torture and that all attempts to pacify the accused persons failed, which led to the filing of Complaint Case No. 1895C of 2012 on 05.07.2012 which came to be registered as a police case, being Shastri Nagar P.S. Case No. 202 of 2012 on 11.07.2012 for the offences punishable under Sections 325, 379, 383, 406, 420 and 498A of the IPC and Sections 3/4 of the Dowry Prohibition Act.

On conclusion of investigation, final form (charge sheet) was submitted on 31.5.2013 and consequently the order of cognizance was passed on 14.6.2013, whereby the learned Judicial Magistrate 1st Class, Patna directed for issuance of process after taking cognizance under Sections 341,323 and 498A IPC and Sections 3 and 4 of Dowry Prohibition Act. Other accused petitioners except husband Rupesh Kumar Gautam preferred applications for discharge under Section 239 Cr.P.C., but the same was dismissed. Subsequently, O.P. No. 2 Vashundhara Sharma and her husband i.e., petitioner Rupesh Kumar Gautam settled the issue and both decided to part ways on payment of permanent alimony of Rs.10 lakhs by the husband and by getting the marriage dissolved by filing proper suit under Sections 13(B) of the Hindu Marriage Act.

Now, a joint compromise petition has been filed to



the effect that the marriage has been dissolved with the consent of the parties vide judgment dated 11.12.2014 passed in Matrimonial Suit No. 5332 of 2014 by the learned Addl. Principal Judge, Family Court, Patna and accordingly the decree has been prepared. Permanent alimony of amount of Rupees Ten lakhs have already been received by the O.P. No. 2 Vasundhara Sharma. In the circumstances, the complainant is not opposing the quashing of the prosecution against the petitioners.

This Court in the present proceeding has to decide as to whether on the basis of compromise and dissolution of marriage, in exercise of inherent powers under Section 482 of the Cr. P.C., the non-compoundable offences under Section 498A IPC and Sections 3 and 4 of the Dowry Prohibition Act can be quashed, in the interest of justice, in spite of the embargo under Section 320(9) of the Cr. P.C., which does not permit the compounding of any offence, except as provided under Section 320 Cr. P.C. Time and again, the Apex Court has reiterated its view that most of the complaints under Section 498A of the IPC are filed in the heat of the moment over trivial issues, without proper deliberations and that every complaint under Section 498A IPC should be



treated as a basic human problem and serious endeavour ought to be made to help the parties in arriving at an amicable resolution of that human problem. The Apex Court has emphasized, time and again, to be extremely careful and cautious in dealing with these complaints and to take the pragmatic realities into consideration while dealing with matrimonial dispute cases. In the case of Preeti Gupta and Another Vs. State of Jharkhand and Another, reported in AIR 2010 SC 3363, while considering the issue of filing of large number of cases under Section 498A IPC which has not only flooded the courts but also led to enormous social unrest affecting peace harmony and happiness of society, hence, the Apex Court has deliberated in the following words:-

“.....It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law.”

The Apex Court has also been deliberating upon the compoundability aspect of Section 498A IPC where the parties have themselves arrived at a settlement. The Supreme Court of India, in the case of Ramgopal Vs. State of M.P. and Anr. reported in (2010) 13 SCC 540, has suggested the Law Commission of India to examine and send a suitable



proposal to the Union Government for introducing a suitable amendment in the statute for making such offences compoundable. In the 154th Report of the Law Commission also there was a clear recommendation to make the offence under Section 498 IPC compoundable. Justice Mallimath Committee on Criminal Justice Reform also recommended that this provision should be made compoundable as well as bailable. The Committee of Petitions (Rajya Sabha), in the report presented on 7.9.2011, observed at para 13.2 under the heading “Making the offence under Section 498A IPC compoundable” which reads as follows:

“The Committee notes that the offence under Section 498A IPC is essentially a fallout of strained matrimonial relationship for which there might be various considerations. Since there can be various causes leading to an offence under Section 498A, IPC and parties to the marriage could be responsible for the same in varying degrees, it would be appropriate if the remedy of compromise is kept open to settle a matrimonial dispute. In this context, the Committee feels that in case of any marital discord which has reached the stage of a complaint under Section 498A, IPC, it would be better if the parties have the option of a compromise whereafter they can



settle down in their lives appropriately for a better future rather than diverting their energies negatively by pursuing litigation. The Committee recommends to the Government to consider whether the offence under Section 498A, IPC can be made compoundable.”

The Law Commission of India, in 243rd Report on Section 498A IPC, recommended for making the offence under Section 498A IPC as compoundable with permission of the court and with the consent of the woman subjected to cruelty and for making necessary amendment in Table 2 forming part of Sections 320 Cr.P.C., but till date the same has not seen the light of the day.

This Court is conscious of the fact that sub-Section (9) of Section 320 Cr.P.C. mandates that no offence shall be compounded except as provided by this Section. Obviously, an offence can be compounded either in accordance with the provision under Section 320 Cr.P.C. or in no other way.

The question arises with regard to the inherent powers of the High Court in quashing criminal proceeding against an offender who has settled his dispute



with the victim of the crime but the crime in which he is involved is not compoundable under Section 320 Cr.P.C., whether in that situation the power under Section 482 Cr.P.C. can be exercised in the interest of justice, provided the offences alleged are not serious, heinous or the offences of moral turpitude, like, offence under the provision of the Prevention of Corruption Act.

A Full Bench of Mumbai High Court, in the case of Abasaheb Yadav Honmane Vs. State of Maharashtra and Ashwini Abasaheb Honmane, reported in 2008(2) Mh. L.J. 856, has deliberated upon the scope and ambit of Section 482 Cr. P.C. vis-à-vis Section 320 of the Cr. P.C., as well as the definition of compoundability and the scope of exercise of power by the High Court under Section 482 Cr. P.C. in offences instituted under Section 498A of the IPC, wherein the parties have settled heir disputes and have obtained a decree of divorce by mutual consent under Section 13B of the Hindu Marriage Act, 1955. The relevant paragraphs are being quoted hereunder to illuminate the issue involved in the present proceeding:-

“5.21 The fundamental rudiments of the criminal jurisprudence requires that rule of strict construction has to be applied to the provisions of



the Code as far as they are not prejudicial to the accused but the provisions which are procedural and are intended to be beneficial provisions to protect and ensure pure and fair administration of criminal justice need to be constructed liberally. Quashing is one of the forms of exercise of power to prevent an abuse of process of law to pass orders to give effect to any order under the Code or otherwise to secure the ends of justice. Being an expression of wide magnitude, it cannot be unnecessarily restricted. In the wisdom of the Legislature, powers under section 482 of the Code were not to be limited by any other provisions of the Code. The expression 'nothing in this code shall be deemed to limit the inherent powers of the High Court' is a legislative legal command which cannot, by judicial process, be interpreted so as to obstruct or frustrate the very object sought to be achieved by the legislature by enacting section 482 of the Code. It would not be even proper to argue that in face of the **non-obstante** language of the provision, the requirements of section 320 of the Criminal Procedure Code have a direct or indirect impact on the inherent powers. Compounding is a different concept of criminal jurisprudence **in** comparison with the inherent power of the court to quash proceedings. On the aspect of compounding of offences, we will discuss in some elaboration shortly hereinafter but



we must notice that FIR or criminal proceedings which are **compoundable** in terms of section 320 are not the only offences in which the court can exercise its power of quashing such proceedings. If the interpretation that section 320 controls or has an inbuilt check upon exercise of powers contemplated under section 482 of the Code is adopted, then it will ex facie be an interpretation contrary to the legislative intent. The use of the word 'shall be deemed to limit' has sufficiently indicated the mind of the **framers** of the statutory provision that though they were aware of the provisions of section 320, **revisional** and appellate jurisdiction of the court as contemplated in sections 401, 377 and 378, they introduced section 482 in such wide language. On a plain reading of the provisions of this section, we have no hesitation in coming to the conclusion that the provisions of section 320 would in no way control or limit the powers of the court under section 482 of the Code, to quash a prosecution.”

In paragraph no.6 of the Judgment, the Full Bench has discussed the meaning and scope of compounding under Section 320 Cr. P.C., in the following words:-

“6. Compounding

The expression "compounding" has been explained in Law Lexicon by P. Ramanatha Aiyer (General Editor Justice Y.V. Chandrachud), 1997 Edition, as



under:

"Compounding: Arranging, coming to terms; condone for money; arranging with the creditor to his satisfaction".

The Black's Law Dictionary, Sixth Edition, defines "compound" as under:

"Compound" : To compromise, to effect a composition with a creditor, to obtain discharge from a debt by the payment of a smaller sum. To put together as elements, ingredients, or parts, to form a whole, to combine, to unite. To form or make up as a composite product by combining different elements, ingredients, or parts, as to combine a medicine.

Compounding crime: Compounding crime consists of the receipt of some property or other consideration in return for an agreement not to prosecute or inform on one who has committed a crime. There are three elements to this offence at common law, and under the typical compounding statute: (1) the agreement not to prosecute; (2) knowledge of the actual commission of a crime; and (3) the receipt of some consideration.

As is apparent from the above language, compounding is primarily an **agreement** between the parties, which in accordance with the language of Section 320 of the Code, would have the effect of settling a dispute

wherever necessary with the leave of the Court. Quashing is a power which is exclusively vested in the Court where, when exercising its inherent powers, the Court could quash the FIR or the criminal proceedings initiated in furtherance thereto, of course, within the specified limitation of judicial pronouncements."

6.1 The concept of compounding is primarily based upon mutuality between the parties. Mutual desire to put an end to prosecution in certain offences may be



settled by action of the parties while in certain other offences it has to be compounded only with the permission of the Court. The table annexed to the provisions of Section 320 of the Code states the offences, the person by whom the offence may be compounded and the offences which are **compoundable** but only with the permission of the Court. No other offence will be compoundable by the consent of parties or even with the leave of the Court which is beyond the purview of Section 320 of the Code. Once the legislature has expressly mentioned the offences which are compoundable **simpliciter** or with the leave of the Court, it leads to an **obvious** result that other offences are excluded by necessary implication from the ambit of the Section. This, in any case, is put beyond doubt by the provisions of sub-section (9) of Section 320 which reads as under:

“9. No offence shall be compounded except as provided by this section.”

6.2 In addition to the above provision, even the High Court while exercising its powers of revision under Section 401, could allow any person who is competent **to** compound any offence within the provisions of this Section. The scheme of Section 320 and its language clearly suggests that compounding of any offences not specified in Section 320 is not permissible in law. Once the law prohibits such compounding, then the inherent powers of the Court cannot be exercised to frustrate the bar contained under Section 320 (9) of the Code. It is a settled rule of interpretation that a statutory provision cannot be rendered redundant or repugnant by interpretative process in judicial dicta. Any approach to the contrary would also be contrary to

public policy.

6.3 We have already discussed that the provisions of Section 320 of the Code do not control or restrict exercise of inherent powers under Section 482 of the Code. In other words, in a given case where the offence is one which is not stated as **compoundable** under Section 320 of the Code, the Court may, still in exercise of its inherent powers, quash an FIR or criminal proceedings subject to satisfaction of the principles enumerated for exercise of such powers. But the Court would not be in a position to permit the parties to compound such an offence. To illustratively examine, one may consider Section 326 of the Indian Penal Code and for that matter even Section **498-A** of the Indian Penal Code which are neither compoundable by the parties nor with the leave of the Court. Thus, the Court may not be in a position to grant its permission and pass an order permitting the parties to compound the offence because of the bar contained in Section 320 (9) of the Code as well as on accepted principles of interpretation. However, the Court does not lose its inherent powers under Section 482 of the Code for quashing such a complaint or FIR or criminal proceedings on the ground that it would be necessary to meet the ends of justice or that further prosecution of the accused would amount to permitting the complainant to abuse the process of the Court or law.”

16. In the light of the above detailed analysis of the principles of law involved in the case, now, we would revert back to the order of reference and the questions referred therein. The order can discernly be dissected into three different portions: (a) what were the facts and law laid down by the Supreme Court in the case of *B.S.*





Joshi (supra); (b) does the High Court under its inherent powers under Section 482 of the Criminal Procedure Code have the power to allow compounding of offences other than offences punishable under section 498A of the IPC, particularly, for the offences punishable under Sections 306, 307, 326, 376, 406, 495 IPC, and (c) whether such a power can be exercised at the trial stage or at the appellate stage.

17. We record our answer to the above three portions of the reference order as follows:

Answer to (a) : As already noticed, the facts of *B.S. Joshi's* case have been recorded in paragraphs 3 and 4 of that judgment. The parties had not prayed for compounding of an offence in terms of section 320 of the Code but had prayed for quashing of the FIR in view of the terms and conditions recorded in the petition for mutual divorce in furtherance to which statements of the parties on first and second motion were recorded by the Additional District Judge, Delhi. The High Court had dismissed the petition for quashing of the FIR on the ground that the offence was not one compoundable under Section 320 and, therefore, it could not be quashed in exercise of powers under section 482. The Supreme Court, in fact, at the outset of the judgment in paragraph two formulated the question that it was examining the ambit of the inherent powers of the High Court under Section 482 of the Criminal Procedure Code and whether Section 320 could restrict such powers of the court. The Supreme Court concluded and, with



approval, stated the view which had consistently been taken since *Ram Pujan's* case (1973) that only those offences could be compounded which are mentioned in Section 320 and, those which are not mentioned therein cannot be permitted to be compounded. Consistent with its earlier view the Supreme Court also held that powers under Section 482 of the Code are not limited or affected by the provisions of section 320 of the Code.

Answer to (b): It is thus answered in the negative. Neither an offence under section 498A nor any other offence under the IPC which is not specifically enumerated in Section 320 of the Code can be compounded by the court in exercise of its powers under section 320 and for that matter by High Court in exercise of its inherent powers under Section 482 of the Code. However, we hasten to add here that the inherent powers under Section 482 of the Code include powers to quash FIR, investigation or any criminal proceedings pending before the High Court or any Courts subordinate to it and are of wide magnitude and ramification. Such powers can be exercised to secure ends of justice, prevent abuse of the process of any court and to make such orders as may be necessary to give effect to any order under this Code, depending upon the facts of a given case. These powers are neither limited nor curtailed by any other provisions of the Code including Section 320 of the Code. The Court could exercise this power in offences of any kind, whether compoundable or non-compoundable. However,



such inherent powers are to be exercised sparingly and with caution and in conformity with the precepts indicated in paragraph 7.10 of this judgment. Further, the Court should ensure that object and purpose of passing any order in exercise of its inherent powers should be confined to one of the three categories stated in Section 482 of the Code.

Answer to (c): The power to compound can be exercised at the trial stage or even at the appellate stage subject to satisfaction of the conditions postulated by the legislature under section 320 of the Code.”

A five Judge Bench of the Punjab and Haryana High Court in Kulwinder Singh Vs. State of Punjab,(2007) 4 CTC 769, was called upon to determine, inter-alia, the question whether the High Court has the power under Section 482 of the Code to quash the criminal proceedings or allow the compounding of the offences in the cases which have been specified as non-compoundable offences under the provisions of Section 320 of the Code. The five Judge Bench referred to quite a few decisions of the Apex Court including the decisions in Madhu Limaye Vs. State of Maharashtra, (1977) 4 SCC 551; State of Haryana V. Bhajan Lal, 1992 Supp (1) SCC 335; State of Karnataka V. L.

Muniswamy, (1977) SCC 699; Simrikhia V. Dolley Mukherjee, (1990) 2 SCC 437; B.S. Joshi V. State of Haryana, (2003) 4 SCC 675 and Ram Lal V. State of J&K, (1999) 2 SCC 213 and framed the following guidelines in para 21 of their judgment, in the following words:-

“21..... (a) Cases arising from matrimonial discord, even if other offences are introduced for aggravation of the case.

(b) Cases pertaining to property disputes between close relations, which are predominantly civil in nature and they have a genuine or belaboured dimension of criminal liability. Notwithstanding a touch of criminal liability, the settlement would bring lasting peace and harmony to larger number of people.

(c) Cases of dispute between old partners or business concerns with dealings over a long period which are predominantly civil and are given or acquire a criminal dimension but the parties are essentially seeking a redressal of their financial or commercial claim.

(d) Minor offences as under [Section 279](#) IPC may be permitted to be compounded on the basis of legitimate settlement between the parties. Yet another offence which remains non- compoundable is [Section 506\(II\)](#) IPC, which is punishable with 7 years imprisonment. It is the judicial experience that an offence under [Section 506](#) IPC in most cases is based on the oral declaration with different shades of intention. Another set of offences, which ought to be liberally compounded, are [Sections 147](#) and [148](#) IPC, more particularly where other offences are compoundable. It may be added here that the State of Madhya Pradesh vide [M.P. Act No. 17 of 1999](#) ([Section 3](#)) has made [Sections 506\(II\)](#) IPC, [147 IPC](#) and [148 IPC](#) compoundable offences by amending the schedule under [Section 320](#) Cr.P.C.



(e) The offences against human body other than murder and culpable homicide where the victim dies in the course of transaction would fall in the category where compounding may not be permitted. Heinous offences like highway robbery, dacoity or a case involving clear-cut allegations of rape should also fall in the prohibited category. Offences committed by Public Servants purporting to act in that capacity as also offences against public servant while the victims are acting in the discharge of their duty must remain non-compoundable. Offences against the State enshrined in Chapter-VII (relating to army, navy and air force) must remain non-compoundable.

(f) That as a broad guideline the offences against human body other than murder and culpable homicide may be permitted to be compounded when the court is in the position to record a finding that the settlement between the parties is voluntary and fair.

While parting with this part, it appears necessary to add that the settlement or compromise must satisfy the conscience of the court. The settlement must be just and fair besides being free from the undue pressure, the court must examine the cases of weaker and vulnerable victims with necessary caution."

The issue was considered by the Apex Court in the case of B.S. Joshi and others Vs. State of Haryana and another (2003) 4 Supreme Court Cases 675, where it has been held that for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 would not be a bar to the exercise of power of quashing. Paragraph 8 reads as follows:

"It is, thus, clear that Madhu Limaye's case does not lay down any general proposition limiting power



of quashing the criminal proceedings or FIR or complaint as vested in Section 482 of the Code or extraordinary power under Article 226 of the Constitution of India. We are, therefore, of the view that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 would not be a bar to the exercise of power of quashing. It is, however, a different matter depending upon the facts and circumstances of each case whether to exercise or not such a power.”

Similar view was taken by the Apex court in the case of Nikhil Merchant Vs. CBI (2008) 9 SCC 677 and Manoj Sharma Vs. State and Ors. (2008) 16 SCC 1 but Hon’ble Mr. Justice Markandey Katju who was one of the members of the above two decisions doubted the exercise of jurisdiction under Section 482 Cr.P.C. for quashing the prosecution on the basis of compromise in non-compoundable offences, as the court cannot amend statute and statutory provision under Section 320 Cr.P.C., hence something which cannot be done directly cannot be done indirectly. Hence, the matter was referred to larger bench in case of Gian Singh Vs. State of Punjab and another, (2010) 15 SCC 118. The issue was ultimately decided by Three Judge Bench, reported in (2012) 10 SCC 303, where it is held that the compounding can only be done as per the provisions of Section 320 Cr.P.C. but in the interest of justice non-compoundable offences can also

be quashed in exercise of power under Section 482 Cr.P.C. subject to the guideline engrafted in the provision under Section 482 Cr.P.C. viz. (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court but such power can only be exercised in the cases pre-dominantly having civil flavour, commercial, financial, mercantile, civil partnership or arising out of matrimonial disputes and not the heinous crimes affecting the society or a case of moral turpitude. The ratio laid down in paragraph no. 61 reads as follows:

“61. The position that emerges from the above discussion can be summarised 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 accord with the guideline 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 F.I.R may be exercised where the offender and 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 serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like 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 pre-dominantly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, 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 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 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 criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

Hence, in view of the above ratio laid down by the Apex Court, the cases falling under the category of offence arising out of matrimonial dispute can also be quashed

in the interest of justice and to prevent the abuse of the process of the Court.

It is trite that quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 Cr.P.C. is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction under Section 482 Cr. P.C. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 Cr.P.C. and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.

Coming to the matter under consideration, it appears that in the present case little skirmishes have developed into an impasse and the allegations and dispute





seem to have been created in the heat of passion. The accruing discontent and unrest in the family life of a large number of people in the society leading to filing of cases with exaggerated accusations implicating relatives residing at different places has been noticed by the Apex Court in the case of Preeti Gupta and Anr. (supra) and allowing to continue such proceeding will be a sheer abuse of the process of the court. Similar view has also been taken in the case of Ruchi Agrawal Vs. Amit Kumar Agrawal and Ors. (2005) 3 SCC 299. The Apex Court in the case of G.V. Rao Vs. L.H.V. Prasad & Ors. (2000) 3 SCC 693 held that in a matrimonial case, the prosecution may be quashed. Their lordships observed therein as follows:

“There has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counseled and brought about rapprochement are rendered helpless on



their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their “young” days in chasing their “cases” in different courts.”

Similar view has been taken by the Apex Court in the case of Neelu Chopra & Another 2009(10) SCC 184, Geeta Mehrotra & Anr. Vs. State of UP & Ans (2012) 10 SCC 741.

In the present case when the marriage has been dissolved with mutual consent under Section 13(B) of the Hindu Marriage Act, 1955 on payment of permanent alimony, the chances of conviction are bleak as the witnesses are not going to support the prosecution case. Hence, under such circumstances, for the ends of justice and to prevent the abuse of the process of Court, it is a fit case for exercise of power under Section 482 of the Cr. P.C., since the parties have approached the court with compromise petition after



dissolution of their marriage with mutual consent under Section 13B of the Hindu Marriage Act, 1955. In view of their rapprochement, no useful purpose would be served in allowing to continue the proceedings under Section 498 A of the IPC since both the parties are of young age. Hence allowing the proceeding to continue will not only be an abuse of the process of the court but also cause serious prejudice to both the parties, who will lose their prime young age in chasing their litigations in different courts when they have already severed their matrimonial ties with a peaceful note.

Under such circumstances, to prevent the abuse of the process of the court and for the ends of complete justice, the orders dated 01.02.2014, 18.02.2014 passed by learned SDJM, Patna in Shastri Nagar P.S. Case No. 202 of 2012 whereby the applications of discharge with regard to petitioners of Cr. Misc. Nos. 11177 of 2014 and 19104 of 2014 were rejected and order dated 14.06.2013 whereby the order of cognizance was passed against Rupesh Kumar Gautam the husband of the informant including the entire prosecution of Shastri Nagar P.S. Case No. 202 of 2012 arising out of Complaint Case No. 1895C of 2012 are hereby quashed.

Accordingly, all the three applications are allowed.



(Dinesh Kumar Singh, J)