

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 977 of 2014

1. Punyaban Patel S/o Shri Bimaleswar Patel Aged About 48 Years Occupation Service, R/o Village Satkama, Via - Kuchinda, PS Kuchinda, Distt. Sambalpur (Odisha).
2. Bimaleswar Patel S/o Late Shri Lalit Mohan Patel Aged About 74 Years R/o Village Satkama, Via - Kuchinda, PS Kuchinda, Distt. Sambalpur (Odisha).
3. Soudamani Patel W/o Shri Satyaban Patel Aged About 40 Years R/o Village Satkama, Via - Kuchinda, PS Kuchinda, Distt. Sambalpur (Odisha).

---- Petitioners

Versus

1. State Of Chhattisgarh Through Distt. Magistrate, Raigarh Distt. Raigarh C.G.
2. Smt. Jay Kumari Chaudhary D/o Shri Chakardhar Chaudhary Aged About 35 Years Occupation Govt. Service, R/o Village Saraibhaddar Baypass Road, Raigarh, Tah. And Distt. Raigarh C.G.

---- Respondents

For Petitioners – Shri M.K. Sinha, Advocate.
For Respondent/State – Smt. M. Asha, PL.

Hon'ble Shri Justice Goutam Bhaduri

Order

16/10/2015

1. Challenge in this petition under Section 482 of Cr.P.C. is to the order dated 30/10/2014 wherein prayer made by the petitioners to quash the criminal proceedings has been disallowed.
2. Brief facts of the case are that petitioner No.1 Punyaban Patel was married to respondent No.2 Jay Kumari Chaudhary on 19/01/2001. Petitioner No.1 is the father-in-law and the petitioner No.3 is sister-in-law

of complainant. After the marriage till 2007 both husband and wife could go along, however in the year 2008 dispute arose between the parties. Out of their wedlock a boy namely Riyam was born in the month of September 2001 and now he is residing with his mother i.e. respondent No.2 at Raigarh. Consequent to the fact that husband and wife could not go along a divorce petition was filed as also it gave rise to another criminal case on the basis of complaint made by respondent No.2 the wife under Section 498-A of IPC. The said criminal case was initially bearing No.1827/2008 subsequently numbered as 287/2013 pending before JMFC, Raigarh.

3. Learned counsel for the petitioners submits that between the same parties out of dispute and over custody of child case was filed before Family Court at Raigarh which was bearing Civil Suit No.45-A/2010. In such civil suit the judgement was passed on 8/05/2012 which was subject of appeal by the husband/petitioner before High Court. Before the High Court appeal was bearing number F.A. (M) No.82/2012. During pendency of such appeal, parties settled their dispute and wherein it was agreed by the wife/complainant that she will not prosecute criminal case or continue Criminal Case No.1827/2008 which is under section 498-A of IPC. He therefore submits that in such appeal decree was passed on the basis of compromise, consequently compromise decree have a binding effect to quash proceeding.

4. I have heard learned counsel for the parties and perused the documents.

5. On the earlier date, learned counsel for the petitioners was directed

to place on record certified copy of the order passed in first appeal along with application for compromise. Copy of the application for compromise is placed on record. Record would further show that division bench of this court by its order dated 15/03/2013 has passed a decree for divorce and one of the condition was made part of the decree reads as under:-

“That, the respondent/wife has instituted a criminal case u/s 498-A of IPC pending before the CJM Raigarh registered as Criminal Case No.1827/2008. The wife is not interested in prosecute or continuance of the case and it may be quashed/dropped.”

6. Certified copy of the decree of FAM No.82/2012 is also placed on record. Decree reads that in view of the agreement between the parties, the mutual divorce is granted. It also records that Criminal Case No.1827/2008 pending before CJM, Raigarh may be dropped. It also records that joint application as well as the affidavit shall form part of the decree. It also records that wife is not interested to prosecute or continue with the criminal case and it may be quashed/dropped.

7. The Hon'ble Supreme Court in ***Gian Singh v. State of Punjab & Another***¹ has laid down the following principles :

“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

1 (2012) 10 SCC 303

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 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, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put 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 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.

62. In view of the above, it cannot be said that *B.S. Joshi, Nikhil Merchant and Manoj Sharma* were not correctly decided. We answer the reference accordingly. Let these matters be now listed before the Bench(es)

concerned”

8. The Hon'ble Supreme Court in ***B.S.Joshi & Ors. v. State of Haryana & Anr.***² has held as under :

“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.”

9. Further more Hon'ble Supreme Court in case law reported in **(2013) 4 SCC 58** in between **Jitendra Raghuvanshi and others Vs. Babita**

² (2003) 4 SCC 675

Raghuvanshi and another has examined scope of compromise under Section 320 of Cr.P.C. in offence of non-compoundable nature.

10. Hon'ble Supreme Court referred to various cases and has laid down that in cases of matrimonial matters, court should exercise power under Section 482 of Cr.P.C. sparingly and only it may exercise when the court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of process of court or that the ends of justice require that the proceedings ought to be quashed.

11. In the instant case, perusal of the certified copy of judgment and decree in F.A. (M) No.82/2012 specifically records the fact that Criminal Case No.1827/2008 pending before CJM, Raigarh may be dropped according to compromise entered in between the parties and the terms of compromise application also records the same that wife do not want to continue criminal proceeding. Therefore, since compromise has already been arrived at, in the opinion of this court it will be futile exercise to continue criminal proceeding pending before JMFC, Raigarh under section 498-A of IPC.

12. In a result, proceedings before the JMFC, Raigarh in Criminal Case No.287/2013 old number 1827/2008 is hereby quashed. Petitioners are acquitted of the charges.

13. Accordingly, Cr.M.P. stands allowed.

Sd/-
(Goutam Bhaduri)
JUDGE