

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.M.P. No. 875 of 2015

1. Mohd. Asif, S/o. Late Mohd. Azam Musalman, Aged about 35 Years,
2. Khairun Nisha, W/o. Late Mohd. Azam Musalman, Aged About 65 Years,

Both Presently R/o. At Quarter No. 7/A, Street No. 37-C, Sector-7, Bhilai, Police Station Bhilai, Civil, Tahsil and Rev. Distt. Durg Chhattisgarh.

---- Petitioners

Versus

1. State Of Chhattisgarh, Through District Magistrate, Durg, Distt. Durg Chhattisgarh.
2. Smt. Yasmin Sheikh, D/o. Sayeed Haider Ali, Aged About 32 Years R/o. Talapara Main Road, Next To Bharat Dairy, Magarpara, Bilaspur, Tehsil , Civil And Rev. Distt. Bilaspur Chhattisgarh.

-----Respondents

For Petitioners	:	Mr. Jaydeep Singh Yadav, Advocate
For Respondent No.1/State	:	Mr. Ramakant Pandey, Panel Lawyer
For Respondent No.2	:	Mr. Pramod Shrivastava, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

06/10/2015

1. This petition is against the order dated 09/06/2015, passed by the Judicial Magistrate First Class, Durg in Criminal Case No. 472/2010 styled as State Vs. Mohd. Asif & and Another. By such order, an application filed under Section 320 of Cr.P.C. for compounding of offence under section 498-A/34 of I.P.C. and Section 4 of Dowry Prohibition Act has been rejected.

2. The brief facts of the case are that petitioner No.1, Mohd. Asif was married to respondent No.2, Smt. Yasmin Sheikh, on 31.01.2005 at Bilaspur. They were living together and after sometime of marriage, they could not go along and respondent No.2, Smt. Yasmin Sheikh lodged a report, thereby a case was registered under Section 498A/34, 323 of I.P.C. and Section 4 of the Dowry Prohibition Act.
3. During the course of proceeding, the respondent No.2, Smt. Yasmin Sheikh, who is present before this Court on being asked, expressed her desire that she do not want to continue with the criminal case, which is pending against the petitioners and on being enquired by the State counsel from the complainant/respondent No.2, it is stated that she do not want to continue with the criminal case and has compromised the case out side the Court without any fear, undue influence or any pressure. Consequently, the criminal case pending before the Court below be quashed.
4. The Hon'ble Supreme Court in ***Gian Singh v. State of Punjab & Another¹*** 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 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

1. (2012) 10 SCC 303

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”

5. 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

2. (2003) 4 SCC 675

under Section 482 of the Code.”

6. The principles laid down by the Supreme Court clearly leads to an irresistible conclusion that a dispute which arises out of a matrimonial nature where the wrong is basically private or personal in nature and parties have resolved their entire dispute, the High Court may quash the criminal proceedings. If the High Court finds it to be unfair and contrary to the interest of justice to continue with the criminal proceeding despite settlement and compromise between the victim and the wrongdoer and make put to an end to the criminal case.
7. Consequently, in view of the principles laid down by the Hon'ble Supreme Court and the fact that complainant, Smt. Yasmin Sheikh, herself, who is present in the Court do not want to continue with the criminal case and has settled the dispute without any pressure or fear, it would be in the interest of justice to allow the petition and to quash the proceeding of criminal case pending before the Judicial Magistrate First Class, Durg.
8. Accordingly, the petition is allowed and consequently, the order dated 09.06.2015, passed by the Judicial Magistrate First Class, Durg is set-aside. In the result, the proceeding of Criminal Case No.472/2010, pending before the Judicial Magistrate First Class, Durg under Section 498A/34 of I.P.C. & Section 4 of Dowry Prohibition Act is quashed. The petitioners are acquitted of the charges.

Sd/-
(Goutam Bhaduri)
Judge