

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.2217 of 2014

Arising Out of PS.Case No. -746 Year- 2013 Thana -DARBHANGA COMPLAINT CASE District-
DARBHANGA

=====

1. Niraj Sarswati @ Neeraj Sarswati S/O Late Yogendra Narayan Sarswati
@ Lalan Sarswati Permanent Resident Of Village Machhaita, P.S. Sakatpur,
District Darbhanga, Presently Resident Of Mohlla Mirzapur (Near Icici
Prudencial), P.S. Darbhanga Town, District Darbhanga.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. Arti Devi W/O Sri Sameer Kumar Mishra Resident of Village Sarisab
Pahi, P.S. Pandual (Sarisab Pahi O.P.), District Madhubani.
3. Archana Kumari D/O Sri Sameer Kumar Mishra Resident Of Village
Sarisab Pahi, P.S. Pandual (Sarisab Pahi O.P.), District Madhubani.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Manish Kumar No 13, Advocate on record
Mr. Rohit Kumar, Advocate
Ms. Nitu Kumari, No.-7, Advocate
For the State Mr. Chandra Bhushan Prasad (App)

For the informant and Opposite Party No.3: Mr. Madhav Jha, Advocate
Mrs. Kanchan Jha, Advocate

=====

CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL ORDER

8 17-11-2016 Heard learned counsel for the petitioner and learned
counsel appearing on behalf of Opposite Party No. 3 as well as
learned A.P.P. for the State.

Notice on Opposite Party No. 2 has been validly served

1) The present application has been filed under Section
482 of the Cr. P. C. for quashing of the order dated 06.11.2013
passed by the learned S.D.J.M., Darbhanga in C.R. No. 746 of
2013 Trial No. 3814/2013 whereby the processes has been
directed to be issued after cognizance being taken for the offences
punishable under Section 498(A) of the Indian Penal Code.

2) The prosecution case is that the complainant/informant's daughter, Opposite Party No. 3 was married with the petitioner on 13.05.2011 and thereafter she was inflicted to physical and mental torture and demand of Rs.1,25,000/-. Initially a Complaint case was filed by Opposite party No. 2, mother of the Opposite Party No. 3, which was subsequently registered as a Police case under Section 156 (3) Cr. P.C. and was numbered as Darbhanga Town P. S. Case No. 142/2012. The said Complaint case was filed on 16.07.2012 by the Opposite Party No. 2, the informant, who is mother of Opposite Party No. 3 married with the petitioner.

3) It has been submitted by the learned counsel for the petitioner that Opposite Party No. 3, his wife, had disappeared from her Matrimonial house out of her own will. An Informatory petition bearing No. 1145 of 2012 was filed before the learned Chief Judicial Magistrate, Darbhanga on 13.07.2012 seeking police help for recovery of his wife, the Opposite Party No. 3. The Opposite Party No. 3 was recovered with police help as she was found in possession of one Sachin Kumar Mandal.

4) Further case of the petitioner is that the Opposite Party No. 3, filed a Matrimonial Suit No. 105 of 2013 for divorce. The Opposite Party No.2 also filed a petition before the Court of learned Chief Judicial Magistrate to hand over the custody of Opposite Party No. 3, which was allowed by the learned Chief

Judicial Magistrate on 27.07.2012 but thereafter, a petition was filed by the informant before the learned Chief Judicial Magistrate, Darbhanga that it was apprehended that Opposite Party No. 3 will run away from the house, so she prayed for the Opposite Party No. 3, be kept in Nariniketan. The learned Chief Judicial Magistrate vide order dated 08.08.2012 observed that the Opposite Party No. 3, wife of the petitioner being a major, as per her School Leaving Certificate, she could not be kept in Nariniketan and handed over the custody to the mother, Opposite Party No. 2.

5) A supplementary affidavit has been filed by the petitioner stating therein that the Matrimonial Case No. 105 of 2013 has been filed by the Opposite Party No. 3, later on converted into a petition for mutual Divorce under Section 13 (B) of the Hindu Marriage Act. The matter having been compromised with the petitioner, she is agreed for mutual divorce on payment of Rs.2, 05,000/- as permanent alimony as full and final settlement. The petitioner submits that through the Demand Draft Number 145385 dated 13.07.2016 drawn by the Central Bank of India, Darbhanga, which has been received by the Opposite Party No. 3 on 25.07.2016, which is part of Annexure-D Series of the Supplementary affidavit, the matter has been amicably settled.

6) Having heard the parties and perused the record, I find that the offences punishable under Section 498-A of the

Indian penal Code and Sections 3 & 4 of the Dowry Prohibition Act are non-compoundable in nature. The ambit and scope of inherent power of the High Court under Section 482 of the Cr. P. C. in quashing of the criminal proceeding in non-compoundable offences relating to matrimonial dispute was recently discussed and adjudicated by a three Judge Bench of the Hon'ble Supreme Court in **Jitendra Raghuvanshi & Ors. Vs. Babita Raghuvanshi & Anr. [(2013) 4 SCC 58]**. The Supreme Court examined the scope and ambit of powers of the High Court under Section 482 of the Code in quashing of the criminal proceeding in non-compoundable offences, is relating to matrimonial dispute and held in paragraphs No. 15 and 16 as under :-

“15. In our view, it is the duty of the Courts to encourage genuine settlements of matrimonial disputes, particularly, when the same are on considerable increase. Even if the offences are non-compoundable, if they relate to matrimonial disputes and the Court is satisfied that the parties have settled the same amicably and without any pressure, we hold that for the purpose of securing ends of justice, Section 320 of the Code would not be a bar to the exercise of power of quashing of F.I.R., complaint or the subsequent criminal proceedings.

“ 16. There has been an outburst of matrimonial disputes in recent times. The institution of marriage occupies an important place and it has an important role to play in the society. Therefore, every effort should be made in the interest of the individuals in order to enable them to settle down in life and live peacefully. If the parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law, in order to do complete justice in the matrimonial matters, the courts should be less hesitant in exercising its extraordinary jurisdiction. It is trite to state that the power under Section 482 should be exercised sparingly and with circumspection only when the court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice require that the proceedings ought to be quashed. We also make it clear that exercise of such power would depend upon the facts and circumstances of each case and it has to be exercised in appropriate cases in order to do real



and substantial justice for the administration of which alone the courts exist. It is the duty of the courts to encourage genuine settlements of matrimonial disputes and Section 482 of the Code enables the High Court and Article 142 of the Constitution enables this Court to pass such orders.

17. In the light of the above discussion, we hold that the High Court in exercise of its inherent powers can quash the criminal proceedings or FIR or complaint in appropriate cases in order to meet the ends of justice and Section 320 of the Code does not limit or affect the powers of the High Court under Section 482 of the Code. Under these circumstances, we set aside the impugned judgment of the High Court dated 04.07.2012 passed in M.CR.C. No. 2877 of 2012 and quash the proceedings in Criminal Case No. 4166 of 2011 pending on the file of Judicial Magistrate Class-I, Indore.”

7. An identical issue had arisen earlier before the Supreme court in **B.S. Joshi & Ors. vs. State of Haryana & Anr.** [(2003) 4 SCC 675]. In that case, the Supreme Court had held that

the inherent powers of the High Court under Section 482 of the Code are wide and unfettered. It upheld the powers of the High Court under Section 482 of the Code to quash the criminal proceedings where the disputes is of private nature and the compromise is entered into between the parties, who are willing to settle their differences amicably.

8) In **Gian Singh vs. State of Punjab [(2010) 15 SCC 118]**, a two-Judge Bench of the Supreme Court doubted the correctness of the decision of the Supreme Court in **B.S. Joshi** (supra) and referred the matter to a larger Bench. The question before the larger Bench was with regard to the inherent power of the High Court under Section 482 of the Cr.P.C. in quashing of the criminal proceedings against an offender who has settled his dispute with the victim of the crime in which he is allegedly involved is not compoundable under Section 320 of the Cr.P.C. The question referred to was lucidly explained by a three-Judge Bench in **Gian Singh vs. State of Punjab [(2012) 10 SCC 303]**. The court explained the difference between 320 and 482 of the Cr.P.C. in the following manner in paragraphs 57 and 59 as under:-

“ 57. 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 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 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.

XXXX

XXXX

XXXX

59. B.S. Joshi [(2003) 4 SCC 675], Nikhil Merchant [(2008) 9 SCC 677], Manoj Sharma [(2008) 16 SCC 1] and Shiji [(2011) 10 SCC 705] do illustrate the principle that High Court may quash criminal proceedings or FIR or complaint in exercise of its inherent power under Section 482 of the Code and Section 320 does

not limit or affect the powers of the High Court under Section 482. Can it be said that by quashing criminal proceedings in B.S. Joshi, Nikhil Merchant, Manoj Sharma and Shiji, this Court has compounded the non-compoundable offences indirectly? We do not think so. There does exist the distinction between compounding of an offence under Section 320 and quashing of a criminal case by the High Court in exercise of inherent power under Section 482. The two powers are distinct and different although ultimate consequence may be same viz., acquittal of the accused or dismissal of indictment.”

Thereafter, the Court answered the reference made to it in paragraphs No. 61 to 62 in the following words:-

“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 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-dominatingly 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 [(2003) 4 SCC 675], Nikhil Merchant [(2008) 9 SCC 677] and Manoj Sharma [(2008) 16 SCC 1] were not correctly decided. We answer the reference accordingly. Let these matters be now listed before the concerned Bench (es) concerned.”

9) After considering the law laid down by the Supreme Court in B.S. Joshi (Supra), Gian Singh (Supra) and Jitendra Raghuvanshi (Supra), it is amply clear that even if the offences are non compoundable, if they relate to matrimonial disputes and the Court is satisfied that the matter is settled amicably and without any pressure, section 320 of the Cr.P.C. could not be a bar to the exercise of powers of quashing of the First Information Report, complaint or the subsequent criminal proceedings.

10) Reverting back to the facts and circumstances of the present case, it is evident that the parties have decided to bury

all the controversies by way of an out of court settlement and have agreed for mutual divorce, which is also pending before the Court of Principal Judge, Family Court, Patna. The amount of Rs. 2, 05, 0000/- has already been paid by the petitioner to the Opposite Party No. 3.

11) Consequently, and keeping in mind the decisions of the Supreme Court, hereinabove, I am of the view that allowing the further proceeding to continue in the Court of the Magistrate may lead to insurmountable harassment, agony and pain not only to the accused but also to the Opposite Party No./ 3, who is wife of the petitioner.

12) Accordingly, the impugned order dated 06.11.2013 passed by the learned Sub Divisional Judicial Magistrate, Darbhanga in C.R. No. 746 of 2013/ T.R. No. 3814 of 2013 and all consequential orders passed in connection with the aforesaid police case are hereby quashed.

13) At this stage, I must record that the petitioner Niraj Sarswati @ Neeraj Sarswati must physically remain present on each and every date in the Court in Matrimonial case No. 105 of 2013. In case of his failure to co-operate with the disposal of the matrimonial case, this Court may recall the order quashing the criminal prosecution as the same has been passed purely on the basis of compromise arrived at between the parties. The Opposite Party No. 2 is also expected to cooperate with the early disposal of

the matrimonial case.

14) The learned Principal Judge, Family Court, Patna is directed to take up the matter on the priority basis and dispose of the same as early as possible, preferably within two months from the receipt of copy of this order.

With these observations and directions, this application stands allowed.

The Registry is directed to transmit a copy of the order to the Court of Principal judge, Family Court, Darbhanga forthwith.

(Nilu Agrawal, J)

Sudha/-

U		T	
---	--	---	--