

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.46675 of 2015

Arising Out of PS.Case No. -473 Year- 2014 Thana -PHULWARI District- PATNA

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1. Navaneet Kumar Son of Late Vinod Kumar Lal
 2. Meena Lal Wife of Late Vinod Kumar Lal

Both resident of B 1/3 Purnendu Nagar, P.S. Phulwari Sharif, District- Patna.

.... Petitioners

Versus

1. The State of Bihar.
2. Pranati Das, daughter of Arun Kumar Das Resident of Church Road, Chandwara, P.S. and Town- Muzaffarpur, Present residing at C/o Ramesh Kumar Flat No.401, Ram Krishna Apartment, Road No.12, District Patna.

.... Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. Ratnesh Kumar Singh, Advocate
For the State : Mr. Uday Pratap Singh, APP
For the O. P. No. 2 : Ms. Shilpi Keshri, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 26-04-2016

In the present application preferred under Section 482 of the Code of Criminal Procedure, 1973 (for short “CrPC”), the petitioners have prayed for quashing the entire criminal prosecution including the order dated 17.11.2014 passed by the learned Judicial Magistrate, 1st Class, Patna in connection with Phulwari Sharif P. S. Case No. 473 of 2014, whereby finding a *prima facie* case to be made out for the offences punishable under Sections 498-A, 341, 323/34 of the Indian Penal Code (for short “IPC”) and Sections 3

and 4 of the Dowry Prohibition Act, 1961 (for short “DPA”) the petitioners have been summoned to face trial.

2. Bereft of unnecessary details the facts, which are necessary to be stated, are that the first information report (for short “FIR”) of Phulwari Sharif P. S. Case No. 473 of 2014 dated 09.08.2014 was registered under Section 498-A/34 of the IPC and Sections 3 and 4 of the DPA on the basis of a written report submitted by the opposite party no. 2, namely, Pranati Das to the Officer-in-Charge of Phulwari Sharif Police Station. The informant/opposite party no. 2 has stated in her written report that immediately after she was married to the petitioner no. 1 Navaneet Kumar on 13.05.2011, her husband and petitioner no. 2, i.e., mother-in-law respectively started harassing her for dowry.

3. On completion of investigation, the police submitted their report under Section 173(2) of the CrPC, pursuant to which vide impugned order dated 17.11.2014 cognizance has been taken against the petitioners for the offences punishable under Sections 498-A, 341, 323/34 of the IPC and Sections 3 and 4 of the DPA and they have been summoned to face trial.

4. Mr. Ratnesh Kumar Singh, learned counsel appearing for the petitioners has submitted that during the pendency of the instant case, charges have been framed and the



informant has already been examined during trial as P.W. 1. It has been contended that in her deposition made before the learned Magistrate, the informant has clearly stated that she has settled the dispute with the petitioners and a compromise petition has already been filed in the court. She has further stated in her deposition that an application under Section 13 B of the Hindu Marriage Act, 1955 for the grant of decree of divorce by mutual consent was filed in the court of Principal Judge, Family Court and in view of terms of compromise arrived at between the parties, she has received Rs.19 lakh as permanent alimony.

5. The learned counsel for the petitioners has stated that even though the parties have settled their dispute and a compromise deed has already been filed in the court, the learned Magistrate is proceeding with the trial, which would serve no useful purpose.

6. Ms. Shilpi Keshri, learned counsel appearing for the opposite party no. 2, has supported the submissions advanced at the Bar by the learned counsel for the petitioners. She has contended that in view of the compromise arrived at between the parties, opposite party no. 2 is not interested at all in prosecuting the petitioners in the criminal trial. She has further contended that in Matrimonial Case No. 5688 of 2014, the informant Pranati Das

has deposed before the Principal Judge, Family Court, Patna that in terms of the compromise, Rs.19 lakh has been deposited by the petitioner no. 1 vide Demand Draft No.610515, which would be received by her from the court and she would withdraw Phulwari Sharif P. S. Case No. 473 of 2014 instituted against the petitioners.

7. Learned counsel for the opposite party no. 2 has further contended that after recording the statements of the parties, the Principal Judge, Family Court, Patna has granted decree of divorce by mutual consent vide judgment and order dated 25.02.2016.

8. A copy of the judgment dated 25.02.2016 has also been produced in course of hearing of the matter. Let the same be kept on record.

9. The operative part of the judgment of Matrimonial Case No. 5688 of 2014, whereby the learned Principal Judge, Patna has dissolved the marriage by mutual consent is reproduced hereunder :

“4. Both, petitioner, Pranati Das and opposite party, Navaneet Kumar have stated in their evidence before this Court that the marriage of both parties was solemnized on 31/05/2011 as per Hindu Rites and Customs at Muzaffarpur. After few days of the marriage, various differences in their thoughts were cropped up and



led to such an extent that together living was not possible and due to that both are living separately since 31/01/2014. They have not been blessed with any issue. Both parties decided to take divorce with their sweet will. Both admitted that a Draft bearing no.610515 dated 24/02/2016 of Rs.19,00,000/- (Rupees Nineteen Lac) has been deposited in the Court, which will be received by the petitioner as permanent alimony. They further stated in their evidence that they have got no objection, if decree of divorce is passed.

In cross-examination both admitted that after getting decree of divorce on the mutual consent basis, both parties will be free to live independently with their sweet will. Petitioner admitted that she will withdraw the case bearing Phulwari P. S. Case No. 473 of 2014 pending in the court of the SDJM. They have prayed for decree of divorce on the basis of mutual consent.

5. On consideration of the case and evidences adduced on behalf of the parties and entire facts and circumstances discussed above, I came to the conclusion that the witnesses have fully corroborated the averments as alleged by them in the petition filed under Section 13 B of Hindu Marriage Act and both have stated that they want dissolution of their marriage on the basis of mutual consent as they are living separately since 31/01/2014. I find and hold that the marriage

between the petitioner, Pranati Das and opposite party, Navaneet Kumar is liable to be dissolved by decree of divorce on mutual consent as prayed for.

6. *It is therefore,*

ORDERED

that the matrimonial case be and the same is hereby decreed in terms of Section 13 B of Hindu Marriage Act, 1955. The marriage between the petitioner, Pranati Das and opposite party, Navaneet Kumar solemnized on 31/05/2011 is hereby dissolved by decree of divorce on the basis of their mutual consent.

Let a decree be drawn accordingly.”

10. Mr. Uday Pratap Singh, learned Additional Public Prosecutor has contended that the offences punishable under Section 498-A of the IPC as well as Section 4 of the DPA under which the cognizance has been taken are not compoundable in nature. Hence, the prosecution case cannot be quashed on the basis of compromise arrived at between the parties. He has further contended that since the trial is going on, it would not be proper for this Court to terminate the same at this stage.

11. I have heard learned counsel for the parties and perused the record.

12. An identical issue had arisen before the



Supreme Court in **B. S. Joshi & Ors. Vs. State of Haryana & Anr. [(2003) 4 SCC 675]**. In that case, the informant had registered a case under Sections 498-A, 323 and 406 of the IPC against her husband, father-in-law, mother-in-law and brother-in-law. Subsequently, the informant filed an affidavit that the FIR was registered at her instance due to temperamental differences and implied imputations. Her disputes with the accused persons had been finally settled and she and her husband had agreed for mutual divorce. The accused persons of the case had filed an application before the High Court seeking quashing of the FIR. The High Court had declined to quash the FIR as the offences alleged under Section 498-A and 406 of the IPC were non-compoundable. Being aggrieved by the judgment of the High Court, the accused persons preferred an appeal before the Supreme Court. After hearing the parties, the Supreme Court held that the inherent powers of the High Court under Section 482 of the CrPC are wide and unfettered. It upheld the powers of the High Court under Section 482 of the CrPC to quash the criminal proceedings where the dispute is of private nature and the compromise is entered into between the parties, who are willing to settle their differences amicably. The Court further held that the High Court ought to have quashed the criminal proceedings by accepting the

agreement arrived at between the parties.

13. Similar views have been expressed by the Supreme Court in the matter of **Nikhil Mercant Vs. C.B.I. [(2008) 9 SCC 677]** and **Manoj Sharma Vs. State [(2008) 16 SCC 1]**.

14. In **Gian Singh Vs. State of Punjab [(2010) 15 SCC 118]**, a two-Judge Bench of the Supreme Court doubted the correctness of the decisions of the Supreme Court in **B. S. Joshi** (supra), **Nikhil Mercant** (supra) and **Manoj Sharma** (supra) and referred the matter to a larger Bench.

15. The question before the larger Bench was with regard to the inherent power of the High Court under Section 482 of the CrPC in quashing 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 CrPC.

16. The question referred to was lucidly explained by a three-Judge Bench in **Gian Singh Vs. State of Punjab [(2012) 10 SCC 303]**. The larger Bench explained the difference between 320 and 482 of the CrPC in the following manner in paragraphs 57 and 59 :-

“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.

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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.”

17. Apart from explaining the differences between the two provisions in the manner aforesaid, the Supreme Court also described the extent of power under Section 482 of the CrPC in quashing the criminal proceedings in the cases where the parties had settled the matter although the offences are not compoundable in the following manner in paragraph 58 :-

“58. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and



consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crime- doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of

offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed.”

18. Thereafter, the larger Bench of the Supreme Court answered the reference in paragraphs 61 and 62 in the following words :-

“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 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 [(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.”

19. Thus, I find that the three-Judge Bench of the Supreme Court has clearly held in **Gian Singh** (supra) that in respect of serious offences like murder, rape, dacoity, etc. or other offences of mental depravity under IPC or offences of moral turpitude under special statute, like Prevention of Corruption Act or the offences committed by public servants while working in that



capacity cannot be quashed merely on the ground of settlement between the parties but the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and offender and the victim has settled all disputes amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted. The Supreme Court has further held that under such circumstances by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated.

20. In view of the law laid down by the larger Bench of the Supreme Court in **Gian Singh** (supra), it becomes amply clear that 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, Section 320 of the CrPC would not be a bar to the exercise of powers of quashing of the first information report, complaint or the subsequent criminal proceedings.

21. Reverting back to the facts and circumstances of

the present case, it would be evident that the entire controversy had arisen due to domestic and matrimonial discord and differences and since the matter has amicably been settled between the parties and the informant is not willing to pursue the matter, no useful purpose would be served by continuing with the proceeding in the court below.

22. Consequently and keeping in mind the facts of the present case and the decisions of the Supreme Court as discussed, hereinabove, the first information report, the report submitted by the police under-Section 173(2) of the CrPC, the impugned order dated 17.11.2014 passed by he learned Judicial Magistrate, Ist Class, Patna and the entire criminal proceedings in connection with Phulwari Sharif P. S. Case No. 473 of 2014, are hereby quashed.

23. The application stands allowed, accordingly.

(Ashwani Kumar Singh, J.)

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