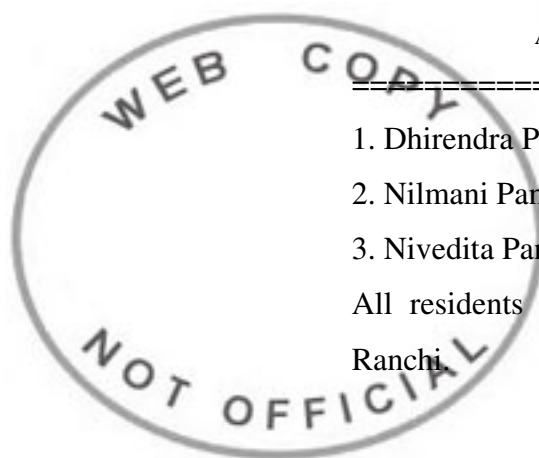




IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.41551 of 2015

Arising Out of PS.Case No. -237 Year- 2013 Thana -RUPASPUR District- PATNA

=====

1. Dhirendra Pandey, Son of Late Ramchandra Pandey
2. Nilmani Pandey, wife of Dhirendra Pandey
3. Nivedita Pandey, daughter of Dhirendra Pandey
All residents of Mohalla-A-6, Laxmi Ganesh Apartment, P.S.-Kanke, District- Ranchi

.... Petitioners

Versus

1. The State of Bihar.
2. Shweta Prabhat, wife of Dr. Prashant Kumar, resident of Mohalla-Veer Basawan Nagar, P.S.-Rupaspur, District-Patna.

.... Opposite Parties

With

Criminal Miscellaneous No. 41359 of 2015

Arising Out of PS.Case No. -237 Year- 2013 Thana -RUPASPUR District- PATNA

=====

Dr. Prashant Kumar, son of Dhirendra Pandey, resident of Mohalla- A-6, Laxmi-Ganesh Apartment, P.S.- Kanke, District- Ranchi.

.... Petitioner

Versus

1. The State of Bihar
2. Shweta Prabhat, wife of Dr. Prashant Kumar, resident of Mohalla-Veer Basawan Nagar, P.S.- Rupaspur, District- Patna

.... Opposite Parties

=====

Appearance :

Both in Cr.Misc. No.41551 of 2015 & Cr.Misc. No.41359 of 2015

For the Petitioner/s : Mrs. Soni Srivastava, Advocate
Mr. Amit Prakash, Advocate
Mrs. Madhuri Kumari, Advocate

For the Opposite Party No.2: Mr. Devendra Prasad Singh, Advocate

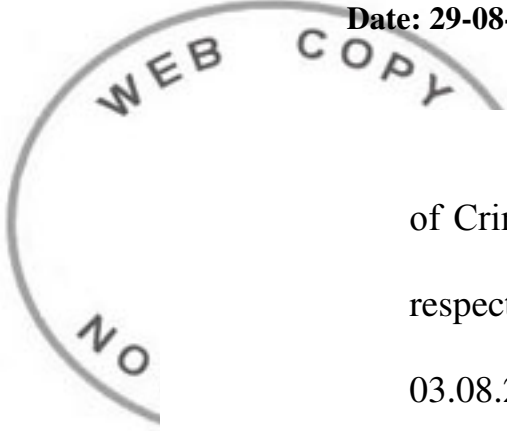
For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 29-08-2016



These two applications under Section 482 of the Code of Criminal Procedure (For short 'Cr.P.C.') have been filed by the respective petitioners seeking quashing of the order dated 03.08.2015 whereby the Additional Chief Judicial Magistrate, Danapur took cognizance against the petitioners of the offences under Sections 498-A, 323/34 of the Indian Penal Code and Sections 3 & 4 of the Dowry Prohibition Act in connection with Rupaspur P.S. Case No. 237 of 2013.

2. The case, as per the allegations of the opposite party No. 2, is summarized hereinbelow:-

(a) It has been stated in the written report of opposite party No. 2 that her marriage was solemnized with the petitioner, Dr. Prashant Kumar, on 10.11.2012. It is alleged that she was being beaten up and abused after few days of her marriage.

(b) It is further alleged that the husband, father-in-law, mother-in-law and sister-in-law made demand of money and car from her and she accordingly informed her brother Abhishek Anand, a Train Ticket Examiner, posted at Ara, Bhojpur.

(c) It is alleged that the demand was again made and then Rs. 30 Lakhs was provided for the establishment of the private clinic of the husband. It

has been further alleged that after '*Holi*' in March, 2013, she was again assaulted and sent to Patna.

(e) It is also alleged that again both the parties met on 21st November, 2013 for resolving the issue but of no avail.

3. On the basis of the aforesaid allegations, Rupaspur P.S. Case No. 237 of 2013, dated 22.11.2013, was registered under Sections 498-A, 406 of the Indian Penal Code and Sections 3 & 4 of the Dowry Prohibition Act.

4. On completion of investigation, the investigating officer submitted police report under Section 173(2) of the Cr.P.C. Thereafter, on perusal of the allegations made in the FIR, the statements of witnesses recorded under Section 161(3) of the Cr.P.C. and substance of accusation noted down in the police report submitted under Section 173(2) of the Cr.P.C., the Additional Chief Judicial Magistrate, Danapur, vide order dated 03.08.2015, took cognizance of the aforesaid offences against the petitioners of these cases.

5. Being aggrieved and dissatisfied with the order impugned dated 03.08.2015, Dr. Prashant Kumar, husband of the opposite party No. 2, filed the instant application under Section 482 of the Cr.P.C., vide Cr. Misc. No. 41359 of 2015. The other accused persons also challenged the impugned order vide Cr. Misc. No.

41551 of 2015.

6. Since the order under challenge is common, these applications were heard together and, vide order dated 12.10.2015, this Court had issued notice to the opposite party No. 2, whereafter, the opposite party No. 2 entered into appearance through counsel.

7. Heard Mrs. Soni Srivastava, learned counsel appearing on behalf of the petitioners, Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor of the State and Mr. Devendra Prasad Singh, learned counsel appearing for the opposite party No. 2.

8. It is submitted by Mrs. Soni Srivastava, learned counsel for the petitioners that the parties through the well wishers entered into a compromise and in furtherance of the same, a joint compromise petition dated 11.04.2014 between the petitioner and the opposite party No. 2 was filed before the court below. It was agreed that the opposite party No. 2 would be paid Rs. 18.50 lakhs in lieu of the compromise as one time settlement.

9. It is further submitted that in furtherance of the terms of compromise, opposite party No. 2 and her husband filed a petition for mutual divorce under Section 13-B of the Hindu Marriage Act, 1961, bearing Matrimonial Case No. 5281 of 2014 dated 22.04.2015, in the court of Principal Judge, Family Court,

Patna. The joint compromise petition dated 11.04.2015 and the petition for mutual divorce filed under Section 13-B of the Hindu Marriage Act in the court of the Principal Judge, Family Court, Patna, have been brought on record and marked as Annexures 2 & 3 respectively to the present application.

10. It is submitted that in terms of the compromise the first installment of Rs. 6 lakhs was to be deposited in the court of Principal Judge after the testimony of both the parties accepting the divorce in the case while the second installment of Rs. 12.50 lakhs was to be deposited after acceptance of compromise petition and consequential closure of all the cases between the parties. In continuation of the same, Rs. 6 lakhs was deposited in the court of Principal Judge, Family Court, Patna, on 15th May, 2014 much before the schedule date of June, 2014 vide Cheque No. 027452 dated 15.05.2014 of the Union Bank of India, Kanke Branch, Ranchi.

11. It has been submitted that on completion of investigation, the police submitted charge-sheet on 15th June, 2015 against all the accused named in the FIR except the sister-in-law of the informant, but the Magistrate differed with the police report and took cognizance of the offences against all. It has been submitted that as the police have submitted charge-sheet and the court took

cognizance of the offences, the matter of compromise between the parties got delayed.

12. It has also been brought to my notice that a joint compromise petition has also been filed by the parties before this Court in Cr. Misc. No. 41359 of 2015. The petitioner, Dr. Prashant Kumar has also filed an affidavit that he has deposited the demand draft of Rs. 12.50 Lakhs, vide D.D. No. 112176 dated 09.08.2016 of Union Bank of India, Kanke Branch, Ranchi in the name of the opposite party No. 2 before the court of Principal Judge, Family Court, Patna in Matrimonial Case No. 5281 of 2014. The submission is that no useful purpose would be served by continuing with the criminal prosecution in view of the compromise arrived at between the parties, as no public policy is involved in this case and the case does not come within the definition of heinous offences.

13. Mr. Devendra Prasad Singh, learned counsel appearing for the opposite party No. 2 does not oppose or controvert the submissions made by the learned counsel for the petitioners. He has submitted that due to incompatibility, the parties willfully decided to dissolve the marriage and live their life in their own way. He has submitted that the compromise is willful and it has been arrived at without any threat or coercion. He has also submitted that in view of the compromise arrived at between the parties the

opposite party No. 2 is not interested in pursuing the criminal case before the court below.

14. Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor for the State has submitted that since the case arises out of a matrimonial dispute and the parties have amicably settled their dispute outside the court, the State has got no objection, if the criminal prosecution is set aside.

15. Having heard the parties and perused the record, I find that the offences punishable under Sections 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]**.

16. In that case, the marriage of Jitendra Raghuvanshi and Babita Raghuvanshi was solemnized on 22.02.2002 as per Hindu rites and rituals. After the marriage, parties were residing together as husband and wife. On 05.03.2003 an FIR was registered for the offences punishable under Sections 498-A



and 406 read with 34 of the IPC at the instance of Babita Raghuvanshi owing to the harassment and torture meted out to her in the matrimonial home by her husband and his relatives. Another criminal case was also registered against Jitendra Raghuvanshi in 2011 for the offences punishable under Sections 498-A and 406 of the IPC and Sections 3 & 4 of the Dowry Prohibition Act, 1961. In the year 2012, with the help and intervention of the family members, friends and well wishers the parties amicably settled their differences by way of mutual settlement. A compromise application was filed for dropping of the criminal proceedings in both the cases instituted at the behest of Babita Raghuvanshi. The informant Babita Raghuvanshi also filed an affidavit stating that she did not wish to pursue the criminal proceedings against the accused persons. However, the trial court rejected the said application. Being aggrieved, Jitendra Raghuvanshi filed an application before the High Court invoking its inherent powers under Section 482 of the Code to quash the criminal proceedings launched against them. The High Court dismissed the application filed by the accused persons stating that the Court has no power to quash the criminal proceedings in respect of the offences under Section 498-A of the Indian Penal Code. Aggrieved by the order passed by the High Court, Jitendra Raghuvanshi filed an appeal before the Supreme

Court.

17. 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 relating to matrimonial dispute and held in paragraphs No. 15 to 17 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 FIR, 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.”

18. 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.

19. 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 to 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.

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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.”

20. Thereafter, the Court answer 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 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.”



21. 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 parties have settled the same amicably and without any pressure, Section 320 of the Cr.P.C. would not be a bar to the exercise of powers of quashing of the First Information Report, complaint or the subsequent criminal proceedings.

22. Reverting back to the facts and circumstances of the present case, it would be evident that the parties have decided to bury all the controversies by way of an out of court settlement. The petitioners have also acted upon the terms of compromise and have deposited the entire amount agreed to between the parties in the court of Principal Judge, Family Court, Patna. The first installment of Rs. 6 lakhs has already been withdrawn by the opposite party No. 2 and the balance amount of Rs. 12.50 Lakhs has been deposited by the petitioner Dr. Prashant Kumar by way of Demand Draft, which is in the custody of the court.

23. 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 Magistrate in case

of the petitioners may lead to insurmountable harassment, agony and pain not only to the accused, but also to the informant/opposite party No. 2.

24. Accordingly, the impugned order dated 03.08.2015, passed by the Additional Chief Judicial Magistrate, Danapur in Rupaspur P.S. Case No. 237 of 2013, and all consequential orders passed in connection with the aforesaid police case are, hereby, quashed.

25. Both these applications stand allowed.

26. At this stage, I must record that the petitioner Prashant Kumar must physically remain present on each and every date in the court in Matrimonial Case No. 5281 of 2014. 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.

27. The learned Principal Judge, Family Court, Patna is directed to take up the matter on priority basis and dispose of the same as early as possible, preferably within two months from today. The opposite party No. 2 is also expected to co-operate with the early disposal of the matrimonial case. The learned Principal Judge is further directed to release the Demand draft deposited in the court

to the opposite party No. 2 Smt. Shweta Prabhat immediately after disposal of the matrimonial case.

28. The Registry is directed to transmit a copy of the order to the court of Principal Judge, Family Court, Patna forthwith.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	-----
Uploading Date	02.09.2016
Transmission Date	02.09.2016