

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.43407 of 2015

Arising Out of PS.Case No. -1152 Year- 2009 Thana -PATNA COMPLAINT CASE District-
PATNA

- =====
1. Kanti Devi W/o S/o Late Rajendra Prasad, permanent resident of Bajitpur, P.S-
Karai Pursurai, District- Nalanda
 2. Nitish Kumar S/o Late Rajendra Prasad, permanent resident of Bajitpur, P.S-
Karai Pursurai, District- Nalanda

.... Petitioner/s

Versus

1. The State of Bihar
2. Pinki Kumari W/o Nitish Kumar at present resident of Railway Quarter No, 627-
A Loco Colony, Khagaul, P.S.- Khagaul, Dist. Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rabi Bhushan Prasad, Adv.
For Opposite Party No.2 : Mr. Ranjan Kumar Sinha, Adv.
For the State : Dr. M.K. Gautam, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 22-04-2016

Heard Mr. Rabi Bhushan Prasad, learned counsel for
the petitioners, Mr. Ranjan Kumar Sinha, learned counsel for the
Opposite Party No.2 and Mr. M.K.Gautam, learned counsel for the
State.

2. By way of the present application preferred under
Section 482 of the Code of Criminal Procedure (for short 'CrPC'), the
petitioners seek quashing of the order dated 25th January, 2010 passed
by the learned Sub Divisional Judicial Magistrate, Patna in Complaint
Case No. 1152(C) of 2009, whereby, finding a prima facie case to be
made out under Section 498-A of the Indian Penal Code (for short

‘IPC’) and Section 4 of the Dowry Prohibition Act, 1961, the petitioners have been summoned to face trial.

3. In Complaint Case No. 1152(C) of 2009, the complainant has alleged that she was married to the petitioner no.2 Nitish Kumar on 11th July, 2008 at Chitranjan Park in New Delhi as per Hindu rites and customs and at the time of marriage her father had given costly gifts and ornaments to the accused persons and had spent Rs.8 lakhs in the marriage ceremony. After marriage, she went to Faridabad and started living there with her husband. However, the petitioners started demanding one Maruti Car and on failure to fulfill the said demand, she was being tortured in various ways. When her father tried to resolve the dispute through negotiation, he was also threatened and abused.

4. The complainant was examined on oath and in course of enquiry conducted under Section 202 of the CrPC, some witnesses were also examined on her behalf and, thereafter, vide order dated 25th January, 2010, cognizance of the offences under Section 498-A of the IPC and Section 4 of the Dowry Prohibition Act was taken and the petitioners were summoned to face trial.

5. The aforesaid order dated 25th January, 2010 is under challenge in the present case.

6. It has been contended by the learned counsel for the



petitioners that as a matter of fact the petitioner no.2 being husband of the opposite party no.2 had also filed a matrimonial case in the court of District Judge, Faridabad under Sections 11, 12 and 13 of the Hindu Marriage Act, 1955 for declaring the marriage between the parties as null and void, which was transferred to the court of Principal Judge, Family Court, Patna by order of the Supreme Court.

7. It has been contended that due to intervention of common friends, relatives and well-wishers of both the parties, the matter has now been amicably settled and the parties have resolved to compromise all disputes between them and on that understanding a joint compromise petition for a decree of divorce was filed in the court of the learned Additional Principal Judge Family Court, Patna, where the matrimonial case between the parties was pending. In terms of the compromise, petitioner no.2 Nitish Kumar had already paid Rs.10,00,000/- (Rupees ten lakhs) as permanent alimony to the complainant-opposite party no.2. The parties have also agreed that they would not proceed in any case against each other. Accordingly, in terms of the compromise arrived at between the parties in Matrimonial Case No. 553 of 2010, the parties have also filed a joint compromise petition before the learned Sub Divisional Judicial Magistrate, Patna for dropping Complaint Case No.1152(C) of 2009.

8. It has been contended that since the offences punishable



under Section 498-A of the IPC and Section 4 of the Dowry Prohibition Act are not compoundable, the learned Sub Divisional Judicial Magistrate has not passed any order on the compromise petition filed by the parties in his court. It has been further contended that in view of the compromise between the parties, no useful purpose would be served by keeping the matter pending and the same would amount to an abuse of process of law.

9. Learned counsel for the complainant-opposite party no.2 concedes that the parties have settled their differences outside the court and in terms of the compromise the complainant-opposite party no.2 has already received Rs.10 lakhs as permanent alimony. He has submitted that in view of the compromise arrived at between the parties, the complainant does not want to proceed further in the complaint case.

10. Learned counsel for the State has contended that since the parties have already compromised the case and the case arise out of a complaint, the State has no objection to the present application seeking quashing of the complaint case.

11. I have heard the parties and perused the materials available on record.

12. It is true that the offences under Section 498-A of the IPC and Section 4 of the Dowry Prohibition Act are not



compoundable in terms of Section 320 of the CrPC. However, the Supreme Court in the matters of *B.S.Joshi & Ors. Vs. State of Haryana & Anr.* [(2003) 4 SCC 675], *Nikhil Merchant Vs. C.B.I.* [(2008) 9 SCC 677] and *Manoj Sharma Vs. State & Ors.* [(2008) 16 SCC 1], has held that the High Court may quash the proceedings or FIR or complaint in exercise of its inherent power under Section 482 of the CrPC and Section 320 of the CrPC does not limit or affect the powers of the High Court under Section 482 of the CrPC.

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

14. 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.

15. A three-Judge Bench of the Supreme Court in *Gian Singh Vs. State of Punjab* [(2012) 10 SCC 303] answered the reference made to it 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."

16. Thus, I find that the Supreme Court has settled the issue that serious offences like murder, rape, dacoity or other offences of mental depravity under IPC or offences of moral turpitude under special statute, like Prevention of Corruption Act or the offence 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 wrong is basically to the victim and offender and the victim has 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 FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted. The Court has held that under such circumstances by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated.

17. Keeping in mind the decision of the Supreme Court rendered in *Gian Singh Vs. State of Punjab [(2012) 10 SCC 303]*, this Court is of the view that allowing the complaint to continue would amount to an abuse of the process of the court. Accordingly, Complaint Case No. 1152(C) of 2009 and the entire proceedings arising out of the said case are, hereby, quashed.

18. The application stands allowed.

(Ashwani Kumar Singh, J)

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