

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38956 of 2011

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1. Ajit Kumar, S/o Basudeo Prasad, at present posted as Jharkhand Police at Petul Mari, P.S. & Distt. Dhanbad (Jharkhand)
 2. Basudeo Prasad, S/o Late Rameshwar Ram,
 3. Purnima Devi, W/o Basudeo Prasad. All resident of village – Hosir, P.O. Hosir, Police Station – Gomiya, District – Bokaro (Jharkhand)

.... Petitioner/s

Versus

1. The State of Bihar
2. Vinita Kumari, w/o Ajit Kumar, D/o Late Uma Shankar Singh, resident of village – Laraiyapanr (Sadham), P.S. Gomiya, District – Bokaro (Jharkhand). At present Lally Bagicha, Chandar, P.S. Civil Line, District Gaya (Bihar).

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Dr. Manoj Kumar, Advocate Mrs. Sweety Sinha, Advocate
For the State	:	Mr. Uma Shankar Prasad Singh, APP
For opposite party no.2	:	None

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

Date: 10-05-2017

Heard learned counsel for the petitioners. In spite of service of notice, opposite party no.2, who is wife of petitioner no.1, Ajit Kumar, has neither tendered her appearance nor appeared in Court through her counsel. However, learned A.P.P. for the State appears.

2. This application under Section 482 of the Code of Criminal Procedure (hereinafter referred to as the 'Cr.P.C.') has been filed for quashing of the order dated 06.12.2010 passed by the learned Sub-Divisional Judicial Magistrate, Gaya in Complaint Case No. 1921 of 2009 whereby and whereunder cognizance under Section 498A of



the Indian Penal Code and Section 4 of the Dowry Prohibition Act has been taken while issuing summons against these petitioners.

3. The case in short, as lodged by opposite party no.2-complainant, is that her marriage was solemnized with petitioner no.1, Ajit Kumar according to Hindu rights at Gaya on 20.07.2004. At the time of marriage, a number of articles and cash with gold ornaments were given, but after three months, all the nine accused persons, who are family members of her husband-petitioner no.1, started torturing her, demanding Rs. one lac cash. She gave birth to a male child on 19.01.2008. On 29.09.2009 all the petitioners along with other accused tried to strangle the complainant, but due to interference of the co-villagers, she was saved, but she was ousted from the matrimonial house after snatching everything from her. Although, there were nine accused persons, but the learned Magistrate has taken cognizance against these three petitioners, who are husband, father-in-law and mother-in-law respectively of the complainant.

4. Learned counsel for the petitioners submits that petitioner no.1, husband of the complainant had submitted before this Court on 10.12.2013 that he is ready to keep the complainant as wife with full dignity and honour and in this connection, he refers to an application filed on 17.11.2011 by the complainant herself before the Court of the learned Sub-Divisional Judicial Magistrate, Gaya in the



aforesaid case stating therein that she undertakes to pay due respect to her father-in-law and mother-in-law and she will never misbehave with the elders of matrimonial house, which has been taken note by the learned Sub-Divisional Judicial Magistrate, Sadar Gaya in its order-sheet dated 17.11.2011 while granting bail to petitioner no.1. He submits that opposite party no.2/ complainant-wife has chosen not to appear before this Court, which indicates that complainant is living with dignity and honour with the petitioners.

5. Learned A.P.P. for the State has submitted that since the case arises out of the matrimonial dispute and from the records, it appears that the parties have amicably settled their dispute, the State has got no objection, if the order of cognizance is set aside.

6. Having heard the counsel for the petitioners and the State and perused the record, I find that the offences punishable under Sections 498-A of the Indian Penal Code and Section 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].



7. 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.

8. 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.”

9. 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.

10. 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.”

11. 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 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.”

12. 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.

13. 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 and a petition to the said effect has been filed by the complainant before the Sub-Divisional Judicial Magistrate, Gaya on 17.11.2011 which has been taken note of by the learned Sub-Divisional Judicial Magistrate, Gaya in its order dated



17.11.2011. 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 unsurmountable harassment, agony and pain not only to the accused, but also to the complainant-opposite party no.2.

14. For the reasons stated above, allowing the prosecution to continue as against the petitioners would amount to gross abuse of the process of the Court.

15. In the result, this application is allowed and the entire proceedings, including the order taking cognizance dated 06.12.2010 passed by the learned Sub-Divisional Judicial Magistrate, Gaya in Complaint Case No. 1921 of 2009 is hereby quashed.

(Nilu Agrawal, J.)

Arjun/-

AFR/NAFR	AFR
CAV DATE	03.05.2017
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