

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.41471 of 2016

Arising Out of PS. Case No.-237 Year-2016 Thana- GAYA COMPLAINT CASE District-
Gaya

1. M.A. Arshad, Son of Md. Abid
2. Md. Abid, Son of late Md. Abdul Khalique
3. Jahan Ara, Wife of Md. Abid All resident of Mohalla- Mayaganj Kuppaghat, Police station Barari, Police Station- Barari, District Bhagalpur.
4. Md. Shamim, Son of Md. Sadaruddin
5. Gajala Afreen, wife of Md. Shamim Both Resident oif Mohalla- Lodipur Police Station- Lodipur District Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Shaheena Parween Wife of M.A. Arshad , Daughter of Abdul Raheem, Resident of Mohalla- Mayaganj Kuppaghat, Police Station Barari, Police Station- Barari, District Bhagalpur.At Present Ghughari Tand, PS Bishnupad, District Gaya.

... .. Opposite Party/s

Criminal Miscellaneous No. 35819 of 2016

Arising Out of PS. Case No.-237 Year-2016 Thana- GAYA COMPLAINT CASE District-
Gaya

M. A. Arshad, Son of Md. Abib, Resident of Mohalla- Mayaganj Kuppaghat, Police Station- Barari , District- Bhagalpur

... .. Petitioner/s

Versus

1. The State of Bihar
2. Shaheena Parween, Wife of M.A. Arshad, Daughter of Abdul Raheem, Resident of Mohalla- Mayaganj Kuppaghat, Police Station- Barari , District- Bhagalpur At Present Ghughari Tand, Police Station- Bishnupad, District- Gaya

... .. Opposite Party/s

Appearance :

(In Criminal Miscellaneous No. 41471 of 2016)

For the Petitioner/s : Mr. Md. Najmul Hodda

For the Opposite Party/s : Mr. MD. FAHIMUDDIN

(In Criminal Miscellaneous No. 35819 of 2016)

For the Petitioner/s : Mr. Md. Najmul Hodda

For the Opposite Party/s : Mr. SRI SANJAY KUMAR

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH



ORAL JUDGMENT

Date : 22-09-2017

Cr. Misc. No. 41471 of 2016 has been filed with a prayer for quashing the order dated 11.5.2016, passed by the learned S.D.J.M., Gaya in Complaint Case No. 237 of 2016, whereby process has been directed to be issued after cognizance being taken for the offences punishable under Section 498A of the IPC and Section 4 of the Dowry Prohibition Act.

Whereas, Cr. Misc. No. 35819 of 2016 has been filed on behalf of petitioner M.A. Arshad, being the husband of the complainant, with a prayer for grant of anticipatory bail in the same complaint case.

Re: Cr. Misc. No. 41471 of 2016

Petitioner no.1 being the husband of the complainant, petitioner no. 2 being father-in-law, petitioner no. 3 being mother-in-law, petitioner no. 4 being brother-in-law (bahnoi) and petitioner no. 5 being married sister of the husband of the complainant, have challenged the order of cognizance in the present proceeding.

Statement has been made in paragraph 2 of the supplementary affidavit dated 1.9.2017, filed on behalf of the petitioners that



charges have still not been framed. Paragraph 2 of the Supplementary Affidavit reads as follows:

“That it is most respectfully submitted that vide order dated 11.5.2016 cognizance has been taken in this case under section 498(A) Indian Penal Code and section 4 of Dowry Prohibition Act against the petitioners but as yet charges have not been framed in this case.”

The prosecution case got initiated with the filing of the Complaint Case No. 237 of 2016 by Shaheena Parween, the complainant/O.P. No. 2 on 16.2.2016 before the learned C.J.M., Gaya alleging therein to the effect that the marriage between the complainant/O.P. No. 2 and petitioner no. 1 was performed on the assurance from the accused persons that the prospective bridegroom is a railway driver. The parents of O.P. No. 2 were ready to provide a small car and other articles as dowry, but Scorpio vehicle worth Rupees Fourteen Lacs was demanded by the in-laws. Consequently, Rupees Six lacs Fifty One Thousand was given through two cheques, with an assurance of making payment of remaining amount of Rupees Seven Lacs Fifty Thousand at the time of marriage. Subsequently, Rupees Five lacs Fifty Thousand was given in cash, whereas Rupees Two Lacs was given through account payee cheque. Thereafter, when the date of marriage was fixed further demand of Yamaha Fazer motorcycle was made and



that was also given to the petitioner no. 1, prior to the marriage. On the date of marriage, other electronic items, clothes, crockery and other such household articles were also given. After performance of rituals of marriage, the complainant went to matrimonial house, but the marriage was not consummated and subsequently, the complainant realized that the petitioner no. 1 used to chat with some other girl on mobile phone. The mother-in-law Jahan Ara assaulted the complainant and instigated the petitioner no. 1 to perform second marriage. Though the husband and mother-in-law, got the complainant to do the household work, but the husband of the complainant did not use to eat the food cooked by the complainant. The complainant, subsequently, came to know that her husband wanted to marry some other girl, but he performed marriage with the complainant only for the sake of dowry and this fact was disclosed to the complainant by her husband himself who used to force the complainant to talk to the girl, with whom he was in love with. The complainant tolerated the torture but ultimately, the father in law, brother in law, sister in law of the complainant started pressurizing her to leave the matrimonial house. When the complainant conveyed all the happenings to her mother, then on 29.11.2015 the complainant's elder brother and one brother-in-law came and took efforts to



resolve and pacify the issue and invited the accused persons on the occasion of marriage of maternal uncle, but the in-laws of the complainant declined to attend the marriage and ultimately, after retaining all her belongings, including the jewellery, the complainant was compelled to leave the matrimonial house.

Subsequently, on the basis of the solemn affirmation of the complainant and the statements of enquiry witnesses, process was issued for summoning the petitioners, after finding a prima facie case under Section 498A of the IPC and Sections 4 of the Dowry Prohibition Act. Hence, this application.

The petitioner no. 1, being husband of the complainant, preferred Cr. Misc. No. 35819 of 2016 with a prayer for grant of anticipatory bail. This Court, vide order dated 26.9.2016, on the joint prayer of the parties, referred the matter to the Mediation and Conciliation Centre of the State Legal Services Authority. The report of the Mediator dated 30.10.2017 reflects that the issue has been reconciled between the parties, as the petitioner no. 1 and the complainant have decided to part ways on payment of one time settlement amount of Rupees Nine Lacs One Thousand. The said amount has already been paid to the complainant. The parties have also agreed to withdraw the Matrimonial Case No. 72 of 2016 pending before the learned Principal Judge, Family Court,



Bhagalpur, as well as the present Complaint Case No. 237 of 2016 pending in the court of the learned SDJM, Gaya. The husband of the complainant has already returned the articles, given at the time of marriage to the complainant and the list of articles, as per the terms of agreement between them. The petitioner no. 1 has given divorce (Talaq) to the complainant for performing new marriage.

The terms of agreement read as follows:

“Both the parties came to the amicable settlement on the following terms and condition:-

1. Both the parties (the petitioner) namely M.A. Arshad and wife namely Shaheena Parween decided to live separately and the marriage was never consumated.
2. Both the parties came to the amicable settlement on total of one time settlement amount of Rs.9,01,000/- (Rupees Nine Lakh One Thousand only) paid in the form of two bank draft of Rs..5,00,000/- (Rupees Five lakh) and Rs.4,01,000/- (Rupees Four lakh One Thousand).
3. Both the parties will withdraw matrimonial case No. 72 of 2016 pending in the Court of Principal Judge Family Court Bhagalpur as well as complaint case No. 237 of 2016 pending in the court of S.D.J.M., Gaya.
4. The parties have taken back of the goods given at the time of marriage and for the same the list of received items is attached with this report (Enclosure herewith) dated 25.12.2016.



5. In the aforesaid terms and conditions settlement the boy Md. M.A. Arshad had given Talaque (divorce) to the girl (Shaheena Parween) is free to solemnized their new marriage after recording of the dissolution of marriage.

6. That now there remains no claim of any type with regard to matrimonial matter by the oposite party No.2 againswt the petitioner.

7. That the above contents of the agreement have been read over and explained to us in Hindi which we have fully understood and accepted the same.

8. That in the above terms and conditions a settlement has been arrived at between the parties and both have signed in presence of their learned counsel, who have also put their signature on this agreement.”

On the basis of the aforesaid agreement, between the parties, during mediation, a joint compromise petition dated 11.7.2017, bearing the signatures of the complainant and her husband petitioner no. 1, has been filed, which stipulates that they have decided to part ways on payment of one time settlement amount of Rupees Nine Lacs One Thousand and the same has been paid to the complainant. The petitioner no. 1 divorced the complainant and they have no objection if the present proceeding is quashed. The paragraph 3 of the joint compromise petition reads as follows:

“3. That in terms of compromise the petitioner no. 1 has handed over two bank drafts amounting to



Rs.9,01,000/- (nine lacs and one thousand) to the father of the complainant on 30.01.2017 before Mediation Centre by way of one time settlement as well as on the request of the complainant the petitioner no. 1 M.A. Arshad has orally divorced her as per the Mohammadan Law in the mediation centre itself in presence of the father, brother of the complainant which has been accepted by her and a memorandum of agreement has also been prepared between the parties on 30.01.2017 and both the parties and their relative lawyers have put their signature upon the memorandum in presence of the learned mediator.”

Before advertng to the issue of quashing of proceedings, as against the accused, for offence being non-compoundable in nature, it would be necessary to deliberate upon the law laid down by the Apex Court, in such cases.

In the case of State of Karnataka Vs. L. Muniswamy and Ors., reported in (1977) 2 Supreme Court Cases 699, the Apex Court while considering scope of power of quashing under section 482 of the Cr.P.C., held that in exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to a conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice so requires as the ends of justice are higher than the ends of mere law.



In the case of Madhavrao Jiwajirao Scindia & Ors. Vs. Sambhajirao Chandrojirao Angre & Ors., reported in (1988) 1 Supreme Court Cases 692, it was held that while exercising inherent power of quashing under section 482 of the Cr.P.C., it is for the High Court to take into consideration any special feature which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. It was further held that if in the opinion of the court chances of an ultimate conviction are bleak, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue. Hence, the court, taking into consideration the special facts of a case, quashed the proceeding.

No doubt, the offences under section 498A of the IPC and and Section 4 of the Dowry Prohibition Act are not compoundable but whether such prosecution on the basis of compromise between the parties, can be quashed in exercise of jurisdiction under section 482 of the Cr.P.C., was under consideration in the case of B.S. Joshi and Ors. Vs. State of Haryana and Anr., reported in (2003) 4 Supreme Court Cases 675, wherein it has been held that the object of introducing Chapter XX-A in the IPC is to prevent torture to a woman by her husband or by relatives of her husband, but where there is no likelihood of issue being reconciled, to secure the ends



of justice and to allow the woman to settle down in life at early stage, the inherent power under section 482 of the Cr.P.C. can be exercised to quash the criminal prosecution on basis of settlement.

Paragraph nos. 8 and 14 read as follows:

“8. It is thus, clear that Madhu Limaye's case does not lay down any general proposition limiting power of quashing the criminal proceedings or FIR or complaint as vested in Section 482 of the Code or extra ordinary power under Article 226 of the Constitution of India. We are, therefor, of the view that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 would not be a bar to the exercise of power of quashing. It is, however, a different matter depending upon the facts and circumstances of each case whether to exercise or not such a power.”

“14. There is no doubt that the object of introducing Chapter XX-A containing Section 498A in the Indian Penal Code was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hyper-technical view would be counter productive and would act against interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the



proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XXA of Indian Penal Code.”

In the case of Gian Singh Vs. State of Punjab, the petitioner was convicted under sections 420 and 120B of the IPC by the learned Magistrate. The convict filed an appeal challenging his conviction before the Sessions Judge. While his appeal was pending, he filed an application before the Sessions Judge for compounding the offence, but in the meantime, he also filed an application under section 482 of the Cr.P.C. before the High Court for quashing of the FIR on the ground of compounding of the offence. The said petition was dismissed by the High Court and then it was challenged before the Supreme Court, where the counsel for the petitioner relied upon the ratio laid down in the case of B.S. Joshi (supra), Nikhil Merchant Vs. CBI & Anr., reported in (2008) 9 Supreme Court Cases 677 and Manoj Sharma Vs. State and Ors., reported in (2008) 16 Supreme Court Cases 1, wherein the different Benches indirectly permitted compounding of non-compoundable offence. In spite of the fact that one of the Judges was a party to one of the judgments, the Court doubted the power of the Court to amend the statute and in view of the fact that permitting compounding offence in exercise of power under



section 482 of the Cr.P.C. will amount to amend the statute or it will amount to doing something indirectly, which cannot be done directly, the matter was referred to a larger bench and consequently, the Three Judges Bench in the case of Gian Singh Vs. State of Punjab, reported in (2012) 10 Supreme Court Cases 303, held that sub-section (9) of Section 320 of the Cr.P.C. mandates that no offence shall be compounded except as provided by this section. In view thereof, the composition of an offence has to be in accord with Section 320 of the Cr.P.C. and in no other manner. Paragraph 51 reads as follows:

“51. Section 320 of the Code articulates public policy with regard to the compounding of offences. It catalogues the offences punishable under Indian Penal Code which may be compounded by the parties without permission of the Court and the composition of certain offences with the permission of the court. The offences punishable under the special statutes are not covered by Section 320. When an offence is compoundable Under Section 320, abatement of such offence or an attempt to commit such offence or where the accused is liable Under Section 34 or 149 of the Indian Penal Code can also be compounded in the same manner. A person who is under 18 years of age or is an idiot or a lunatic is not competent to contract compounding of offence but the same can be done on his behalf with the permission of the court. If



a person is otherwise competent to compound an offence is dead, his legal representatives may also compound the offence with the permission of the court. Where the accused has been committed for trial or he has been convicted and the appeal is pending, composition can only be done with the leave of the court to which he has been committed or with the leave of the appeal court, as the case may be. The revisional court is also competent to allow any person to compound any offence who is competent to compound. The consequence of the composition of an offence is acquittal of the accused. Sub-section (9) of Section 320 mandates that no offence shall be compounded except as provided by this Section. Obviously, in view thereof the composition of an offence has to be in accord with Section 320 and in no other manner.”

However, while examining the purport of the inherent power incorporated under section 482 of the Cr.P.C. the Three Judge Bench has held that this provision is an overriding one. Paragraph 53 reads as follows:

“53. Section 482 of the Code, as its very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior court to prevent abuse of the process of any court or otherwise to secure the ends of justice. It begins with the words, 'nothing in this Code' which means that the provision is



an overriding provision. These words leave no manner of doubt that none of the provisions of the Code limits or restricts the inherent power. The guideline for exercise of such power is provided in Section 482 itself i.e., to prevent abuse of the process of any court or otherwise to secure the ends of justice. As has been repeatedly stated that Section 482 confers no new powers on High Court; it merely safeguards existing inherent powers possessed by High Court necessary to prevent abuse of the process of any Court or to secure the ends of justice. It is equally well settled that the power is not to be resorted to if there is specific provision in the Code for the redress of the grievance of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision of the Code.”

Section 482 of the Cr.P.C. saves the inherent power of the High Court enabling it to pass such order as necessary (i) to give effect to any order under this Code, (ii) to prevent the abuse of the process of any court and (iii) to otherwise secure the ends of justice.

The Supreme Court in the case of Gian Singh (supra), has held that 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 Cr.P.C. and in exercise of such power, the criminal cases having overwhelming and predominately civil flavour stand on a different footing for the purposes of quashing, particularly, the offences arising from commercial, financial, mercantile, civil, partnership or offences arising out of matrimonial dispute. However, the court should be reluctant to exercise such power in case of heinous and serious offences like murder, rape, dacoity etc.

Paragraph 61 reads as follows:

“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 favour 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.”

The Three Judge Bench in Gian Singh Vs. State of Punjab (supra), while answering the reference whether the High Court has the jurisdiction under Section 482 of the Code to quash a proceeding in respect of non-compoundable offences, after referring to a number of authorities, ruled that Section 482 of the Code, as its very language suggests, saves the inherent power of the High Court, which it has, by virtue of its being a superior Court to prevent the abuse of the process of the Court or otherwise to secure the ends of justice. The words, “nothing in this Code” means that Section 482 of the Code is an overriding provision. Hence, the said words leave no manner of doubt that none of the provisions of the Code limits or restricts the inherent powers.

Such power of quashing the prosecution in exercise of jurisdiction under Section 482 of the Code has been permitted by the Supreme Court in above mentioned judgments; in offences of



private/personal nature, but such liberty is restricted so far as heinous and serious nature of offences are concerned.

The Apex Court in the case of Preeti Gupta & Anr. Vs. State of Jharkhand & Anr. (2010) 7 Supreme Court Cases 667 held that unfortunately the matrimonial litigations are rapidly increasing in in the country, hence, all the courts in the country including the Supreme Court are flooded with matrimonial cases which reflects the discontent and unrest in the family life of a large number of people of the society. Most of the complaints under section 498A of the IPC are filed in the heat of the moment over trivial issues without proper deliberations which are non-bonafide and are filed with oblique motive. Unfortunately, at the time of filing of the complaints, the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations. Hence, the effort should be made to help the parties in arriving at an amicable resolution of the dispute. Paragraph nos. 33 and 35 read as follows:

“33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either



on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under Section 498A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.”

“35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is



also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.”

The Apex Court in the case of Narinder Singh and Ors. Vs. State of Punjab and Anr., reported in (2014) 6 Supreme Court Cases 466, while dealing with quashing of a conviction under section 307 of the IPC on the basis of compromise, has laid down certain parameters. Paragraph 29 reads as follows:

“29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

(I) Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the



matter between themselves. However, this power is to be exercised sparingly and with caution.

(II) When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure: (i) ends of justice, or (ii) to prevent abuse of the process of any Court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

(III) Such a power is not be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by Public Servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

(IV) On the other, those criminal cases having overwhelmingly and pre-dominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

(V) While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice



and extreme injustice would be caused to him by not quashing the criminal cases.

(VI) Offences under Section 307 Indian Penal Code would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 Indian Penal Code in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 Indian Penal Code is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 Indian Penal Code. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in



harmony between them which may improve their future relationship.

(VII) While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 Indian Penal Code is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the



offender who has already been convicted by the trial court. Here charge is proved under Section 307 Indian Penal Code and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.”

The Apex Court in the case of Manohar Singh Vs. State of Madhya Pradesh & Anr., reported in (2014) 13 SCC 75, though declined to quash the conviction under Section 498A of the IPC and Section 4 of the Dowry Prohibition Act on the basis of compromise but reduced the sentences to the period undergone, when the convict husband had undergone only seven days sentence, out of a period of six months sentence imposed on him.

The Apex Court in the case of K. Srinivas Rao Vs. D.A. Deepa, reported in (2013) 5 Supreme Court Cases 226 directed the Family Courts dealing with the matrimonial matters, to make all efforts to settle the matrimonial dispute through mediation even if the counsellor submits failure report in terms of Section 9 of the Family Courts Act and further directed the criminal courts dealing with the matters under section 498A of the IPC that at any stage the parties may be sent for mediation, if they feel that there exists an element of settlement and both the parties are willing for such settlement. Paragraph 46 reads as follows:



“46. We, therefore, issue directions, which the courts dealing with the matrimonial matters shall follow.

46.1. In terms of Section 9 of the Family Courts Act, the Family Courts shall make all efforts to settle the matrimonial disputes through mediation. Even if the counsellors submit a failure report, the Family Courts shall, with the consent of the parties, refer the matter to the mediation centre. In such a case, however, the Family Courts shall set a reasonable time-limit for mediation centres to complete the process of mediation because otherwise the resolution of the disputes by the Family Court may get delayed. In a given case, if there is good chance of settlement, the Family Court in its discretion, can always extend the time-limit.

46.2. The criminal courts dealing with the complaint under Section 498-A IPC should, at any stage and particularly, before they take up the complaint for hearing, refer the parties to mediation centre if they feel that there exist elements of settlement and both the parties are willing. However, they should take care to see that in this exercise, rigour, purport and efficacy of Section 498-A is not diluted. Needless to say that the discretion to grant or not to grant bail is not in any way curtailed by this direction. It will be for the court concerned to work out the modalities taking into consideration the facts of each case.”

In the present case, no doubt, the complaint was filed and cognizance was taken under section 498A of the IPC and Section 4



of Dowry Prohibition Act but the accusation is of such nature which indicates that from the very beginning the complainant could not adjust with her husband and in last several years the issue could not be resolved in terms of resumption of conjugal life but during mediation, the matter being referred on joint prayer of the parties, they agreed to part ways. Hence, in such circumstance, refusal in quashment of the prosecution will not only drag the complainant and their in-laws including the husband to a prolonged harassment but, it will also not allow the complainant and her husband to settle down early in their respective life and live peacefully. Moreover, they will lose their prime time in chasing their cases in different Courts. Above all, in view of the present stand of parting ways, in view of one time settlement amount having been given to the complainant, it appears that there is no chance of the accused being convicted in complaint case. Hence, allowing the prosecution to continue will be a futility as has been held in the case of G.V. Rao Vs. L.H.V. Prasad and Ors., reported in (2000) 3 Supreme Court Cases 693. Paragraph 12 reads as follows:

“12. There has been an outburst of matrimonial disputes in recent times. The marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully.



But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counseled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a Court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their "cases" in different Courts.”

Here, it would be relevant to appreciate the legislative intent behind the introduction of Section 498A of IPC, which was introduced in the year 1983. By virtue of enactment of Criminal law (Second Amendment) Act, 1983, amendments were introduced in the Indian Penal Code, Criminal Procedure Code and the Indian Evidence Act, with the intention of protecting married women from marital violence (cruelty to married women), abuse and extortionist dowry demands. The intent was to stem the greedy demands of the in-laws and the husbands. However, over the years, it has been noticed that there has been a growing tendency



to abuse to provisions, which may have resulted due to misplaced ego tussle between the bride and the husband or the in-laws. Though there are genuine cases of cruelty, in real sense, being meted out to the married women but time has come where cruelty, particularly mental cruelty, needs to be redefined in cases arising out of matrimonial discords. It is in such cases of vague and exaggerated version of cruelty, which after having been, appreciated by the Apex Court, that a sensitive view is being developed to tackle such cases arising out of matrimonial discords, so that in genuine cases or in cases where harmony has prevailed after the turmoil in relationship between the married couple, to settle such cases by the intervention of the Courts at different levels.

Unless it appears from the facts of any case that the cruelty which has been meted out to the bride is of a gruesome and depraved nature, being impardonable by any stretch of imagination of a thinking and civilized society, it is the duty of the society, the law enforcing mechanism (including the police and the courts) to take sincere efforts for settlement in genuine cases of matrimonial discord. In cases where settlement is arrived, either for living and continuing together or for separating on peaceful terms, efforts have to be taken for ending the needless and long drawn process of



litigation of any nature, criminal or civil, so that both the parties and their families continue with their peaceful lives.

The same has also been the view of the Apex Court in a catena of decisions including those discussed above. In the present case under consideration, on going through the allegations in complaint case, no such instance has come forth to suggest that there has been any instance of cruelty of gruesome and depraved nature. The offence as understood from the facts are purely of a personal nature, which the parties have settled amicably and they now want to continue with their lives, though separately. Neither of the parties have any more grievance against each other. Hence, under such circumstances, the continuance of the criminal proceeding would be an abuse of the process of the court and both the parties would suffer harassment and agony of participating in a long drawn and needless proceeding of criminal trial.

It is jointly submitted by learned counsels for the parties that the prosecution against the petitioners on account of the compromise entered into between them, be quashed. Hence, this Court is not deliberating meticulously upon the accusation whether that constitutes offence under section 498A of the IPC or section 4 of Dowry Prohibition Act.



In view of the discussions made above, the order of cognizance dated 11.5.2016, passed by the learned S.D.J.M., Gaya in Complaint Case No. 237 of 2016 including the entire prosecution against the petitioners is hereby quashed.

This application is, accordingly, allowed.

Re: Cr. Misc. No. 35819 of 2016

In view of the fact that entire prosecution against the petitioners arising out of Complaint Case No. 237 of 2016 has been quashed by the order passed in Cr. Misc. No. 41471 of 2016, the present application on behalf of the petitioner for grant of anticipatory bail in the said case, becomes infructuous, since, the apprehension of arrest of the petitioner M.A.Arshad, does not exist any more.

This disposes of the present application, i.e., Cr. Misc. No. 35819 of 2016 as it has become infructuous.

(Dinesh Kumar Singh, J)

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