

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.50848 of 2013

Arising Out of PS.Case No. -352 Year- 2013 Thana -SAMASTIPUR COMPLAINT CASE District-SAMASTIPUR

- =====
1. Shanti Devi @ Shanti Shahi, W/O Rakesh Prasad Narayan Shahi @ Rakesh Shahi
 2. Rakesh Shahi @ Rakesh Prasad Shani, S/O Late Kapildeo Prasad Narayan Shahi
- Both resident of New Professor Colony, Begusarai, P.S.- Begusarai Town & District- Begusarai

.... Petitioners

Versus

1. The State Of Bihar
2. Rubby Devi @ Rubby Kumari, W/O Shambhu Prasad Rai, presently residing at- D/O Madan Mohan Chaudhary, Village- Dumri, P.S.- Biraul, District- Darbhanga

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar Thakur, Advocate
For the Opposite Party/s : Mr. Mayanand Jha, APP

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

Date: 23-05-2017

Heard learned counsel for the petitioner and learned APP for the State. In spite of valid service of notice on opposite party no. 2, she has chosen not to appear.

2. Petitioners under Section 482 of the Code of Criminal Procedure (hereinafter referred to as the Cr.P.C.) seek quashing of order dated 21.08.2013, passed by learned S.D.J.M., Rosera, Samastipur in C.R. No. 352/2013, corresponding to T.R. No. 2655/2013 whereby and whereunder the learned Sub-Judicial Magistrate, Rosera, Samastipur after examining the complainant on



oath and after examination of three witnesses has taken cognizance against the petitioners and other co-accused under Sections 498-A and 120-B of the Indian Penal Code and further issued summons against the petitioners.

3. The prosecution case, as lodged by complainant Rubi Devi @ Rubi Kumari, is that she was married to one Shambhu Rai in the year 2002, but on demand of dowry she was tortured by her husband and the petitioners. The petitioner no. 1 and 2 are Nanad and Nandoi respectively, who had sold 1 katha 1 dhur of land on a consideration amount of Rs. 95,000/- and when the complainant demanded half share she was beaten by the petitioners and husband of the complainant also slapped her.

4. It has been submitted by the learned counsel for the petitioners that they are Nanad and Nandoi of the complainant and have nothing to do with the marital relationship of the complainant and her husband and have been falsely implicated due to land dispute, which was the ancestral property of the father of petitioner no. 1 and the husband of the complainant in which petitioner no. 1 had sold her share and out of the said sale complainant wanted half share of the money so received by sale by petitioner no. 1, hence, the present complaint has been filed, which is in the nature of civil dispute regarding property matter and has nothing to do with the applicability



of Section 498-A and 120-B of the Indian Penal Code. He submits that the petitioners are living in Begusarai for which he has produced the Adhar Cards by way of supplementary affidavit stating therein that they do not reside at village Rampur, Rajwa Hasanpur, district Samastipur, which is the maternal house of petitioner no. 1, but occasionally visits the place. It is further submitted that such proceedings in the garb of civil dispute, if allowed to continue, will be an abuse of the process of the Court for which he relies on a judgment reported in **2011 (1) BBCJ 259 (Deepak Kumar Deep Vs. State of Bihar)** in which while taking note of the judgment of the Apex Court in SLP (Cri) No. 4684/2009 (Preeti Gupta and another Vs. State of Jharkhand and another) he submits that for family dispute between the husband and wife even distant relatives are roped in just to put pressure upon the husband to come to terms as may be dictated by the other side.

5. However, learned APP for the State opposes the relief claimed by the petitioners.

6. The inherent power of the Courts under Section 482 Cr.P.C. has been discussed by the Hon'ble Apex Court in the case of **State of Haryana and others Vs. Bhajan Lal and others** since reported in **1992 Supp (1) Supreme Court Cases 335**, wherein it has been observed that where a criminal proceeding is manifestly attended



with mala fide and/or maliciously for wreaking vengeance or to spite him due to private and personal grudge then the inherent power under Section 482 Cr.P.C. could be exercised to prevent abuse of the process of the Court and to secure ends of justice. The said proposition has been enunciated in paragraph 102 Clause (7) of the judgment in the case of Bhajan Lal (supra).

7. 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 is 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]**.

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.

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 the case of **Bhajan Lal** (supra) **B.S. Joshi** (supra), **Gian**



Singh (supra), **Jitendra Raghuvanshi** (supra) and Deepak Kumar Deep (supra) cited by the petitioners, it is amply clear that even if the offences are non-compoundable, if they relate to matrimonial disputes and especially in the present case where there was a dispute relating to sale of land and its proceeds, 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. Hence, taking into consideration all such aspects and the allegation being of civil nature regarding property dispute, continuation of the proceedings will be an abuse of the process of the Court. In the result, order taking cognizance dated 21.08.2013, passed by learned S.D.J.M., Rosera, Samastipur in C.R. No. 352/13, corresponding to T.R. No. 2655/2013 is hereby quashed. The application is allowed to the extent concerned with the two petitioners but the court below shall continue with its proceedings in accordance with law with respect to other accused persons.

(Nilu Agrawal, J)

Rajesh/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	25.05.2017
Transmission Date	NA

