

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.11066 of 2014

Arising Out of PS.Case No. -477 Year- 2009 Thana -PATNA COMPLAINT CASE District-
PATNA

- =====
1. Nisar Ahmad Son Of Md. Sadruddin Resident Of-Patna Colony, Gauri Shanker Road, P.O.+P.S.-Jugalsalai, Jamshedpur, District-East Singhnbhum Jharkhand
 2. Md. Sadruddin Son Of Late Md. Nizamuddin Resident Of-Patna Colony, Gauri Shanker Road, P.O.+P.S.-Jugalsalai, Jamshedpur, District-East Singhnbhum Jharkhand

.... Petitioner/s

Versus

1. The State Of Bihar
2. Farzana Yasmin Wife Of Nisar Ahmad, D/O-Md. Yasin Resident Of Mohalla-New Ajimabad Colony P.S.-Sultanganj, District-Patna

.... Opposite Party/s

with

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Criminal Miscellaneous No. 10276 of 2014

Arising Out of PS.Case No. -121 Year- 2009 Thana -AGAMKUAN District- PATNA

- =====
1. Md. Sadruddin S/O Late Md. Nizamuddin
 2. Iftekhar Ahmad
 3. Israr Ahmad
 4. Nisar Ahmad All Sons Of Md. Sadruddin All Resident Of Patna Colony, Gauri Shankar Road, P.O+ P.S- Jugalsalai, Jamsheopur, District- East Singhbhum, Jharkhand.
 5. Md. Anwar Ahmad S/O Md. Sadruddin Resident Of Mohalla- Daud Bigha, P.S- Agam Kuan, District- Patna.
 6. Tarannum Khatoon @ Nishat Tarannum W/O Tasnim Ahmad Resident Of House No. 14/14, Moh- B.H. Area, Road No. 4, P.O+ P.S- Kadma, District-East Champaran.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Md. Yasin S/O Late Mangali Hussain Resident Of New Ajimabad Colony, P.S- Sultanganj, District- Patna.

.... Opposite Party/s

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Appearance :

(In Cr.Misc. No.11066 of 2014)

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

(In Cr.Misc. No.10276 of 2014)

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date: 03-01-2018

The petitioners in both the cases have sought quashing of the criminal cases lodged against them by opposite party No. 2/ Farzana Yasmin/Md. Yasin on the ground of settlement having been arrived at between the parties.

The opposite party No. 2/Farzana Yasmin (Cr. Misc. No. 11066/2014) and Md. Yasin (Cr. Misc. No. 10276 of 2014) had earlier lodged two cases against the petitioners for the offences under Sections 323, 379/34, 498A of the Indian Penal Code and Section 34 of the Dowry Prohibition Act.

At the instance of the petitioners, the cases were sent before the Mediation Centre of the Patna High Court, where during the course of mediation proceedings, a settlement was arrived at and the parties decided to settle all their disputes by burying all the hatchets. It was agreed upon that petitioner Nisar Ahmad shall make payment of Rs. 7,00,000/-(seven lacs) to his wife/opposite party No. 2/Farzana Yasmin towards all her matrimonial claims; past, present and future. In view of the aforesaid, the parties have agreed to withdraw/file necessary application before the concerned Courts for disposal of the other cases lodged by each against the other.

A bank draft of Rs. 7,00,000/-(seven lacs)



bearing draft No. 313651 dated 23.11.2017 issued by the Canara Bank in favour of opposite party No. 2/Farzana Yasmin has been produced before this Court. The same has been handed over to opposite party No. 2/Farzana Yasmin who is present in Court along with her father and she has accepted the same to the full satisfaction.

A detailed inventory of the cases filed by the opposite party No. 2 in both the cases against the petitioners and against opposite party No. 2 by the petitioners have been set out in the supplementary affidavit filed on behalf of the petitioners today.

Times without number, this Court as well as the Apex Court has held that in the cases of matrimonial dispute, it is only advisable that in cases of settlement, the dispute should be set at rest and the parties be given fresh opportunity of carrying on with their lives in the right perspective. This Court has interacted with the opposite party No. 2/Farzana Yasmin, who is agreeable to the aforesaid settlement and is not desirous of prosecuting the petitioners any further. Such statement of Farzana Yasmin has been supported by her father who is also present in the Court today.

In Gyan Singh versus State of Punjab reported in (2012) 10 SCC 303, the Hon'ble Supreme Court in para 61 has held as follows:-

“The position that emerges from the above discussion can be summarized 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 FIR may be exercised where the offender and the 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 a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the 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 predominatingly civil flavour stand on a 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, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the 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 the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

In the case of **Narinder Singh and Others versus State of Punjab and Another** reported in (2014) 6 SCC 466, the Supreme Court has encapsulated as to under what conditions powers could be exercised under Section 482 of the Code of Criminal Procedure in the event of settlement of matrimonial dispute between the parties. Paragraph 29 of the said judgment reads as under :-

“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:

29.1. 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.

29.2. 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.

29.3. Such a power is not to 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 the 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.

29.4. On the other hand, those criminal cases having overwhelmingly and predominantly 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.

29.5. 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.

29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are 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 IPC 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 IPC 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 IPC. 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 latter 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.



29.7. 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 power 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 to a conclusion as to whether the offence under Section 307 IPC 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 IPC 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.”

Similarly in the case of **Jitendra Raghuvanshi**



and Others versus Babita Raghuvanshi and Another reported in (2013) 4 SCC 58, the Hon'ble Supreme Court has adumbrated in paras 15, 16 and 17 which reads as follows :-

“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 their 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 process of 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 4-7-2012 passed in Rajendra Singh Raghuvanshi v. Aarkshi Kendra Police Mahila Thana and quash the proceedings in Criminal Case No. 4166 of 2011 pending on the file of the Judicial Magistrate Class, I, Indore.”

Considering the aforesaid facts and the unilateral decision of the parties pursuant to the mediation proceedings, of not prosecuting the petitioners any further, this Court is inclined to quash the prosecution of the petitioners.

Resultantly, the Complaint Case No. 477 of 2009 filed by the opposite party No. 2 Farzana Yasmin as well as Agam Kuan P.S. Case No. 121 of 2009 lodged by opposite party No. 2 Md. Yasin are quashed.

All the resultant proceedings arising therefrom are also set aside.



It is expected that the parties shall file requisite applications before the concerned Courts seeking disposal/withdrawal of the complaints filed against the parties inter se and the Courts below shall dispose off such applications in right earnest and in accordance with law, keeping in mind that there has been complete settlement between the parties and no dispute now remains to be addressed.

The petitions are disposed of accordingly.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
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