

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.16142 of 2018

Arising Out of PS.Case No. -10 Year- 2017 Thana -MEHUS District- SEKHPURA

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1. Pallavi, Daughter of Shriniwas Singh, resident of C- 13, Noba Nagar, Phase I, Khoja Imli, P.S.- Phulwari Sharif, District- Patna- 801505.
 2. Manjari, Daughter of Srinivas Singh, Resident of C- 13, Noba Nagar, Phase I, Khoja Imli, P.S.- Phulwari Sharif, District- Patna- 801505.
 3. Srinivas Singh, aged about 60 years, Son of Late Ram Bachchan Singh, Resident of C- 13, Noba Nagar, Phase I, Khoja Imli, P.S.- Phulwari Sharif, District- Patna- 801505.

.... Petitioners

Versus

1. The State of Bihar.
2. Aparna, Wife of Vidya Prakash, Resident of Village+P.S.- Suryagarha, District- Lakhisarai presently residing at Shakti Nagar, Mitra Mandal Colony, P.S.- Phulwarisharif, District- Patna.

.... Opposite Parties.

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Appearance :

For the Petitioners : Mr. Kumar Kaushik, Advocate
For the State : Mr. Vinod Shankar Modi, APP
For the informant : Mr. Jay Prakash Sharma, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 21-08-2018

Heard Mr. Kumar Kaushik, learned counsel for the petitioners, Mr. Vinod Shankar Modi, learned Additional Public Prosecutor for the State and Mr. Jay Prakash Sharma, learned counsel for the informant.

2. Apart from the counsel for the parties, pursuant to the



order dated 18.08.2018, the petitioners, the informant and her husband are also present in the chambers.

3. This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed by the petitioners for quashing the order dated 19.01.2018 passed by the learned Judicial Magistrate, 1st Class, Sheikhpura in Mehus P. S. Case No. 10 of 2017 whereby and whereunder the petitioners have been summoned after taking cognizance of the offences punishable under Sections 323, 341, 307, 313, 406, 498A read with 34 and 120B of the Indian Penal Code (for short 'IPC') and 3 and 4 of the Dowry Prohibition Act.

4. The prosecution case is based on the written report of opposite party no. 2. She had submitted her written report before the Officer-in-Charge of Mehus Police Station stating therein *inter alia* that her marriage was solemnized with accused Vidya Prakash on 24.01.2016 in accordance with Hindu rites and rituals, during which her father had gifted about Rs.50 lacs, jewellery, furniture, etc. She went to her matrimonial house after her marriage and for some days, the behaviour of her husband, father-in-law and sisters-in-law was good. Subsequently, her sisters-in-law began taunting her and pressurizing her for a four wheeler. Her complain about this to her husband and father-in-law went in vain. On 04.01.2017, when she



expressed her father's inability to fulfil the demand of a four wheeler and protested against the illegal demand, her sisters-in-law took her in the kitchen and burnt her left hand with a hot utensil. After the receipt of information, her father along with her brother and others came and persuaded the accused persons to keep her properly in the matrimonial house. On 14.01.2017, the accused persons tried to strangle her, but they panicked and left her free after which she informed her father about it. Next day, her father came to her matrimonial house and was asked to take her back until he could give a four wheeler to the accused persons. It was further stated that when the accused persons came to know about the pregnancy of informant, her husband came to her paternal house on 13.03.2017 on the occasion of Holi and showered love on her. Next morning, on 14.03.2017, while she was suffering from headache, her husband administered two tablets and he went back to Patna next morning. Thereafter, the informant felt pain in her stomach and experienced miscarriage. She was taken to a nursing home at Lakhisarai where the doctor informed her about feticide.

5. On the basis of the aforesaid written report, Mehus P. S. Case No. 10 of 2017 dated 10.04.2017 for the offences under Sections 498-A, 307, 313, 406, 323 and 341 of the IPC and 3 and 4 of the Dowry Prohibition Act.



6. On completion of investigation, the investigating officer submitted charge-sheet no. 24 of 2017 against the petitioners and husband of opposite party no. 2 on 26.12.2017 in the court for the offences punishable under Sections 323, 341, 307, 313, 406, 498A read with 34 and 120B of the IPC and 3 and 4 of the Dowry Prohibition Act.

7. After looking into the FIR, the materials collected in course of investigation and the police report submitted under Section 173(2) of the CrPC, learned Judicial Magistrate, 1st Class, Sheikhpura, vide impugned order dated 19.01.2018, took cognizance of the offences and summoned the accused persons to face trial.

8. Learned counsel appearing for the petitioner submitted that petitioner no. 3 is the father-in-law whereas petitioner nos. 1 and 2 are unmarried sisters-in-law of the informant. He contended that the present case arises out of a matrimonial dispute between the accused Vidya Prakash and the informant (opposite party no. 2). The allegation of strangling the informant is highly unbelievable. He pleaded that no offence under Section 307 of the IPC is made out even if the entire allegations are assumed to be true. Even as per the FIR, the accused persons on their own volition set her free after having tried to strangle her to death. He further contended that there is no material on the basis of which either the police could have



submitted charge-sheet under Section 313 of the IPC or the court could have taken cognizance of the offence punishable under Section 313 of the IPC as there was no medical report to suggest any miscarriage or even the factum of pregnancy.

9. Besides arguing on merit, he contended that during the pendency of the application, due to intervention of common relatives, friends and well wishers, the parties have resolved their dispute. As of date, opposite party no. 2 and petitioners have developed a good cordial relationship and the petitioners have extended their helping hand to restore the matrimonial life of opposite party no. 2 with her husband. He contended that a joint compromise petition has also been filed on behalf of the parties in which it has been stated that the parties have been leading their life happily and opposite party no. 2 has got no grievance against the petitioners.

10. Learned counsel appearing for opposite party no. 2 admitted that after filing of the case, the parties have resolved their dispute amicably and the opposite party no. 2 is living together with her husband and in-laws peacefully. He contended that it is in the interest of both the parties that the instant criminal proceedings against the petitioners be quashed.

11. As noted above, the informant, her husband and the



petitioners are present in person. On query made by the court, the informant (opposite party no. 2) clearly stated that she is living happily in her matrimonial home and her dispute with the accused persons has amicably been settled and now she is not interested in prosecuting them.

12. I have heard learned counsel for the parties as also the informant. Now, the question before the court is since some of the offences alleged are non-compoundable, would it be proper to quash the criminal proceeding.

13. In the recent past, the Supreme Court has issued guidelines for quashing of criminal proceedings of a non-compoundable offence by using inherent powers of High Court under Section 482 of the CrPC on the basis of settlement between the parties in several cases.

14. In **B .S. Joshi & Ors. Vs. State of Haryana & Anr. [(2003) 4 SCC 675]**, the informant had registered a case under sections 498-A, 323 and 406 of the IPC against her husband, father-in-law, mother-in-law and brother-in-law. Subsequently, the informant filed an affidavit that the FIR was registered at her instance due to temperamental differences and implied imputations. Her disputes with the accused persons had been finally settled and she and her husband had agreed for mutual divorce. The accused



persons of the case had filed an application before the High Court seeking quashing of the FIR. The High Court had declined to quash the FIR as the offences alleged under section 498-A and 406 of the IPC were non-compoundable. Being aggrieved by the judgment of the High Court, the accused persons preferred an appeal before the Supreme Court. After hearing the parties, the Supreme Court held that the inherent power of the High Court under section 482 of the CrPC is wide and unfettered. It upheld the powers of the High Court under section 482 of the CrPC to quash the criminal proceedings where the dispute is of private nature and the compromise is entered in between the parties, who are willing to settle their differences amicably. It further held that the High Court ought to have quashed the criminal proceedings by accepting the agreement arrived at between the parties.

15. In **Gian Singh Vs. State of Punjab [(2010) 15 SCC 118]**, a two-Judge Bench of the Supreme Court doubted the correctness of the decisions of the Supreme Court in **B. S. Joshi** (Supra) 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 CrPC in quashing the criminal proceedings against an offender who has settled his dispute with the victim of the crime in which he was allegedly involved in



compoundable under Section 320 of the CrPC.

16. 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 CrPC 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.”

17. Apart from explaining the differences between the two provisions in the manner aforesaid, the Court also described the extent of power under section 482 of the CrPC in quashing the criminal proceedings in the cases where the parties had settled the matter although the offences are not compoundable as under :-

“58. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and



justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crime- doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may



within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed.”

18. Thereafter, the Court answered the reference made to it as under :-

“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 predominatingly 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.”

(emphasis mine)

19. In yet another case, **Narinder Singh & Ors vs State of Punjab & Anr [(2014) 6 SCC 466]**, the Supreme Court considered quashing of criminal proceedings of a non-compoundable offence by using inherent powers of the High Court under Section 482 of the



CrPC on the basis of settlement between the parties. In that case, the Court was considering the question as to whether the offence like under Section 307 of the IPC be quashed only because both the parties have compromised. The scope of Section 320 of the CrPC was considered whether serious offence like under Section 307 of the IPC be quashed on the basis of a compromise entered into between the parties. After discussing the scope of Section 320 of the CrPC, the Court considered the scope of quashing the criminal proceedings upon compromise in serious offences.

20. After noticing the ratio laid down by the Supreme Court in **B .S. Joshi & Ors. Vs. State of Haryana & Anr.** (Supra) and **Gian Singh Vs. State of Punjab** (Supra), the Court issued the following guidelines :

“(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 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.

(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](#) IPC 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](#) 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.

(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](#) 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.”

(emphasis mine)

21. In the instant case, the trial has yet not commenced. It is pending before the court of Magistrate after taking cognizance of the offence. Though serious offences like 307 and 313 IPC has been alleged, there is neither any allegation of any use of weapon nor there is any medical report to corroborate the informant's version. The application of the aforesaid offences *prima facie* seems to be for the sake of it. The criminal case appears to have been instituted predominantly due to matrimonial discord arising out of dowry demand.

22. After considering the law laid down by the Supreme



Court in **Gian Singh** (Supra) and **Narindra Singh** (Supra), it becomes 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, there would be no bar in exercise of powers of quashing the criminal proceeding under Section 482 of the CrPC.

23. The informant herself has appeared and stated that out of matrimonial differences, the case was instituted and she is no more interested in continuing with the criminal case. Hence, this Court has no reason to doubt the *bona fide* of the compromise between the parties. Since the informant is not interested in pursuing the criminal proceedings, there is no possibility of conviction of the petitioners in the case.

24. In view of the foregoing discussions, this Court is of the opinion that allowing the prosecution to continue any more would lead to insurmountable harassment, agony and pain not only to the petitioners but also to the informant, her husband and other common relatives. It may even spoil the matrimonial life of the informant which could be saved somehow due to intervention of friends and well wishers.

25. Accordingly, the impugned order dated 19.01.2018 passed by the learned Judicial Magistrate, 1st Class, Sheikhpura in



Mehus P. S. Case No. 10 of 2017 as well as the entire criminal proceedings arising out of the aforesaid case are quashed. The application stands allowed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
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