

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL MISCELLANEOUS No. 8274 of 2015**

Arising Out of Complaint Case No.-06 CYear-2011 Thana- BHABHUA (KAIMUR)  
COMPLAINT CASE District- Kaimur (Bhabhua)

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1. Dolly Moitra Wife of Biplab Moitra @ Pintu Moitra.
  2. Biplab Moitra @ Pintu Moitra Son of Late Binjendra Moitra. Both Resident of Village Churamanpur, P.S. Maruadih, District Varanasi (U.P.).

... .. Petitioner/s

Versus

1. The State of Bihar
2. Nirmal Kumar Bannerjee, Son of Late Binay Bihari Bannerjee, resident of Bhabhua Ward No. 5, Professors Colony District- Kaimur.

... .. Opposite Party/s

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**Appearance :**

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|--------------------------|---|--------------------------------------------------------------------------------|
| For the Petitioner/s     | : | Mr. Radhe Shyam Sharma,<br>Mr. Sunil Kumar and<br>Mrs. Smiti Bharti, Advocates |
| For the Opposite Party/s | : | None                                                                           |
| For the State            | : | Mr. Jharkhandi Upadhyay, APP                                                   |

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN  
AMANULLAH**

**ORAL JUDGMENT**

**Date : 22-04-2019**

Heard learned counsel for the petitioners and learned  
APP for the State.

2. Learned counsel for the petitioners is permitted to  
make correction in paragraph no. 4 with regard to the Sections  
under which the complaint case has been instituted.

3. The petitioners have moved the Court under Section  
482 of the Code of Criminal Procedure, 1973 (hereinafter referred  
to as the 'Code') for the following relief:



*“That this is an application for setting aside the order dated 9.7.2013 passed by the learned SDJM, Bhabua (Kaimur) in Trial No. 2177 of 2011 arising out of Complaint Case No. 06C of 2011. Pending before learned S.D.J.M. Bhabua (Kaimur).”*

4. The opposite party no. 2, being the brother of the petitioner no. 1, had filed Complaint Case No. 6 C of 2011 before the Chief Judicial Magistrate, Kaimur at Bhabhua under Sections 498(A), 406 and 497 of the Indian Penal Code and 3/4 of the Dowry Prohibition Act against the petitioner no. 2, who is the husband of the petitioner no. 1 and five other family members of the petitioner no. 2. However, subsequently, there was compromise between the parties and now the petitioner no. 1 is living in the matrimonial home and accordingly, she filed a compromise petition before the Court below itself but instead of taking cognizance of the same, the Court has proceeded to frame charge.

5. Learned counsel for the petitioners submitted that the Court below ought to have considered the fact that the dispute is relating to matrimonial affairs and once the parties have compromised and even started living together, the ends of justice require that the criminal case be put to an end. It was submitted that as various offences are non compoundable, the Court may



exercise its inherent power under Section 482 of the Code to prevent the abuse of the process of the Court.

6. Learned APP submitted that if the husband and wife are living together in the matrimonial home, the case be closed.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that in such matters, the inherent power of the Court is required to be exercised for preventing the abuse of the process of the Court as well as to secure the ends of justice.

8. The Hon'ble Supreme Court in **Gian Singh v. State of Punjab** reported as **(2012) 10 SCC 303**, at paragraphs no. 58 and 61 has held as under:

*“58. Where the High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and the 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 the offender and the 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 the 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 the 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.*

*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 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 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-dominatingly 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, the High Court may quash 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 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 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 the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."*



9. Similarly, the Hon'ble Supreme Court in **State of Maharashtra Thr. CBI vs. Vikram Anantrai Doshi** reported as **2014(10) Scale 690**, at paragraph no. 17 has held thus:

*“17. Recently, in Narinder Singh & Ors. v. State of Punjab & Anr., a two- Judge Bench placed reliance on Gian Singh's case (supra) and Dimpay Gujral v. Union Territory through Administrator and distinguished the decision in State of Rajasthan v. Sambhu Kevat, and came to hold that in the facts of the said case the proceedings under Section 307 deserved to be quashed. The two-Judge Bench laid down certain guidelines by which the High Courts 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. Some of the guidelines which are relevant for the present purpose are reproduced below :-*

*“(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 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 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.”*

10. For reasons aforesaid, the application is allowed in the following terms:

(a) The petitioners shall appear before the Court below whereupon the Court below shall record a finding, after interacting with the parties with regard to there being a compromise and the petitioner no. 1 living in the matrimonial home with the petitioner no. 2 willingly and on her own volition. If the Court finds that the parties are willingly living together in the matrimonial home, the petitioner no. 2 shall submit an undertaking before the Court that he shall keep the petitioner no. 1 with him, as his wife with full dignity, honour and security and shall also take care of all her needs, including medical expenses. He shall further give undertaking that the petitioner no. 1 shall be allowed to talk to and visit her relatives without any let, hindrance or objection, either from the petitioner no. 2 for his family members. Upon the same being done, the Court would record its finding.



(b) Once the Court below records a finding in terms of the order above and the petitioner no. 2 filing such undertaking, the entire criminal proceeding arising out of Complaint Case No. 6C of 2011, pending before the Court below at Kaimur shall stand quashed, subject to the petitioner no. 2 complying with the terms of the undertaking in future also.

**(Ahsanuddin Amanullah, J.)**

P. Kumar

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