

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.77104 of 2019

Arising Out of PS. Case No.-53 Year-2011 Thana- AIRPORT District- Patna

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1. Anwar Rashid, S/o Late Khan Saheb Mohammad Rashid, Resident of Flat No. 101 and 102, Ambar Homes Apartment, P.S. Hawaii Adda, Distt.- Patna.
 2. Sabiha Rashid @ Sabiha, W/o Anwar Rashid, Resident of Flat No. 101 and 102, Ambar Homes Apartment, P.S. Hawaii Adda, Distt.- Patna.
 3. Shees Ahmad @ Shees Ain, S/o Late Kudartul Ain @ Qurutulain Harun, Resident of Mohalla- Harun Nagar, P.S. Phulwari Sharif, District Patna (Bihar).
 4. Sufiya Alim @ Ladli @ Saifia, Wife of Md. almuddin @ Alim, Resident of Village- Sherghati, P.S. Sherghati, District- Gaya (Bihar).
 5. Ain Rashid, S/o Anwar Rashid, Resident of Flat No. 101 and 102, Ambar Homes Apartment, P.S. Hawaii Adda, Distt.- Patna, A/P Resident of near National Paints, P.S. Maiehia, Sharjah, UAE.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Arzoo Fatma @ Arzu Fatima, Daughter of Late S.M. Sabbir Ahmad @ Late Saiyad Mohammad Shabbir, Resident of Mohalla- Saiyadana Phulwari Sharif, P.S. Phulwari Sharif, Dist. Patna (Bihar).

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mrs. Nivedita Nirvikar, Sr. Advocate
		Mrs.Mira Kumari, Advocate
For the State	:	Mr.Jharkhandi Upadhyay, APP
For the Opposite party no.2		Mrs. Shalini Raut, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 13-10-2022

Heard learned senior counsel for the petitioners and the learned counsel for the opposite party no.2 as well as learned APP for the State.

The present petition has been filed by the petitioners for quashing the FIR bearing Hawaii Adda P.S. Case No. 53 of 2011, registered for the offences punishable under Sections 323, 325, 498 A and 307 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act, on the ground that both the parties have



amicably settled their dispute.

The prosecution case in brief is that the marriage of the opposite party no. 2 was solemnized with Ain Rashid (petitioner no.5) on 24.03.2009 in accordance with Muslim Rites and Rituals. It is alleged that the opposite party no.2 was subjected to torture and assault for non-fulfillment of demand of dowry by the accused persons, the petitioners herein, leading to filing of the FIR bearing Hawai Adda P.S. Case No.53 of 2011 under Sections 323, 325, 498 (A) and 307 of the Indian Penal Code and Section 3/4 of Dowry Prohibition Act.

Learned senior counsel for the petitioners submits that now full and final settlement has been made between the petitioners and the opposite party no.2 and no further dispute remains between the parties. The opposite party no.2 has filed a withdrawal petition before the learned Judicial Magistrate-1st Class, Patna on 09.02.2018 as she does not want to proceed further with this case. A supplementary affidavit giving the details of the settlement with relevant documents as annexures has been filed which includes copy of a joint compromise petition filed before the learned ACJM, Patna and also the copy of the withdrawal petition filed before the court of learned Judicial Magistrate-1st Class, Patna.

Learned counsel for the opposite party no. 2 concedes



that all the disputes have been settled and the opposite party no.2 does not want to proceed further in the matter. She further submits that a counter affidavit admitting the factum of settlement has been filed by the opposite party no.2 which is on record.

The learned APP appearing on behalf of the State has no objection for quashing the FIR as the matter has been amicably settled after compromise between the husband and wife.

Perused the records.

In the case of ***Parbatbhai Aahir @ Parbatbhai Bhimsinbhai Karmur & Another, (2017) 9 SCC 641***, the Supreme Court has held that whether a complaint or First Information Report should be quashed on the ground that the offender and the victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of the principles can be formulated.

Though the offences under Sections 498A and 307 of the Indian Penal Code are not compoundable, however, Supreme Court in the case of ***B.S. Joshi & Ors. Vs. The State of Haryana and Ors., reported in (2003) 4 SCC 675***, as also in the case of ***Jitendra Raghuvanshi Vs. Babita Raghuvanshi, reported in (2013) 4 SCC 58***, examined 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.

A three-Judge Bench of the Hon'ble Supreme Court in ***Jitendra Raghuvanshi (supra)*** 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.C.R.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.”

Similarly, in ***B.S. Joshi & Ors. vs. State of Haryana & Anr. [(2003) 4 SCC 675]***, 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 and the compromise is entered into between the parties, who are willing to settle their differences amicably.

However, in ***Gian Singh vs. State of Punjab, reported in (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 referred to was lucidly explained by a three Judge Bench of the Supreme Court in ***Gian Singh vs. State of Punjab, since reported in (2012) 10 SCC 303***. The Court explained the difference between 320 and 482 of the Cr.P.C. and held that:

“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.”

Thus, it is amply clear that the High Court may quash criminal proceedings or FIR or complaint in exercise of its inherent power under Section 482 of the Code which is unaffected by the provisions of Section 320 Cr.P.C. Though The two powers are distinct and different yet the ultimate consequence may be same viz., acquittal of the accused or dismissal of indictment. Inherent power of the High Court under Section 482 Cr.P.C is seemingly unfettered but it has to be exercised in accordance with the limitation mentioned in the provision itself, i.e. (i) to give effect to any order under the Code of Criminal Procedure, (ii) to prevent abuse of the process of any Court or (iii) to secure the ends of justice.

Having considered the provisions under Section 482



Cr.P.C and the law laid down by the Supreme Court in ***B.S. Joshi (Supra), Gian Singh(Supra-2)*** and ***Jitendra Rahuvanshi (supra)*** it is clear that, if the matter relates to matrimonial disputes and the Court is satisfied that the dispute has been settled by the parties amicably, there would be no bar under Section 320 of the Cr.P.C. for exercise of inherent power of the quashing of the First Information Report, complaint or the subsequent criminal proceedings even if the offences are non-compoundable.

Having regard to the aforesaid facts and circumstances and also to the fact that the parties have resolved their dispute amicably which has not been contested by the opposite party no.2, this Court is of the considered view that allowing the further proceedings to continue in the trial court would not be in the interest of justice as the same may lead to unnecessary harassment, agony and pain not only to the petitioners, but also to the opposite party no.2 and would be tantamount to an abuse of the process of the Court.

Therefore, the present petition is allowed and the entire proceeding arising out of Hawaii Adda P.S. Case No. 53 of 2011 is hereby quashed qua the petitioners and the petition stands disposed of.



(Arun Kumar Jha, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	23.10.2022
Transmission Date	23.10.2022

