

14.6.2022
Court No.29
Sl. No. 15
SD

CRR 3501 of 2019
With
CRAN 1 of 2019
(Old CRAN 4646 of 2019)

In the matter of: Partha Sarthi Roy

....petitioner.

Mr. Susnigdho Bhattacharyya

...for the Petitioner.

Mr. Saswata Gopal Mukherjee

Mr. Prasun Kumar Dutta

Mr. Santanu Deb Roy

... for the State.

This revisional application has been preferred for quashing of the proceeding being GR Case No.847 of 2018 arising out of Bidhannagar Women P.S. Case No.43 of 2018 dated November 2, 2018 under Sections 498A/406/325/506/307 of the Indian Penal Code, 1860.

The petitioner's contention in brief is that the opposite party No.2 and the petitioner got married in April 29, 2018 and from the very beginning, opposite party No. 2 started alleging that the husband/petitioner used to torture the opposite party no.2/wife and also took her ornaments and mobile phone and for which, opposite party no.2 had left her matrimonial house on November 1, 2018 and on the basis of written complaint, lodged by opposite party No. 2 Bidhannagar Women PS started the abovementioned case. After completion of investigation, police has submitted charge-sheet against the petitioner under Sections 498A/406/325/506/307 of the Indian Penal Code.

Challenging the aforesaid proceeding initiated by the opposite party no.2 herein, the present petitioner has preferred this

revisional application for quashing the said proceeding. It is submitted on behalf of the petitioner that during pendency of the proceeding, the matter has been amicably settled between the parties and they are also being blessed by a male child and presently they are residing peacefully as husband and wife.

In view thereof, they have filed a joint compromise petition signed by both the parties and both of them have now prayed for quashing the aforesaid proceeding.

In this context, both the parties have relied upon an Apex Court judgment reported in **(2014) 6 SCC 466**. Said case also involved allegation leveled under Section 307 along with section 498 A , 323 & 406 of the Indian Penal Code and Hon'ble Apex Court was pleased to observe as follows:-

***“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/delicate 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.* (emphasis added)

In the present case on perusal of case diary, I find that the materials in the case diary do not constitute offence under Section 307 IPC and it has been incorporated only for the sake of it. The defacto complainant has casually alleged in the written complaint that the husband/petitioner once made an attempt of throttling

her, which statement does not find support in the injury report or other materials in the case diary.

I am of the view that chances of an ultimate conviction either u/sec 307 or under other alleged sections are bleak due to amicable settlement and therefore no useful purpose is likely to be served by allowing a criminal prosecution to continue.

Hon'ble Apex Court further in a case ***B.S. Joshi and Others Vs. State of Haryana and another*** reported in (2003) 4 SCC 675 was pleased to observe as follows:-

“14. There is no doubt that the object of introducing Chapter XX-A containing Section 498-A in the Indian Penal Code was to prevent torture to a woman by her husband or by relatives of her husband. Section 498-A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hypertechnical view would be counterproductive and would act against interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XX-A of the Indian Penal Code”.

In view of the above, as the parties have amicably settled the disputes and they are residing peacefully as husband and wife and that there is hardly any chance of conviction in view of the settlement arrived at by and between the parties, the entire proceeding should be quashed as refusal to invoke power u/sec 482 may become counterproductive.

Accordingly, entire proceeding being G.R. Case No. 8471/2018 arising out of Bidhan nagar women police station case

No. 43/2018, pending before Additional Chief Judicial Magistrate at Bidhan at Bidhan nagar, North 24 Parganas is quashed.

CRR 3501 of 2019 along with CRAN 1 of 2019 are accordingly allowed and disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Ajoy Kumar Mukherjee, J.)