

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2420 of 2013

Kuna Mahananda & others* *Petitioners

-versus-

State of Odisha & others* *Opposite Parties

CORAM: JUSTICE S.PUJAHARI

Order
No.

ORDER
18.04.2022

12. 1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the Petitioners and learned counsel for the Opposite Parties.
3. This application under Section 482 of Cr.P.C. has been filed by the Petitioners to quash the FIR in connection with Binika P.S. Case No.2 of 2013 corresponding to G.R. Case No.8 of 2013 pending in the court of learned S.D.J.M., Sonapur. The offences alleged are punishable under Sections 366/109/34 IPC. But in the meantime charge sheet in the aforesaid case has been filed but charge sheet against Kuna Mahananda has not yet been filed.
4. A photocopy affidavit has been filed by the Petitioner No.1 and Opposite Party No.3 in Court today stating therein that Opposite Party No.3 voluntarily eloped with Petitioner No.1 and after marriage, they are living as husband wife and they are blessed with a girl child. The same be kept on record.

5. Pursuant to the order dated 25.03.2022, learned counsel for the State has produced the instruction obtained from the I.I.C., Binka Police Station wherein it is stated that the Petitioner No.1 and the Opposite Party No.3 are residing husband and wife and there is no dispute between the parties and they are blessed with a girl child

6. Learned counsel for the Petitioners submits that the Petitioner No.1 has married Opposite Party No.3 and they are living as husband and wife and they are blessed with a girl child. He further submits that in the statement recorded under Section 164 Cr.P.C has also stated the same. In such premises, there being bleak chance of conviction, the case against the Petitioners that is Kuna Mahananda and his parents is liable to be quashed. In support of his contention, he has cited a decision of the apex Court in the case of **Fazle Gaffar Khan and others v. State of W.B** and another reported in **2000 SCC (CrI.) 686**.

7. The same is not disputed by the learned counsel for the victim. So also learned counsel for the State has obtained a written instruction that both of them are living husband and wife.

8. The offences alleged in this case are non-compoundable. But notwithstanding the same when compromise has been made between the parties, in appropriate cases this Court can quash the proceeding in exercise the inherent power conferred on this Court under Section 482 Cr.P.C.

9. In the case of *Narinder Singh and others vrs. State of Punjab and another*, reported in (2014) 6 SCC 466, wherein the apex Court taking note of almost all the earlier decision, such as, *Gian Singh vrs. State of Punjab*, (2012) 10 SCC 303, *B.S. Joshi vrs. State of Haryana*, (2003) 4 SCC 675, *Rajendra Harakchand Bhandari vrs. State of Maharashtra*, (2011) 13 SCC 311, *Dimpey Gujral vrs. UT, Chandigarh*, (2013) 11 SCC 497, *Shiji vrs. Radhika*, (2011) 10 SCC 705, *State of Rajasthan vrs. Shambhu Kewat*, (2014) 4 SCC 149, in paragraph-29 have held as follows :-

“29. 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 its 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 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 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.”

10. Taking note of the aforesaid pronouncement of the apex Court with regard to quashment of the proceeding of non-compoundable offence under Section 482 Cr.P.C. as laid down by the apex Court in the case of *Narinder Singh* (supra) and **Fazle Gaffar Khan** (supra), this Court is of the view that no doubt the offence alleged is serious one, but it cannot be lost sight of the fact that this is a case of elopement. From the statement of the victim recorded under Section 164 Cr.P.C. as available in the record, it appears that the victim then eloped with the present Petitioner. When the incident occurred though she was below 18 years and nearing the age of 16 and as such

had reached the age of discretion to consent for sexual intercourse as it then was. Presently the Petitioner and the Opposite Party No.3 are living as husband and wife and blessed with a child. Instruction received from the concerned police station also reveals that they are remaining as husband and wife.

11. The apex Court in the case of **Fazle Gaffar Khan** (supra), in the similar facts and situation quashes the proceeding in exercise of the power under Section 482 Cr.P.C, which was refused by the High Court. So also in the case of **Narinder Singh** (supra), though the apex Court have held that the said power has to be exercised with care and caution but here in this case there being bleak chance of conviction, more particularly when the trial has not commenced and the evidence has not been recorded, this Court is of the view that the continuance of the proceeding of the case shall be an abuse of process of the court.

12. Hence, placing reliance of the authoritative pronouncement of the apex Court, this Court allows the Criminal Misc. Case and consequently quashes G.R. Case No.8 of 2013 arising out of Binika P.S. Case No.2 of 2013 pending in the court of learned S.D.J.M., Sonapur against the Petitioner Nos.2 and 3 against whom charge sheet has been filed. The trial court shall do well to comply with this order on production of the certified copy of the same. Police also if not filed any charge sheet against Kuna Mahananda shall close the proceeding against him and if charge sheet has been filed against the Petitioners to close the proceeding. But the same is subject to filing of the original

affidavit copy of which has been filed in this Court before the trial court. The order be communicated along with the photocopy of the affidavit filed.

13. Urgent certified copy of this order be granted on proper application.

(S. Pujahari)
Judge

PKS

