

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**CRLMC No.2149 of 2016**

***D. Rama Rao***

***..... Petitioner***  
Mr. P.K.Mishra, Advocate

***-versus-***

***State of Odisha***

***..... Opp. Party***  
Mrs. S. Patnaik, AGA

**CORAM:  
JUSTICE CHITTARANJAN DASH**

**DATE OF JUDGMENT : 09.11.2022**

**Chittaranjan Dash, J**

1. Heard learned counsel for the parties.
2. By means of this application, the Petitioner seeks to challenge the order of cognizance dated 3<sup>rd</sup> March, 2016 passed by the learned S.D.J.M., Parlakhemundi in G.R. Case No.391 of 2014 for the offences under Sections 498-A/323/506/406/34 IPC read with Section 4 of the D.P. Act.
3. The background facts of the case are that Smt. Patrakanda Bijaylaxmi, W/o. Patrakanda Ram Prakash of village Kamarda under P.S. Seranga in the district of Gajapati lodged a written report before the IIC, Kasinagar to the effect that he got married to P. Ram Prakash of Kasinagar on 22<sup>nd</sup> March, 2006 according to Hindu Rites and Customs. Prior to her marriage her husband T. Ram Prakash along with his relatives including the Petitioner, the maternal uncle came to the house of the informant and demanded dowry and the same was upon negotiation was finalized.

However, it is alleged in the report that the parents of the informant had to give dowry under compulsion by the bridegroom side.

4. According to her, after the marriage she spent a couple of months along with her husband a blissful married life. Where after her husband, parents in law, sister in law, the maternal uncle D. Rama Rao, D. Bhima Raju, D. Krishna Rao insisted her to bring Rs.1,00,000/- more towards dowry from her parents and started ill treating her. It is further reported that she was not being shown proper behavior and was being scolded and also being given slap and continued to ill treat her by engaging her in the household work for about 14 to 15 hours and was being treated as a domestic help. She was not being given treatment for ailment even though she was suffering from fever and they also left her in the parental house under threat not to take her back in case she does not come with dowry, she would not be allowed to stay in the matrimonial house. On many occasion her father having paid Rs.10,000/- and Rs.20,000/- fell in the mercy of the in-laws to treat her properly but the in-laws instead of giving proper treatment continued to ill treat her and even to do away with her life and somehow she managed to escape from their clutch and took shelter in her parental house. It is also reported that on 20<sup>th</sup> July, 2014 in the night at about 8 P.M. her husband and persons above named in a concerted manner with an intention to do away with her life and threatened not to disclose the fact to anybody else and reiterated their demand under the threat she would not be returned to the back she would not be allowed to continue in the matrimonial house until a sum of Rs.1,00,000/- is paid. On the said day, they also pulled and pushed her and made her necked. On being raised outcry by her, the persons from neighbourhood arrived there and rescued her. On the basis of the report, the Police registered the case and took up the investigation. While the

court in the same on receipt of the F.I.R. on 1<sup>st</sup> August, 2014 took cognizance of the offence which is impugned herein.

5. It is submitted by the learned counsel for the Petitioner that the Petitioner is an old man of 61 years and happened to the matrimonial uncle of the informant, a permanent resident of Kasinagar whereas had spent his entire life while working under Andhra Pradesh and on retirement returned to Kasinagar. It is further submitted that there was absolutely no demand of dowry at the time of marriage, much less a demand from the Petitioner side and the Petitioner has absolutely no role at the time of marriage or subsequently thereafter except for the sake of maintaining the ritual as maternal uncle in law that he was present at the time of marriage. According to the learned counsel for the Petitioner an application for divorce was presented before the competent court i.e. the Additional District Judge-cum-Judge, Family Court, Visakhapatnam under Section 13 of the Hindu Marriage Act which was registered as FCOP No.761 of 2014 and it is only upon receipt of the notice in the above said divorce proceeding, the informant had lodged the F.I.R. as it is counter blast implicating the entire family including the present Petitioner and in absence of any material apparent on the face of the F.I.R. More so when the Petitioner was undergoing treatment at the relevant point of time, the learned court took cognizance of the offences of divorce the established principle of law without application of judicial mind and hence prays for quashing of the cognizance.

6. Learned counsel for the State on the other hand opposed the contention raised by the learned counsel for the Petitioner and submitted that the allegations are indeed as appearing on the F.I.R. prima facie to embarrass the Petitioner in the alleged offence and having regard to the

facts and circumstances of the case and the nature of allegations being serious exemption of the Petitioner from being proceeded further in the case by quashing of the cognizance would cause prejudice to the victim and hence deserves no interference to the impugned order.

7. The Apex Court in ***Daxaben v. State of Gujarat (2022) SCC Online SC 936*** while dealing with the matter regarding quashing of proceeding under Section 482 Cr.P.C. held as follows:

46. In *Parbatbhai Aahir Alias Parbathbhai Bhimsinhbhai Karmur and Others v. State of Gujrat and Another 21* , a three Judge Bench of this Court quoted *Narinder Singh (supra)*, *Vikram 19 (2016) 1 SCC 389 20 (2016) 1 SCC 376 21(2017) 9 SCC 641 19 Anantrai Doshi (supra)*, *CBI v. Maninder Singh (supra)*, *R. Vasanthi Stanley (supra)* and held:-

“16. The broad principles which emerge from the precedents on the subject, may be summarized in the following propositions:

16.1. Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

16.2. The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

16.3. In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

16.4. While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.

16.5. The decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.

16.6. In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the families of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

16.7. As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.

16.8. Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

16.9. In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

16.10. There is yet an exception to the principle set out in propositions 16.8. and 16.9. above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanor. The consequences of the act complained of upon the financial or economic system will weigh in the balance.”

47. In *State of Madhya Pradesh v. Laxmi Narayan & Ors.* 22, a three-Judge Bench discussed the earlier judgments of this Court and laid down the following principles:-

“15. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

15.1. That the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

15.2. Such power is not to be exercised in those prosecutions which involved 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; 22 (2019) 5 SCC 688 21.

15.3. Similarly, such power is not to be exercised for the offences under the special statutes 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;

15.4. Offences under Section 307 IPC and the Arms Act, etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act, etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. 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 framing 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. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge-sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paras 29.6 and 29.7 of the decision of this Court in *Narinder Singh [(2014) 6 SCC 466: (2014) 3 SCC (Cri) 54]* should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

15.5. While exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he

was absconding, how he had managed with the complainant to enter into a compromise, etc.” 48. In *Arun Singh and Others v. State of Uttar Pradesh Through its Secretary and Another* 23, this Court held:- “14. In another decision in *Narinder Singh v. State of Punjab* (2014) 6 SCC 466: (2014) 3 SCC (Cri) 54] it has been observed that in respect of offence against the society it is the 23 (2020) 3 SCC 736 22 duty to punish the offender. Hence, even where there is a settlement between the offender and victim the same shall not prevail since it is in interests of the society that offender should be punished which acts as deterrent for others from committing similar crime. On the other hand, there may be offences falling in the category where the correctional objective of criminal law would have to be given more weightage than the theory of deterrent punishment. In such cases, the court may be of the opinion that a settlement between the parties would lead to better relations between them and would resolve a festering private dispute and thus may exercise power under Section 482 Cr.PC for quashing the proceedings or the complaint or the FIR as the case may be.

15. Bearing in mind the above principles which have been laid down, we are of the view that offences for which the appellants have been charged are in fact offences against society and not private in nature. Such offences have serious impact upon society and continuance of trial of such cases is founded on the overriding effect of public interests in punishing persons for such serious offences. It is neither an offence arising out of commercial, financial, mercantile, partnership or such similar transactions or has any element of civil dispute thus it stands on a distinct footing. In such cases, settlement even if arrived at between the complainant and the accused, the same cannot constitute a valid ground to quash the FIR or the charge-sheet.

16. Thus the High Court cannot be said to be unjustified in refusing to quash the charge-sheet on the ground of compromise between the parties.” 49. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegation in the complaint except in exceptionally rare cases where it is patently clear

that the allegations are frivolous or do not disclose any offence.

50. In our considered opinion, the Criminal Proceeding cannot be nipped in the bud by exercise of jurisdiction under Section 482 of the Cr. P.C. only because there is a settlement, in this case a monetary settlement, between the accused and the complainant and other relatives of the deceased to the exclusion of the hapless widow of the deceased. As held by the three-Judge Bench of this Court in *Laxmi 23 Narayan & Ors. (supra)*, Section 307 of the IPC falls in the category of heinous and serious offences and are to be treated as crime against society and not against the individual alone. On a parity of reasoning, offence under section 306 of the IPC would fall in the same category. An FIR under Section 306 of the IPC cannot even be quashed on the basis of any financial settlement with the informant, surviving spouse, parents, children, guardians, care-givers or anyone else. It is clarified that it was not necessary for this Court to examine the question whether the FIR in this case discloses any offence under Section 306 of the IPC, since the High Court, in exercise of its power under Section 482 Cr.PC, quashed the proceedings on the sole ground that the disputes between the accused and the informant had been compromised.

51. The appeals are allowed. The impugned orders of the High Court are set aside. The observations made in this judgment are not to be construed as any observation on the merits of the contentions of the respective parties.”

8. In the case in hand, the F.I.R. allegation clearly attributed an overt act on the part of the present Petitioner constituting the offence alleged against which the learned Magistrate has taken cognizance as impugned herein. The very fact that the Petitioner was absent at the relevant time and was undergoing treatment, are matters of record can be gone into in course of the trial. This is because the allegations appearing in the F.I.R. reveals that the incident of cruelty being meted out to the victim wife has

been spelt out with specific instance involving the present Petitioner. Consequently, all that have been averred in the petition and submitted by the Petitioner would be dealt with during trial in order to ascertain its authenticity and genuineness.

9. Keeping in view the proposition of law, as above and the facts and circumstances appearing in the case in hand, more so when the name of the Petitioner finds place in the F.I.R. with specific overt act cannot be blinked aside to quash the proceeding by resorting to the jurisdiction under Section 482 Cr.P.C. in order to nip it at the bud. It may, however, be observed that if the Petitioner is not before the court so far and chooses to surrender before the court in seisin over the matter he shall be admitted to bail on such terms and conditions as would be deemed fit and proper by the court and further the identity of the Petitioner being not in question, his presence in each date of the trial may not be insisted upon except when it appears necessary for the interest of justice by the court dispensing with his personal appearance, if so applied, U/s. 205 Cr.P.C. This Court, therefore, is not inclined to interfere with the impugned order in exercise of power U/s. 482 Cr.P.C .

10. The CRLMC stands dismissed.

***(Chittaranjan Dash)***  
***Judge***

*KC Bisoi /Secretary*