

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2375 of 2012

Chandrasekhar Modual ***Petitioner***
-versus-

State of Odisha & another ***Opposite Parties***

CORAM:JUSTICE S.PUJAHARI

ORDER

25.04.2022

Order
No.

05. 1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the Petitioner, the learned counsel for the State-Opposite Party No.1 and the learned counsel for the Opposite Party No.2.
3. This application under Section 482 of Cr.P.C. has been filed by the Petitioner to quash the order dated 21.07.2012 passed by the learned S.D.J.M., Udala in G.R. Case No.339 of 2011 taking cognizance of the offence under Sections 498-A/406 IPC and Section 4 of the D.P Act.
4. It appears that the FIR was lodged against the husband, father-in-law and mother-in-law vide Udala P.S. Case No.106 of 2011, which was registered as G.R. Case No.339 of 2011 but on investigation charge sheet was filed against the present Petitioner (father-in-law) only leaving the other two accused persons.

5. It is stated by Mr. Sharma, learned counsel for the Petitioner that a civil suit was filed by the Opposite Party No.2-wife before the learned Civil Judge (Senior Division), Udala vide MAT Suit No.39 of 2012. During the pendency of the said suit, an agreement was entered into between the husband and wife on 18.02.2013 with regard to snap their marital ties due to intervention of the well-wishers of both the parties and accordingly both the husband and wife have filed a joint petition along with the agreement before the learned Civil Judge (Senior Division), Udala. The learned Civil Judge (Senior Division), Udala while satisfying with the terms of compromise in the agreement between the parties has allowed the decree of divorce between the parties and directed the husband to pay an amount of Rs.1,00,000/- to the wife as permanent alimony, which forms a part of the decree. In such premises, he submits to quash the impugned order of cognizance as well as the criminal prosecution launched against the Petitioner.

6. The aforesaid fact is not disputed by Mr. Pratik Nayak, learned counsel appearing on behalf of Mr. P.K. Rath, learned counsel appearing for the Opposite Party No.2.

7. No doubt, some of the offences are non-compoundable in nature. Non-compoundability of an offence does not stand

on the way of the Court for quashment of the proceeding in appropriate cases in exercise of power under Section 482 of Cr.P.C. In this regard, reliance can be placed 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.”

8. It appears that the aforesaid dispute arises out of marital discord. The matter has been compromised between the parties. A photocopy of the order dated 08.09.2012 passed by the learned Civil Judge (Senior Division), Udala in MAT Suit No.39 of 2012 along with an agreement have been filed by the learned counsel for the Petitioner indicating that the matrimonial relationship between the husband and wife has already been snapped by a decree of divorce and Opposite Party No.2 does not want to proceed with the matter. In such premises, when the husband and wife have amicably settled the dispute before the learned Civil Judge (Senior Division), Udala in MAT Suit No.39 of 2012 and the Opposite Party

No.2-victim does not want to proceed with the case in question, there shall be a bleak chance of conviction of the Petitioner-father-in-law in this case hereinafter, so the continuance of the prosecution against him shall be an abuse of the process of the Court.

9. I would, therefore, in the facts and circumstances of the case and placing reliance on the law laid down in the case of *Narinder Singh (supra)*, allow this Criminal Misc. Case, quash the impugned order as well as the proceeding vide G.R. Case No.339 of 2011 arising out of Udala P.S. Case No.106 of 2011, pending on the file of the learned S.D.J.M., Udala against the Petitioner. The trial court shall do well to comply with this order on production of the certified copy of this order, subject to the Petitioner producing the original certified copies of the aforesaid decree of divorce passed in MAT Suit No.39 of 2012 as well as the agreement entered into between the husband and wife on 18.02.2013.

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

(S.Pujahari)
Judge