

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3724 of 2017

***Kishore Kumar Mohanty &
another***

....

Petitioners

-versus-

State of Odisha & another

....

Opposite Parties

CORAM:JUSTICE S.PUJAHARI

**Order
No.**

**ORDER
12.08.2022**

- 05.
1. This matter is taken up through Hybrid mode.
 2. Heard learned counsel for the Petitioners, 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 Petitioners to quash the FIR in connection with Bonai P.S. Case No.10 of 1998, corresponding to G.R. Case No.114 of 1998, pending on the file of the learned S.D.J.M., Bonai. The offence alleged against the Petitioners is under Section 498-A IPC and Section 4 of the D.P Act.
 4. It appears that the aforesaid case arises out of a marital discord between the Petitioner No.1 and Opposite Party No.2. Petitioner No.2 is the father-in-law. The affidavit of Opposite Party No.2 along with certified copy of the petition as well as

the decree of divorce filed in Court today be kept on record. It is stated in the affidavit that Petitioner No.1 had filed an application under Section 13(B) of the Hindu Marriage Act in the court of Judge, Family Court, Cuttack which was registered as C.P. No.646 of 2018. Learned Judge, Family Court, Cuttack allowed the decree of divorce since they have decided to dissolve their marriage. Opposite Party No.2 has received Rs.5,00,000/- towards permanent alimony. Opposite Party No.2 has agreed not to proceed with the aforesaid criminal proceeding and in such circumstances, if criminal proceeding will be continued then it would result in killing of valuable judicial time and as such, in the interest of justice, the criminal proceeding be quashed.

5. Both the parties are personally present in Court today and submitted their Aadhar Cards as proof of their identity duly attested by their advocates. The same be kept on record. Both the learned counsel appearing for the Petitioners as well as the Opposite Party No.2 have jointly submitted that since both the Petitioner No.1 and Opposite Party No.2 have decided to snap their matrimonial relationship by way of settlement between them before the court of Judge, Family Court, Cuttack vide C.P. No.646 of 2018, the F.I.R. and the consequential criminal proceeding may be quashed, as no useful purpose is going to be served to continue with the same, inasmuch as hereinafter there shall be bleak chance of conviction.

6. No doubt, some of the offences allegedly committed 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 aground 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.”

7. Reverting back to the present case, it appears that the aforesaid dispute arises out of marital discord. The matter has been compromised between the parties. Opposite Party No.2-Informant has stated that their marriage is dissolved and she does not want to proceed with the matter. When the parties have dissolved their marriage by mutual consent before the court of Judge, Family Court, Cuttack in C.P. No.646 of 2018 and the victim does not want to proceed with the criminal prosecution in question, allowing the continuance of the investigation pursuant to the F.I.R. is going to serve no useful purpose, particularly when the Opposite Party No.2-informant does not want to proceed with the matter and the matter arises out of marital discord. Therefore, for the ends of justice, the same needs to be quashed.

8. 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 and quash the F.I.R. registered vide Bonai P.S. Case No.10 of 1998 and the consequential investigation made pursuant to the same. Consequently, G.R. Case No.114 of 1998 registered on the file of the learned S.D.J.M., Bonai against the Petitioners pursuant to the aforesaid F.I.R. stands closed. The trial court shall do well to comply with this order on production of the certified copy of this order to close the proceeding, so also the Police Station concerned shall act accordingly on the F.I.R.

registered and report the same to the learned S.D.J.M., Bonai within a week on receipt of this order.

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

(S.Pujahari)
Judge

PKS

