

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1799 of 2018

***Biswaranjan Nayak @ Bapulu
& others***

.... Petitioners

-versus-

State of Odisha & another

.... Opposite Parties

CRLMC No.3185 of 2018

Biranchi Kumar Nayak

.... Petitioner

-versus-

State of Odisha & another

.... Opposite Parties

CORAM: JUSTICE S.PUJAHARI

ORDER

11.04.2022

**Order
No.**

14. 1. CRLMC No.1799 of 2018 was not in today's list, but on being mentioned, the same is listed today by Special Notice and taken up on Board along with CRLMC No.3185 of 2018 through Hybrid mode as the cause of action in both the cases arise out of Paralakhemundi P.S. Case No.197 of 2016.
2. Both the applications under Section 482 of Cr.P.C. have been filed by the Petitioners to quash the criminal proceeding as well as the impugned order taking cognizance in connection with G.R. Case No.575 of 2016 arising out of Paralakhemundi P.S. Case

No.197 of 2016 pending in the court of S.D.J.M, Paralakhemundi. The offences alleged are punishable under Sections 498-A/323/294/342/313/506/34 IPC.

3. Mrs. Digambar Sethi, learned counsel has entered appearance on behalf of the Opposite Party No.2-wife by filing Vakalatanama in CRLMC No.3185 of 2018 in Court today. The same be kept on record.

4. Heard learned counsel for the Petitioners and the learned counsel for the Opposite Parties.

5. A joint affidavit has been filed by the Petitioner and the Opposite Party No.2 stating therein that due to intervention of village gentries and well wishers, the dispute between the parties have been amicably settled and they are living as husband and wife peacefully. Opposite Party No.2-wife has no objection if the proceeding initiated against the Petitioners is quashed.

6. It appears that the aforesaid case arises out of a marital discord between Biranchi Kumar Nayak (Petitioner in CRLMC No.3185 of 2018) and Opposite Party No.2, who are husband and wife respectively. Both the parties are personally present in Court today and filed the proof of their identity i.e. Aadhaar card duly attested by their respective advocates.

7. Learned advocates appearing for both the parties submit that since both the husband and wife are living together and leading

a happy conjugal life, the aforesaid proceeding be quashed as no useful purpose is going to be served to continue with the same, inasmuch as hereinafter there shall be a bleak chance of conviction. Hence, for the ends of justice, the proceeding be quashed.

8. Learned counsel for the State does not oppose such submissions.

9. No doubt, some of the offences are non-compoundable in nature. But, 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 on a decision of the apex Court rendered 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.”

10. The dispute arises out of marital discord. The matter has been compromised between the parties. A joint affidavit has been filed by the parties indicting therein that the marital discord between the parties are resolved in presence of their well wishers and relatives and as such, Opposite Party No.2-wife does not want to proceed with the matter against her husband and the in-laws members more so when both of them are presently reunited and living peacefully. No threat and coercion appears to have been exercised on the Opposite Party No.2-wife in getting her statement in the joint affidavit. No material is produced that the evidence has since been recorded. In such premises, when the parties have amicably settled the dispute, there is a bleak chance of conviction in the case. So the continuance of the prosecution shall be an abuse of the process of the Court. Otherwise also, the parties having been reunited and living peacefully, for the ends of justice, quashment of the proceeding against the Petitioners is also required to be made.

11. I would, therefore, in the aforesaid factual backdrop and also taking note of the ratio laid down in the case of *Narinder Singh and others* (supra), allow both the Criminal Misc. Cases and consequently G.R. Case No.575 of 2016 arising out of Parlakhemundi P.S. Case No.197 of 2016 pending in the court of

learned S.D.J.M., Paralakhemundi stands quashed. The court concerned shall do the needful to close the proceeding in view of the aforesaid order, on receipt of the certified copy of this order.

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

(S.Pujahari)
Judge

PKS

