

IN THE HIGH COURT OF ORISSA AT CUTTACK**CRLMC NO.564 of 2016**

(In the matter of application under Section 482 of the Criminal Procedure Code, 1973.).

Rama Chandra Jena & others ***Petitioners***

-versus-

State of Orissa and another ***Opposite Parties***

For Petitioners : ***Mr. R.C.Swain, Advocate***

For Opposite Parties : ***Mr. S.S. Pradhan, AGA [O.P. No.1]***
Mr. P.K.Deo, Advocate [O.P. No.2]

CORAM:

JUSTICE G. SATAPATHY

DATE OF HEARING :15.11.2022

DATE OF JUDGMENT:22.12.2022

G. Satapathy, J.

1. Aggrieved by the impugned order passed on 19.11.2013 by the learned J.M.F.C., Pattamundai in G.R. Case No. 160 of 2013 taking cognizance of offences U/Ss. 498-A/304-B/302/34 of I.P.C read with Section 4 of D.P. Act and issuing processes, the petitioners have preferred this application U/S. 482 of Cr.P.C.

praying to quash the aforesaid order on the grounds inter alia acquittal of 7 out of 10 accused persons and amicable settlement of dispute between the parties.

2. Facts in precise are Petitioner No.3-Birasen Jena had married to the daughter of opposite party No.2 and at the time of marriage, dowry articles, gold ornaments, cash of Rs.1,00,000/- and other household articles were given as a dowry but it is alleged, being dissatisfied with dowry, the petitioners and his other family members started torturing the daughter of opposite party No.2 for further demand of dowry of one motor cycle and they accordingly killed the daughter of opposite party No.2 by administering poison. Accordingly, opposite party No.2 lodged the F.I.R. before Pattamundai Police Station paving the way for investigation which culminated in submission of charge sheet against the petitioners and others whereafter, the learned J.M.F.C., Pattamundai by impugned order took cognizance of offences indicated in the preceding paragraph and issued processes against the petitioners by issuing N.B.W.As. Accordingly, the case was committed and 7 out of 10 accused persons leaving the petitioners faced the trial in S.T. Case No. 69 of 2015 in which the aforesaid 7 accused persons were acquitted by learned Additional Sessions

Judge, Kendrapara by a judgment passed on 19.01.2016 but the petitioners had failed to face the trial and they later on have come up with this CRLMC with a prayer to invoke the inherent jurisdiction of this Court to quash the impugned order by which process of N.B.W.As. has been issued against them.

3. Mr. R.C. Swain, learned counsel for the Petitioners submits that the Petitioners are the uncle-in-law, brother-in-law and husband of the deceased, but rest of the accused persons have been acquitted in a trial conducted by the learned Trial Court and the matter has been amicably settled between the parties and, therefore, the criminal proceeding against these three accused persons-cum-Petitioners in the present case is nothing but an abuse of process of Court and to secure the ends of justice, the criminal proceeding arising out of the impugned order may kindly be quashed. Relying upon the decision in *Ramawatar Vrs. State of Madhya Pradesh; (2021) 84 OCR (SC) 851* and *Premananda Sahu Vrs. State of Orissa ;(2013) 54 OCR 544*, learned counsel for the petitioners submits that allowing the criminal prosecution against the petitioners in this case would be a futile exercise of power wasting valuable time of the Court and the criminal proceeding can be quashed on the basis of a voluntary compromise

between the parties. He, accordingly, prays to quash the criminal proceeding against the petitioners.

4. Learned counsel for the State in reply by relying upon the decision in the case of *Rajan Rai Vrs. State of Bihar; (2006) 1 SCC 191 and Umesh Vrs. State of Kerala; (2017) 3 SCC 112* submits that even though co-accused have been acquitted but that cannot be a ground to quash the criminal proceeding against other co-accused persons who are yet to face the trial. He also by placing reliance on the provisions of Sections 40 to 44 of Indian Evidence Act submits that the judgment passed in earlier criminal proceeding cannot be taken into consideration to quash the criminal proceeding in which the present Petitioners-cum-accused persons are yet to face the trial. It is accordingly prayed by him to dismiss the CRLMC.

5. Mr. P.K. Deo, learned counsel appearing for the informant by filing an affidavit being sworn in by the informant submits that the matter has already amicably settled between the parties and, therefore, the informant has got no objection for quashing of the proceeding.

6. Admittedly, petitioner No.3 is the husband of the deceased whereas petitioner No.1 is the uncle-in-law and petitioner No.2 is

the brother-in-law(cousin) of the deceased. It is no doubt true that seven out of ten accused persons have already been acquitted by the learned Additional Sessions Judge, Kendrapara in S.T. Case No.69 of 2015, but the seminal question crops up here in this case is whether the impugned order directing issuance of process against the petitioners can be quashed in exercise of inherent jurisdiction of this Court on the grounds of acquittal of co-accused persons and amicable settlement of dispute between the parties. True it is that the offences under which cognizance was taken by the impugned order are not only non-compoundable in nature but also are serious and grave as the offences alleged against the petitioners in this case are for committing murder and dowry death of the deceased by subjecting her to torture and cruelty for demand of dowry.

7. In the course of hearing of this CRLMC, an affidavit stated to be sworn in by the informant has been filed by the learned counsel appearing for the informant and in such affidavit, the informant appears to have stated that out of mental imbalance and due to sudden death of his daughter, he lodged the FIR which was scribed by someone else, but he subsequently came to know that his daughter had committed suicide by taking poison as she could

not tolerate her stomach pain and the son of the deceased is now residing with him, and petitioner No.3 being the father of the child is regularly visiting his child and also taking care of him and in the aforesaid premises, he does not want to proceed in this case as other accused persons have already been acquitted by the learned trial Court. At the cost of repetition, this Court does not hesitate to mention here that the offences alleged against the petitioners are neither compoundable nor can be quashed on the ground of amicable settlement between the parties, nonetheless it is not considered prudent to quash the criminal proceeding of this nature solely on the ground of amicable settlement/compromise between the parties.

8. Law is very well settled that quashing of offences or criminal proceeding on the ground of settlement between an offender and victim is not the same thing as compounding of offence and the power to quash a criminal proceeding by the High Court in exercise of its inherent jurisdiction is distinct and different from the powers given to a criminal Court for compounding of offences. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity etc. cannot be fittingly quashed even though the victim or victim's family and the

offender have settled the dispute and such offences are not private in nature and have serious impact on society as held by the Apex Court in ***Gian Singh Vrs. State of Punjab; (2012) 10 SCC 303.***

9. In coming back to the cases of quashment of non-compoundable offences on the basis of compromise, it is felt apposite to refer to the most recent decision of the Apex Court in ***Daxaben Vrs. the State of Gujarat and others; 2022 Live Law (SC) 642, [(2022) 88 OCR(SC) 197]*** wherein the Apex Court has held at paragraphs-38 , 39 and 40 as follows:-

*“38. However, before exercising its power U/S. 482 of the Cr.P.C. to quash an F.I.R., criminal complaint and/or criminal proceedings, the High Court, as observed above, has to be circumspect and have due regard to the nature and gravity of the offence. **Heinous or serious crimes, which are not private in nature and have a serious impact on society cannot be quashed on the basis of a compromise between the offender and the complainant and/or the victim.** Crimes like murder, rape, burglary, dacoity and even abetment to commit suicide are neither private nor civil in nature. Such crimes are against the society. **In no circumstances can prosecution be quashed on compromise, when the offence is serious and grave and falls within the ambit of crime against society.***

39. Orders quashing F.I.Rs. and/or complaints relating to grave and serious offences only on basis of an agreement with the complainant, would set a dangerous precedent, where complaints would be lodged for oblique reasons, with a view to extract money from the accused. Furthermore, financially strong offenders would go scotfree, even in cases of grave and serious offences such as murder, rape, bride-burning, etc. by buying off informants/complainants and

settling with them. This would render otiose provisions such as Sections 306,498-A,304-B etc. incorporated in the I.P.C. as a deterrent, with a specific special purpose.

*40. In criminal jurisprudence, the position of the complainant is only that of the informant. **Once an F.I.R. and/or criminal complaint is lodged and a criminal case is started by the State, it becomes a matter between the State and the accused.** The State has a duty to ensure that law and order is maintained in the society. It is for the State to prosecute offenders. **In case of grave and serious non-compoundable offences which impact society, the informant and/or complainant only has the right of hearing, to the extent of ensuring that justice is done by conviction and punishment of the offender. An informant has no right in law to withdraw the complaint of a non-compoundable offence of a grave, serious and/or heinous nature, which impact society.***

(emphasis supplied by bold letters)

10. True it is that quashing of criminal proceeding on the ground of settlement of dispute between the informant-victim and the accused persons has come up before different Courts more than often and it has come before the Apex Court once again in the case of *Parbathbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur & others Vrs. State of Gujarat and another; (2017) 68 OCR(SC) 982*, wherein a three Judge Bench of Apex Court while summarizing the broad principles on which inherent power of High Court can be invoked has set out the principles for quashing of criminal proceeding on the ground of settlement of dispute at paragraph-15(v),(vi) and (vii) as follows:-

“(v) 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;

(vi) 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 family 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;

(vii) 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 in so far as the exercise of the inherent power to quash is concerned;”

11. In coming to situations where and when criminal proceedings involving non-compoundable offences can be quashed by exercise of power U/S. 482 of Cr.P.C., the Apex Court in ***Ramgopal and another Vrs. The State of Madhya Pradesh; (2021) 84 OCR (SC) 539*** has held at paragraph-13 as follows:-

“13. It appears to us that criminal proceedings involving non-heinous offences or where the offences are predominantly of a private nature, can be annulled irrespective of the fact that trial has already been concluded or appeal stands dismissed against conviction. Handing out punishment is not the sole form of delivering justice. Societal method of applying laws evenly is always subject to lawful exceptions. It goes without saying, that the cases where compromise

*is struck post conviction, the High Court ought to exercise such discretion with rectitude, keeping in view the circumstances surrounding the incident, the fashion in which the compromise has been arrived at, and with due regard to the nature and seriousness of the offence, besides the conduct of the accused, before and after the incidence. The touchstone for exercising the extraordinary power under Section 482 Cr.P.C. would be to secure the ends of justice. There can be no hard and fast line constricting the power of the High Court to do substantial justice. A restrictive construction of inherent powers under Section 482 Cr.P.C. may lead to rigid or specious justice, which in the given facts and circumstances of a case, may rather lead to grave injustice. **On the other hand, in cases where heinous offences have been proved against perpetrators, no such benefit ought to be extended, as cautiously observed by this Court in Narinder Singh & Ors. vs. State of Punjab & Ors. 2014(II) CLR(SC)722; (2014) 6 SCC 466 and Laxmi Narayan (Supra).**”*

12. On coming back to the important rulings of the Apex Court for exercise of inherent power to quash the criminal proceeding on the ground of settlement between the parties, it is to be reminded that in the case of ***State of Madhya Pradesh Vrs. Laxmi Narayan and Others; (2019) 5 S.C.C. 688***, the Apex Court after noticing the law on the point and authorities laid down in a catena of decisions observed at paragraph-15.4 as follows:-

“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/delegate 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 the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove”.

13. A careful conspectus of the record in this case together with discussions made hereinabove, especially when the petitioners have been charge sheeted for offences U/Ss. 498-A/304-B/302/34 of I.P.C. in this case would lead to an inescapable conclusion that these offences being heinous and serious in nature can be treated as a crime against the society but not against the individual alone.

Hence, the criminal proceeding for such offences cannot be quashed merely on the ground of settlement between the parties.

14. Adverting to the next submission urged by the petitioners to quash the impugned order on the ground of acquittal of co-accused persons, it is reminded in the context of the above case that criminal trial on the allegation of dowry death and murder of bride for demand of dowry is primarily focused against the husband and his relatives which is quite discernible from the words “husband or any relative of her husband” used in the Section 304-B/498-A of IPC. The consideration for quashing a criminal proceeding of this nature against the husband on the ground of acquittal of co-accused brother-in-law/ sister-in-law/relatives of husband would not be same as quashing of criminal proceeding in other cases on the selfsame ground of acquittal of co-accused persons inasmuch as the primary liability for protecting the life of wife is on the husband and in case of torture of wife as contemplated either in Section 498-A or 304-B of IPC is very much referable to husband or relatives of husband of a woman subjecting her to cruelty and the benevolent objects behind enacting the aforesaid penal sections are to prevent torture to a women by her husband or by relatives of her husband by way of punishment to erring husband and his

relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. Admittedly, the petitioners, one of whom is the husband of deceased are yet to face the trial in this case which is a Sessions Triable case and Section 273 of Cr.P.C. mandates that except as otherwise expressly provided, all evidence taken in the course of trial or other proceeding shall be taken in presence of the accused, or, when his personal attendance is dispensed with, in presence of his pleader and therefore, the petitioner having not faced the trial in this case, the evidence tendered in the case against co-accused persons cannot be taken into consideration for quashing the criminal proceeding in which the petitioners are suppose/likely to face the charge for commission of murder and dowry death of the deceased along with other offences which are not only serious but also grave offences and such offences are also against the society.

15. The petitioners have relied upon the decision in ***Premananda Sahu(supra)*** for seeking the relief of quashing of the criminal case of above nature against them, but the acquittal of co-accused recorded therein was on the basis of appreciation of evidence in the nature of circumstance of recovery of spade pursuant to disclosure statement of one of the co-accused,

however, such situation is not prevailing in this case which is premised on different allegation, proof of which can be made by taking into consideration the evidence with regard to unnatural death of a bride in her matrimonial home within seven years of her marriage for torture meted to her soon before her death for demand of dowry, *vis-a-vis* the presumption available in Section 113-B of Indian Evidence Act for offence U/S. 304-B of IPC, nonetheless other evidence can be appreciated to find out criminal liability of the petitioner for offence of murder. Besides, the petitioners have also relied upon the case in ***Ramawatar (supra)*** but the same is found distinguishable from the facts of the present case inasmuch as in the relied on case, the Apex Court has quashed the criminal proceeding by taking into consideration the civil dispute between the parties and voluntary compromise made by them, but in this case the petitioners are likely to face the charge U/S. 302/304-B of IPC which cannot be permitted to be settled up between the parties as the same relates to not only offence against society but the same are grievous and serious offences.

16. In the case ***Umesh(supra)***, the Apex Court has refused to quash the criminal proceeding against the accused who had not faced the trial on the ground of acquittal of co-accused person.

Moreover, in ***Ranjan Rai(supra)***, the Apex Court at paragraph-10 has held as under:-

“the judgment of acquittal rendered in the trial of other four accused persons is only irrelevant in the appeal arising out of the trial of the appellant as the said judgment was not admissible under the provisions of Sections 40 to 44 of the Evidence Act. Every case has to be decided on the evidence adduced therein. Case of the four acquitted persons was decided on the basis of evidence led there while the case of the present appellant has to be decided only on the basis of evidence adduced during the course of his trial.”

17. In view of the discussions made hereinabove and the law laid down by Apex Court in ***Ranjan Rai(supra)*** together with the fact that the offences U/Ss. 302/304-B of IPC alleged against the petitioners being serious and grave as well as against the society and keeping in view the status of one of the petitioners as husband of the deceased who has not faced the trial and requires different consideration especially when there is a presumption available against the accused persons for offence U/S. 304-B of IPC on establishment of ingredients of such offence and the grounds advanced by the petitioners to quash the criminal proceeding not in consonance with the provisions of law, this Court does not find any reason to conclude that the criminal proceeding against the petitioners is in fact an abuse of process of Court. Hence, the

petitioners having failed to satisfy any of the grounds for exercise the inherent power by this Court, the criminal proceeding in this case cannot and shall not be quashed against the petitioners merely on the grounds of acquittal of co-accused and settlement of dispute.

Resultantly, the CRLMC stands dismissed, but in the circumstance, there is no order as to costs.



(G. Satapathy)
Judge

*Orissa High Court, Cuttack,
Dated the 22nd of December, 2022/Kishore*