

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2809 of 2015

Bharati Joy and another

....

Petitioners

Ms. Deepali Mohapatra, Advocate

-versus-

State of Orissa and another

....

Opp. Parties

Mr. J. Katikia, 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 Petitioners seek to challenge the order dated 2nd July 2014 passed by the learned S.D.J.M. (Sadar), Sambalpur in G.R. Case No.293 of 2014 whereby cognizance of the offence under Sections 498-A/34 IPC read with Section 4 D.P. Act has been taken involving the Petitioner.
3. The background facts of the case are that the victim informant tied a nuptial knot with one Nilakantha Joy on 17th February, 2010. At the time of marriage, dowry in cash and kind was given to the bride. After one year of the marriage, the couple was blessed with a male child where after the victim was subjected to ill- treatment in connection with the demand of dowry particularly demanding cash of Rs.1,00,000/- and was subjected to assault and other mode of harassment even to the extent that she was driven out to the matrimonial house. The victim categorically alleged that the matter was brought to the notice of the local police.

However, at the intervention of the gentleman in the Sahi she was given shelter in a Goshala and later her in-laws brought her to the matrimonial house but four months thereafter once again they reiterated their demand and drove her out from the matrimonial house. The matter was then also brought to the police but despite the intervention of the police, the matter could not be reconciled for which the victim had to return to her parental house. In the meanwhile, there was another child born to the couple. It is specifically alleged that on 11th February, 2014 the husband of the victim came to their house and took the elder son with him but did not bring him back. Having not found her son returned the victim went to the matrimonial house to get her son back but was assaulted and driven out in her matrimonial house. On the basis of the report lodged to that effect the law was set in motion and the investigation commenced upon registration of the FIR. In course of investigation, the IO recorded the statement of the witnesses. The cognizance of offence having been taken by the competent court, the same was impugned herein by the Petitioners.

4. Learned counsel for the Petitioners, *inter alia*, submitted that the allegation brought in the F.I.R. did not disclose the names of the Petitioners in particular and the subsequent allegations appearing against them in the statement of the witnesses being vague and concocted have been so included just to harass them and in case the proceeding is allowed to continue against them the same would yield no result.

5. Learned counsel for the Petitioners further submitted that allowing the proceeding to continue against the Petitioners would be abuse of process

of law and hence the impugned order deserves to be set aside vis a vis the present Petitioners and quashed.

6. Learned AGA for the State on the other hand opposed the contention raised by the learned counsel for the Petitioners and submitted that the allegations are tell tale clear to embarrass the Petitioners 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 Petitioners from being proceeded with in the alleged offence would cause prejudice to the victim and hence the impugned order deserves no interference.

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, it is not true to say that there is no allegation at all against the Petitioners in the F.I.R. Rather it is apparent though seems

omnibus in nature whereas the statements recorded U/s 161 Cr.P.C clearly indicts their overt act. The allegations emerging from the F.I.R as well as the statements speaks a series of incident that finally culminated in lodging of the report constituting the offence alleged. Keeping in view the proposition of law as above and the materials available in the case record, facts and circumstances appearing in the case, more so the fact that the name of the Petitioners finds place in the statement with specific overt act cannot be blinked aside to quash the further proceeding by resorting to the jurisdiction U/s. 482 Cr.P.C. at its threshold.

9. In case, however, the Petitioners have not appeared so far before the court concerned and surrenders, they be admitted to bail on such terms and conditions as would deem fit and proper by the Court. Further, the identity of the Petitioners being not in question their personal appearance on each date of trial may not be insisted save and except when the presence is required by the court but upon application to be filed by the petitioners for dispensing with the personal appearance under relevant provision.

10. This Court, therefore, is not inclined to interfere with the impugned order. The CRLMC is accordingly dismissed. The interim orders stands vacated.

(Chittaranjan Dash)
Judge

