

IN THE HIGH COURT OF ORISSA AT CUTTACK**CRLMC NO.3820 of 2016**

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

Govinda Chandra Patra and others ***Petitioners***

-versus-

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

For Petitioners : ***Mr. B. Dalai, Advocate***

For Opposite Parties : ***Mr. S.R. Roul, ASC***
[O.P. No.1]
Mr. K.K. Sahoo, Advocate
[O.P. No.2]

CORAM:
JUSTICE G. SATAPATHY

ORDER
09.11.2022

Order No.**04.**

1. This is an application U/S.482 of Cr.P.C. by the petitioners praying therein to quash the order passed on 23.11.2001 by learned S.D.J.M., Jagatsinghpur in G.R. Case No.316 of 2001 on the ground of amicable settlement between the parties. No doubt the petitioners pray in the CRLMC to quash the order passed on

23.11.2001 but in the course of hearing of application, it is stated that inadvertently such order by which the petitioners were granted bail, has been challenged in the CRLMC instead of the order passed on 26.08.2002 by the learned S.D.J.M., Jagatsinghpur taking cognizance of offences on the ground of amicable settlement between the petitioners-accused persons with the informant-O.P. No.2 who is the wife of petitioner no.1.

2. Be it noted and reminded, it is always the substance of claim but not the date/dates under which a proceeding has been challenged to be quashed and the relief to which the party/parties is/are entitled to shall not be withheld merely because the party/parties has/have mentioned inadvertently a wrong date in the prayer for relief in the proceeding. This Court, accordingly, considers the prayer to quash the order passed on 26.08.2002 by the learned S.D.J.M., Jagatsinghpur in G.R. Case No. 316 of 2001 and the subsequent criminal proceeding thereon as advanced for the parties.

3. Short facts relevant for disposal of this CRLMC are that opposite party no.2 by way of instituting a complaint in 1.C.C. Case No.25 of 2001 in the Court of learned S.D.J.M., Jagatsinghpur has alleged against the petitioners for subjecting her

to torture and cruelty for demand of dowry and threatening her and such complaint was registered as G.R. Case No.316 of 2001 arising out of Jagatsinghpur P.S. Case No.133 of 2001 pursuant to a direction of the Court of learned S.D.J.M., Jagatsinghpur U/S.156(3) of Cr.P.C. which culminated in submission of charge-sheet against the petitioners for offences punishable U/Ss.498-A/34 of IPC read with Section 4 of D.P. Act, under which the cognizance was taken.

4. Heard Mr. B. Dalai, learned counsel for the petitioners, Mr. S.R. Roul, learned Additional Standing Counsel for the State-opposite party no.1 and Mr. K.K. Sahoo, learned counsel for the opposite party no.2-informant in the matter of present CRLMC.

5. At the threshold of hearing, learned counsel for the petitioners and opposite party no.2 jointly submit that the present case was the outcome of the family dissension between the informant and the petitioners and such matter having been amicably settled amongst the parties which is quite evident from the order passed on 23.11.2001 by which petitioners were granted bail on the basis of the compromise and right now the petitioner no.1 and informant are staying together as husband and wife and continuing their marital relationship being blessed with two sons

and the informant having no grievances against any of the petitioners, the further proceeding in this case is an abuse of process of law and, therefore, the criminal proceeding against the petitioners may be quashed.

6. Mr. S.R. Roul, learned Additional Standing Counsel for the State-opposite party no.1 by producing a written instruction received from the IIC, Jagatsinghpur submits that the petitioner no.1 and informant although were having some kind of dispute earlier but subsequently the couple reconciled the matter amongst themselves and staying together happily since last ten years and they are being blessed with two sons and, he therefore, does not have any objection for quashing of the Criminal Proceeding by taking into consideration aforesaid instruction which in the circumstance is in the interest of justice and restoring the family of the informant and the petitioners to right path.

7. The informant Smt. Manashi Patra, wife of petitioner no.1- Govinda Chandra Patra, being identified by Mr. M.R. Das, an Advocate, is personally present in the Court today along with petitioner no.1- Govinda Chandra Patra, being identified by his learned counsel Mr. B. Dalai. Both Manashi Patra and Govinda Chandra Patra file a joint affidavit today in Court stating therein

about amicable settlement of dispute between them and leading a happy conjugal life together. On being asked, the informant states before the Court that she is residing with her husband-petitioner no.1- Govinda Chandra Patra and she has no grievances against any of the petitioners. She further states that she is residing with her in-laws who are rest of the petitioners in this case in a joint family and now leading a happy conjugal life.

8. Considering the submissions advanced on behalf of the parties and taking into consideration the fact that the opposite party no.2- Manashi Patra is residing with petitioner no.1- Govinda Chandra Patra as wife and husband along with rest of the petitioners in a joint family and leading a happy family life and further the fact that the offences alleged against the petitioner are U/Ss.498-A/34 of IPC read with Section 4 of D.P. Act which relates to torture of wife by the husband and her in-laws for demand of dowry, but offence U/S.498-A of IPC by itself is not compoundable in nature, however, such offence can be quashed in exercise of inherent power of this Court on the ground of amicable settlement between the parties in view of the law laid down in ***B.S. Joshi v. State of Haryana; 2003 (4) SCC 675***, wherein the apex Court has observed that:

“non exercise of inherent power to quash the proceeding to meet the ends of justice would prevent women from settling earlier and that would be against the object of Section 498-A.”

9. Although the aforesaid offence as alleged against the petitioners is not compoundable in nature but in view of the decision in ***Gian Singh v. State of Punjab and another; (2012) 10 SCC 303***, wherein the apex Court has been pleased to hold as under:

“High Court must refrain from quashing criminal proceedings if the offence involved is a heinous and serious offence or when public interest is involved. However, if the offence is merely a civil matter, offences arising from commercial transaction, where the wrong is personal in nature and the parties have resolved their dispute, the proceeding may be quashed.”

10. Social justice having adorned in our preamble is the face of our sacred Constitution and one of the cherish object of such social justice is unity and preservation of family life than separation of wife and husband in a family. In this case when the informant has come forward to preserve her family life with the petitioners, rather than getting separated from them, it would be travesty of justice if she is not allowed to preserve her family to lead a happy conjugal life with her husband-petitioner no.1 along with their children and rest of the petitioners. In such situation, it becomes the duty of the Court to encourage genuine settlement of

matrimonial dispute. Besides, it would be extremely harsh and insulting to a woman who had already settled the dispute with her in-laws including husband being blessed with two sons out of their wedlock and continuing to stay happily with them for the last twenty years and more as evidenced from the order dated 23.11.2001, to compel her to prosecute the criminal proceeding initiated by her around twenty years back by allowing the criminal proceeding to proceed further.

10.1. Indisputably, **CHAPTER-XX-A “OF CRUELTY BY HUSBAND OR RELATIVES OF HUSBAND”** containing the offence U/S.498-A of the IPC was introduced by way of Criminal Law (Second Amendment) Act, 1983 (Act No. 46 of 1983) S.2 with effect from 25.12.1983 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 but, it was never the intention of legislature to prevent genuine settlement amongst the wife and husband by taking a hyper technical view that the offence is not compoundable which would be counterproductive and against the interest of women.

10.2. In view of the above facts and discussions made hereinabove, especially when the informant-wife is leading a happy conjugal life with her husband-petitioner no.1 and living happily with rest of the petitioners, the criminal proceeding against the petitioners would nothing but undue and unnecessary harassment to the parties and the continuation of trial thereon, would be a futile exercise of powers of the Court and thereby, further continuation of criminal proceeding would amount to abuse of process of law. Further, in the aforesaid circumstances, it is neither fair nor in the interest of justice to expose the petitioners to the rigmarole and tribulation of the ordeal of trial by allowing the criminal proceeding to continue. Thus, in order to secure the ends of justice, the criminal proceeding arising out of P.S. Case No.133 of 2001 corresponding to G.R. Case No.316 of 2001 is required to be quashed in exercise of inherent power U/S.482 of Cr.P.C.

11. It is, therefore, clarified that the order passed on 26.08.2002 by the learned S.D.J.M., Jagatsinghpur taking cognizance of offences U/Ss.498-A/34 of IPC and consequently the criminal proceeding thereon including the order passed on

18.04.2015 issuing N.B.W.(A) against the petitioners are hereby quashed.

12. Resultantly, the CRLMC is allowed to the extent indicated in the preceding paragraph, but in the circumstance without any costs.

(G. Satapathy)
Judge

Subhasmita

