

IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLMC No.2243 of 2021

1.Subhasis Mishra
2.Nrushinha Mishra @
Nrusinghanath Mishra
3.Kiranbala Mishra
4.Debasis Mishra
5.Swarnaprava Mishra

.... **Petitioners**
Mr.Debasis Panigrahi, Advocate

Versus

1.State of Odisha
2.Prachi Aparajita Tripathy

.... **Opp. Parties**
Mr. P.K.Mohanty, ASC
(for O.P.No.1)
Ms.Tapaswini Mishra, Advocate
(for O.P.No.2)

CORAM:
JUSTICE SAVITRI RATHO

ORDER
24.02.2022

Order No.

03. 1. Heard Mr. Debasis Panigrahi, learned counsel for the petitioners , Ms. Tapaswini Mishra, learned counsel for opp. party No.2 and Mr. P.K.Mohanty, learned Addl. Standing Counsel through hybrid mode.

2. In this application under Section 482 of the Code of Criminal Procedure (in short “CrI.P.C”), the petitioners have challenged the proceedings in G.R. Case No.2213 of 2017 pending in the court of learned S.D.J.M. (Sadar), Cuttack. In the said case, charge sheet has been filed against the petitioners for commission of offences under Sections 498-A/323/294/406/506/34 of I.P.C. read

with Section 4 of the D.P. Act. Cognizance of the offences has been taken on 13.03.2018.

Mr. Debashis Panigrahi, learned counsel for the petitioners submits that the case is posted in the learned court below for appearance of the accused persons and trial has not yet been started and in the meanwhile, the parties have settled the matter among themselves and the informant that opp. party No.2 does not want to proceed with the case.

3. Pursuant to issuance of notice in the present case, opp. party No.2, namely, Prachi Aparajita Tripathy, wife of Subhasis Mishra has entered appearance through counsel Mrs Tapaswini Mishra and has filed an affidavit.

4. Mr. Debashis Panigrahi, learned counsel for the petitioners relies on the decisions in the case of ***B.S.Joshi and others v. State of Haryana and another*** reported in (2003) 4 SCC 675 and ***Dimpey Gujral and others v. U.T. Chandigarh and others*** reported in (2013) 11 SCC 497 in support of his submissions that in view of the settlement between the parties, the order of cognizance and proceedings should be quashed in exercise of power under Section – 482 CrI.P.C even though some of the offences involved may not be compoundable under Section – 320 of the CrI.P.C.

5. Ms. T.Mishra, learned counsel appearing for the opp. party No.2 supports the submission of learned counsel for the petitioner and submits and draws my attention to the affidavit filed by Opp party No. 2 where she has stated that in view of settlement between her and petitioner No. 1, before the learned Judge, Family Court, Cuttack in

Civil Proceeding No.260 of 2017, she has undertaken not to proceed with the above G.R. Case bearing No.2213 of 2017 any further. She has further stated that in view of the divorce between her and the petitioner, she has no objection if the prayer of the petitioner is allowed by quashing the order of cognizance under Annexure-2 as well as the entire proceeding in G.R. Case No.2213 of 2017.

6. Perusal of the judgment dated 19.04.2021 passed in C.P. No.660 of 2017 reveals that the petition filed under Section 13 (1) (i-a) (i-b) of the Hindu Marriage Act by the wife has been allowed and the marriage between the parties dissolved by a decree of divorce. The parties had filed a joint compromise petition for dissolution of marriage and a sum of Rs.8.00 lakh vide two demand drafts has been handed over to the wife towards permanent alimony.

7. The Supreme Court in the case of ***B.S.Joshi and others v. State of Haryana and another*** reported in (2003) 4 SCC 675 has held as follows

“...10. In State of Karnataka v. L. Muniswamy & Ors. : (1977) 2 SCC 699 , considering the scope of inherent power of quashing under Section 482, this Court held that in the exercise of this wholesome power, the High Court is entitled to quash proceedings if it comes to the conclusion that ends of justice so require. It was observed that in a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice and that the ends of justice are higher than the ends of mere law though justice had got to be administered

according to laws made by the legislature. This Court said that the compelling necessity for making these observations is that without a proper realization of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction. On facts, it was also noticed that there was no reasonable likelihood of the accused being convicted of the offence. What would happen to the trial of the case where the wife does not support the imputations made in the FIR of the type in question. As earlier noticed, now she has filed an affidavit that the FIR was registered at her instance due to temperamental differences and implied imputations. There may be many reasons for not supporting the imputations. It may be either for the reason that she has resolved disputes with her husband and his other family members and as a result thereof she has again started living with her husband with whom she earlier had differences or she has willingly parted company and is living happily on her own or has married someone else on earlier marriage having been dissolved by divorce on consent of parties or fails to support the prosecution on some other similar grounds. In such eventuality, there would almost be no chance of conviction. Would it then be proper to decline to exercise power of quashing on the ground that it would be permitting the parties to compound non-compoundable offences. Answer clearly has to be in 'negative'. It would, however, be a different matter if the High Court on facts declines the prayer for quashing for any valid reasons including lack of bona fides.

11. In *Madhavrao Jiwajirao Scindia & Ors. v. Sambhajirao Chandrojirao Angre & Ors. : 1988) 1 SCC 692*, it was held that while exercising inherent power of quashing under Section 482, it is for the High Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. Where, in the opinion of the Court, chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may, while taking into consideration the special facts of a case, also quash the proceedings.

12. The special features in such matrimonial matters are evident. It becomes the duty of the Court to encourage genuine settlements of matrimonial disputes.

13. The observations made by this Court, though in a slightly different context, in *G.V. Rao v. L.H.V. Prasad & Ors.:(2000) 3 SCC 693*, are very apt for determining the approach required to be kept in view in matrimonial dispute by the courts, it was said that there has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other

reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their "cases" in different courts.

14. *There is no doubt that the object of introducing Chapter XX-A containing Section 498A in the Indian Penal Code was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hyper-technical view would be counter productive and would act against interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XXA of Indian Penal Code.*

15. *In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Code."*

The decision in **B.S Joshi** (supra), **Nikhil Merchant** and **Manoj Sharma** were doubted by a two judge Bench in **Gian Singh vs State** :**(2010) 15 SCC 118** on 23.10.2010 and hence the matter was referred

to a larger Bench and the reference was answered by a three judge Bench in **Gian Singh vs. State of Punjab & Anr.: (2012) 10 SCC 303**. After referring to and discussing a vast number of decisions of the Supreme Court and High court, the Supreme Court held that the decisions in **B.S. Joshi** (supra), **Nikhil Merchant** (supra) and **Manoj Sharma** (supra) could not be said to be not correctly decided. The relevant portions of the decision are extracted below:

...“ 57. *Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.*”...

...“ 59. **B.S. Joshi (2003) 4 SCC 675** , **Nikhil Merchant (2008) 9 SCC 677**, **Manoj Sharma (2008) 16 SCC 1** and **Shiji (2011) 10 SCC 705** do illustrate the principle that the High Court may quash criminal proceedings or FIR or complaint in

exercise of its inherent power under Section 482 of the Code and Section 320 does not limit or affect the powers of the High Court under Section 482. Can it be said that by quashing criminal proceedings in B.S. Joshi, Nikhil Merchant, Manoj Sharma and Shiji this Court has compounded the non compoundable offences indirectly ? We do not think so. There does exist the distinction between compounding of an offence under Section 320 and quashing of a criminal case by the High Court in exercise of inherent power under Section 482. The two powers are distinct and different although the ultimate consequence may be the same viz. acquittal of the accused or dismissal of indictment”

... “61. The position that emerges from the above discussion can be summarized thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.:

(i) to secure the ends of justice, or

(ii) to prevent abuse of the process of any court.

In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and

circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. 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. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to

the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceedings.”

In ***Gold Quest International vs State of Tamil Nadu*** : (2014) 15 SCC 235, the decision in ***Gian Singh*** (supra) has been referred to and the Supreme Court has held as follows :

“ 8. In view of the principle laid down by this Court in the aforesaid cases, we are of the view in the disputes which are substantially matrimonial in nature, or the civil property disputes with criminal facets, if the parties have entered into settlement, and it has become clear that there are no chances of conviction, there is no illegality in quashing the proceedings under Section 482 Cr.P.C. read with Article 226 of the Constitution. However, the same would not apply where the nature of offence is very serious like rape, murder, robbery, dacoity, cases under Prevention of Corruption Act, cases under Narcotic Drugs and Psychotropic Substances Act and other similar kind of offences in which 9 Page 10 punishment of life imprisonment or death can be awarded. After considering the facts and circumstances of the present case, we are of the view that learned Single Judge did not commit any error of law in quashing the FIR after not only the complainant and the

appellant settled their money dispute but also the other alleged sufferers entered into an agreement with the appellant, and as such, they too settled their claims...”

In the case of ***Dimpey Gujral and others v. U.T. Chandigarh and others*** reported in (2013) 11 SCC 497, the petitioners had approached the Supreme Court for transfer of the case from a court in Chandigarh to a competent Court in Delhi. The case had arisen out of trivial dispute relating to pet dogs of the petitioners. One of offences was non compoundable. Referring to the decision in Gian Singh (supra) the Supreme Court appreciated the efforts of the counsels to settle the matter and the conduct of the parties to put an end to their differences and held as follows:

“ 5. In light of the above observations of this court in Gian Singh, we feel that this is a case where the continuation of criminal proceedings would tantamount to abuse of process of law because the alleged offences are not heinous offences showing extreme depravity nor are they against the society. They are offences of a personal nature and burying them would bring about peace and amity between the two sides. In the circumstances of the case, FIR No.163 dated 26/10/2006 registered under Sections – 147 ,148 , 149,323,307 452 and 506 I.P.C at Police Station Sector 3, Chandigarh and all consequential proceedings arising therefrom including the final report presented under Section 173 of the Code and charges framed by the trial court are hereby quashed.”

8. It is therefore the settled law that matrimonial disputes can be set to rest by exercising power under Section – 482 CrI.P.C and

Section 320 Crl.P.C does not limit the inherent power of the High Court.

9. In the present case, petitioner No. 1 husband and Opp party No. 2 have filed a joint compromise petition before the Family Court. Their marriage has ended in divorce and the Opp Party No 2 wife has received permanent alimony. She has categorically stated in the compromise petition as well as in her affidavit before this Court that she does not want to proceed in the case. The corollary of which is that if she may not come to the Court to depose or if she does, she will not depose against the accused persons, for which the case will end in acquittal. The valuable time and resources of the Court will unnecessarily be wasted. It would therefore not be in interest of justice to continue the criminal proceedings as doing so would be an exercise in futility and would also amount to abuse of the process of Court. I therefore consider it proper to quash the impugned order of cognizance and the entire proceedings in the G.R. Case. The impugned order of cognizance and entire proceedings in G.R. Case No.2213 of 2017 pending in the Court of the learned S.D.J.M. (S), Cuttack arising out of Cuttack Mahila P.S. Case No.115 of 2017 are hereby quashed.

10. The CRLMC is accordingly disposed of.

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

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(Savitri Ratho)
Judge