

THE HIGH COURT OF SIKKIM : GANGTOK
(Criminal Jurisdiction)

S.B.: HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI, CJ.

Crl. M. C. No. 11 of 2017

1. Shri Sanjay Prasad,
Late Sri Ramavtar Prasad,
Aged about 32 years,
Resident of M.G. Marg,
Below Hotel Bayul,
Gangtok, East Sikkim.
2. Smt. Sushma Sharma,
Wife of Shri Sanjay Prasad,
Aged about 33 years,
Resident of M.G. Marg,
Below Hotel Bayul,
Gangtok, East Sikkim.

... **Petitioners.**

versus

State of Sikkim
Through the Ld. Public Prosecutor,
High Court of Sikkim,
Gangtok, East Sikkim.

... **Respondent.**

**Petition under Section 482 of the Code of Criminal
Procedure, 1973**

Appearance:

Mr. Yadev Sharma and Mr. Dilip Kumar Tamang,
Advocates for the Petitioner.

Mr. Santosh Kr. Chettri, Asstt. Public Prosecutor for
the State.

ORDER
(28.07.2017)

Satish K. Agnihotri, CJ

This is a petition preferred by the husband and wife to quash the FIR, bearing No. 261/2015 dated 05th October 2015, lodged by the wife against the husband and consequential criminal case pending on the file of the Chief Judicial Magistrate, East Sikkim at Gangtok.

2. The brief facts, as narrated by the petitioners, are that the second petitioner was legally married wife of the first petitioner and living together at M.G. Marg, below Hotel Bayul, Gangtok. As stated in the FIR, the first petitioner used to torture, harass and beat the second petitioner regularly. On 4th October 2015 at about 10.30 PM, she was beaten and her neck was throttled which might have led to her death. Further, the first petitioner picked up a kitchen knife and also attempted to stab her. Cognizance of the report was taken and a criminal case, being GR Case No. 109 of 2016, was registered against the first petitioner under Sections 498A/352/323 of the Indian Penal Code, 1860 (for short, "IPC"). As required, proper investigation was done before filing the charge-sheet on 27.04.2016. The petitioners have jointly stated that after the said incident, both of

them started living peacefully in the same house and nurturing the sole child, a son of 9 years of age. It is contended by the learned counsel appearing for the petitioners that keeping in view the peace and betterment of the family and the child, the second petitioner along with the first petitioner have entered into a compromise, which was duly executed on 20th February 2016, giving a quietus to the case in the interest of family and the society. Learned counsel would further contend that the FIR and the consequential criminal case be quashed for the benefit and growth of the family in the society.

3. Supporting the case of the petitioners, learned State counsel would submit that though the charge is serious in nature, but for benefit of the family fabric, the case may be considered for quashment of the FIR as well as the criminal case against the first petitioner pending before the Chief Judicial Magistrate.

4. Heard learned counsel for the parties. Examined the pleadings and also the relevant documents appended hereto.

5. Indisputably, the first and second petitioners are lawfully wedded husband and wife. It has also come on record that they are blessed with one son of 9 years of age. The family comprises of husband, wife and the child. It is necessary for the well being of the family fabric that every constituent must make

contribution and also compromise in the interest of other family members. There is no dispute that the first petitioner, under the mistaken belief, tried to exercise dominion over the wife, by show of his muscular might. This inexorable act of the first petitioner falls within the ambit of crime. A person who commits a crime against the basic norms of the society, is not entitled to live in the society, and as a retributory and ameliorative measure, he is to be removed from the society and kept in captivity. A fine may also be imposed as punishment to mend his ways and make himself suitable to be a part of the society. If the charges framed against the first petitioner are proved that will entail a punishment. The second petitioner feels that in the interest and well being of the family and the sole child, one more opportunity be given to the first petitioner. If the criminal case filed by the second petitioner is allowed to complete its course, this may lead to the destruction and desecration of the family life. It is noticed that both the petitioners are living happily, thus, it is necessary for this Court to exercise its extraordinary jurisdiction in the case under the provisions of Section 482 of the Code of Criminal Procedure, 1973 (for short "the Code").

6. In the case of ***Manoj Sharma vs. State & Ors¹***, wherein the question involved was as to whether a first

¹ (2008) 16 SCC 1

information report under Sections 420/468/471/34/120-B IPC deserves to be quashed either under Section 482 of the Code or under Article 226 of the Constitution, when the accused and the complainant have compromised and settled the matter between themselves. The Supreme Court speaking through Hon'ble Mr. Justice Altamas Kabir (as he then was), observed as under:

"8. In our view, the High Court's refusal to exercise its jurisdiction under Article 226 of the Constitution for quashing the criminal proceedings cannot be supported. The first information report, which had been lodged by the complainant indicates a dispute between the complainant and the accused which is of a private nature. It is no doubt true that the first information report was the basis of the investigation by the police authorities, but the dispute between the parties remained one of a personal nature. Once the complainant decided not to pursue the matter further, the High Court could have taken a more pragmatic view of the matter. We do not suggest that while exercising its powers under Article 226 of the Constitution the High Court could not have refused to quash the first information report, but what we do say is that the matter could have been considered by the High Court with greater pragmatism in the facts of the case."

Concurring, Hon'ble Mr. Justice Markandey Katju (as he then was) observed as under:

"27. There can be no doubt that a case under Section 302 IPC or other serious offences like those under Sections 395, 307 or 304-B cannot be compounded and hence proceedings in those provisions cannot be quashed by the High Court in exercise of its power under Section 482 CrPC or in writ jurisdiction on the basis of compromise. However, in some other cases (like those akin to a civil nature), the proceedings can be quashed by the High Court if the parties have come to an amicable settlement even though the provisions are not compoundable."

7. In yet another case, ***Sushil Suri vs. Central Bureau of Investigation & Anr.***², while further examining the scope, ambit and extent of Section 482 of the Code, the Supreme Court held as under:-

“16. Section 482 CrPC itself envisages three circumstances under which the inherent jurisdiction may be exercised by the High Court, namely, (i) to give effect to an order under CrPC; (ii) to prevent an abuse of the process of court; and (iii) to otherwise secure the ends of justice. It is trite that although the power possessed by the High Court under the said provisions is very wide but it is not unbridled. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the Court exists. Nevertheless, it is neither feasible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court. Yet, in numerous cases, this Court has laid down certain broad principles which may be borne in mind while exercising jurisdiction under Section 482 CrPC. Though it is emphasized that exercise of inherent powers would depend on the facts and circumstances of each case, but the common thread which runs through all the decisions on the subject is that the Court would be justified in invoking its inherent jurisdiction where the allegations made in the complaint or charge-sheet, as the case may be, taken at their face value and accepted in their entirety do not constitute the offence alleged.”

8. A larger Bench of Supreme Court in ***Gian Singh vs. State of Punjab & Anr.***³, summed up the correct proposition of law in this respect as under: -

“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

² (2011) 5 SCC 708

³ (2012) 10 SCC 30

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 end of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.

58. Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor.”

9. Subsequently, in ***Ashok Sadarangani & Anr. vs. Union of India & Ors.***⁴, referring to earlier decision rendered by it, the Supreme Court observed as under:

“24. Having carefully considered the facts and circumstances of the case, as also the law relating to the continuance of criminal cases where the complainant and the accused had settled their differences and had arrived at an amicable arrangement, we see no reason to differ with the views that had been taken in *Nikhil Merchant case* or *Manoj Sharma case* or the several decisions that have come thereafter. It is, however, no coincidence that the golden thread which runs through all the decisions cited, indicates that continuance of a criminal proceeding after a compromise has been arrived at between the complainant and the accused, would amount to abuse of the process of court and an exercise in futility, since the trial could be prolonged and ultimate, may conclude in a decision which may be of any consequence to any of the other parties.”

⁴ (2012) 11 SCC 321

10. In ***Yogendra Yadav and others vs., State of Jharkhand and another***⁵, wherein the accused was charge-sheeted for an offence committed, *inter alia*, under Section 307 IPC, which is non-compoundable, the Supreme Court held as under:

"4. Now, the question before this Court is whether this Court can compound the offences under Sections 326 and 307 IPC which are non-compoundable? Needless to say that offences which are non-compoundable cannot be compoundable by the court. Courts draw the power of compounding offences from Section 320 of the Code. The said provision has to be strictly followed (*Gian Singh v. State of Punjab : (2012) 10 SCC 303*). However, in a given case, the High Court can quash a criminal proceeding in exercise of its power under Section 482 of the Code having regard to the fact that the parties have amicably settled their disputes and the victim has no objection, even though the offences are non-compoundable. In which cases the High Court can exercise its discretion to quash the proceedings will depend on facts and circumstances of each case. Offences which involve more turpitude, grave offences like rape, murder, etc. cannot be effaced by quashing the proceedings because that will have harmful effect on the society. Such offences cannot be said to be restricted to two individuals or two groups. If such offences are quashed, it may send wrong signal to the society. However, when the High Court is convinced that the offences are entirely personal in nature and, therefore, do not affect public peace or tranquility and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice, it should not hesitate to quash them. In such cases, the prosecution becomes a lame prosecution. Pursuing such a lame prosecution would be waste of time and energy. That will also unsettle the compromise and obstruct restoration of peace."

11. Applying the well-settled principles of law to the facts of the case, as stated hereinabove, I am of the considered view

⁵ (2014) 9 SCC 653

that to protect and preserve the sanctity of family life and also for proper development of the child, the petition deserves to be allowed.

12. Resultantly, FIR bearing No. 261/2015 dated 05th October 2015 and the consequential proceedings in GR Case No. 109 of 2016 (State of Sikkim Versus Shri Sanjay Prasad) pending on the file of the Court of Chief Judicial Magistrate, East Sikkim at Gangtok, are quashed.

13. Thus, this petition is allowed. No order as to costs.

Chief Justice
28.07.2017

Approved for Reporting : Yes/~~No~~.
Internet : Yes/~~No~~.