

IN THE HIGH COURT OF SIKKIM : GANGTOK
(Criminal Extraordinary Jurisdiction)

DATED: 02ND APRIL, 2019

S.B.: HON'BLE MR. JUSTICE VIJAI KUMAR BIST, CHIEF JUSTICE.

Crl. M.C. No. 01 of 2019

1. Shri Ashish Asawa,
Son of Shri Shiv Narayan Asawa,
C/o House of Shri Bhagwati Lal Chaplot,
Plot No. 3, Near New Bus Stand Road,
P.O. & P.S. Rajnagar,
Dist. Rajsamand, Rajasthan.
2. Smt. Asha Asawa,
Wife of Shri Shiv Narayan Asawa,
Resident of Right Hand Side Flat,
First Floor, JE-19, Gupta Colony,
Khirki Extension, Malviya Nagar,
P.S. Malviya Nagar, New Delhi-110017.
... Petitioners

-versus-

1. Ms. Kalyani Sarada,
D/o Shri Yogendra Sarada,
Permanent Resident of Singtam Bazar,
P.O. & P.S. Singtam, East Sikkim.
2. State of Sikkim,
Through the Public Prosecutor,
High Court of Sikkim.
... Respondents

Appearance:

Mr. A.K. Upadhyaya, Sr. Advocate with Mr. Sonam R. Lepcha, Advocate for the Petitioners.

Mr. Sudesh Joshi, Advocate for Respondent No. 1.

Mr. Thinlay Dorjee Bhutia, Addl. Public Prosecutor for Respondent No. 2.

ORDER

Chief Justice

Present petition has been filed under section 482 of the Code of Criminal Procedure, 1973 for quashing the proceedings of G.R. Case No. 192 of 2016 (State of Sikkim vs. Asish Asawa & Anr.), pending disposal before the Court of Judicial Magistrate, Chungthang Sub-Division, stationed at Gangtok, under Section 4 of the Dowry Prohibition Act, 1961 and under sections 498(A), 420, 468, 471, 34 of the Indian Penal Code, 1860 (for short 'IPC').

2. Marriage of petitioner no. 1 was solemnized with respondent no. 1 on 12.07.2013 at Siliguri, West Bengal, according to Hindu rituals and customs. After marriage, they lived together in Delhi and later in Rajnagar, Rajsamand, Rajasthan. However, within few months of their marriage, differences between the petitioner no.1 and the respondent no.1, came to the fore. In the month of August 2014, the respondent no.1 left the house of the petitioner and started living in the house of her father at Singtam, East Sikkim. Thereafter, on 30.08.2014, she lodged an FIR against the petitioners at Singtam Police Station, East Sikkim under Section 498-A IPC and Section 4 of Dowry Prohibition Act, 1961. Investigating Officer, after investigating the matter filed charge-sheet against the petitioners. Now they are facing trial before the Judicial Magistrate, Chungthang Sub-Division, stationed at Gangtok.

3. Heard learned counsel for the parties.

4. Learned counsel for the respondent no.1 stated that respondent no. 1 does not want to proceed with the matter as she wants to lead a peaceful life. Hence, she has no objection in case criminal proceedings against the petitioners are quashed.

5. During the pendency of the present petition, the parties arrived at a compromise and mutually agreed that their marriage be dissolved by mutual consent. Thereafter a petition was filed by the petitioner no. 1 and respondent no. 1 for mutual divorce under section 13(B) of the Hindu Marriage Act, 1955. Said petition was allowed on 05.05.2018. It is informed by the counsel for respondent no. 1 that the respondent no.1 has remarried on 18.01.2019 and is living with her husband in Cuttack, Odisha.

6. Offence under section 498A of the IPC is not a compoundable offence. The question that arises before this Court is whether this Court in exercise of its power under Section 498A of IPC can quash a criminal proceeding in a non-compoundable offence. This question came up for hearing before the Hon'ble Supreme Court in the matter of ***B.S. Joshi & Others vs. State of Haryana : (2003) 4 SCC 675, Nikhil Merchant vs. CBI : (2008) 9 SCC 677, Manoj Sharma vs. State : (2008) 16 SCC 1.*** The Hon'ble Supreme Court in all these matters permitted compounding of all non-compoundable offences. Later on, this controversy was referred to a larger Bench in the matter of ***Gyan Singh vs. State of Punjab : (2012) 10 SCC 303,*** for examining and reconsidering the matter, the Hon'ble Supreme Court, *inter alia*, dealt with its earlier three judgments and discussed the matter in the following manner:

53. Section 482 of the Code, as its very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior court to prevent abuse of the process of any court or otherwise to secure the ends of justice. It begins with the words, "nothing in this Code" which means that the provision is an overriding provision. These words leave no manner of doubt that none of the provisions of the Code limits or restricts the inherent power. The guideline for exercise of such power is provided in Section 482 itself i.e. to prevent abuse of the process of any court or otherwise to secure the ends of justice. As has been repeatedly stated that Section 482 confers no new powers on the High Court; it merely safeguards existing inherent powers possessed by the High Court necessary to prevent abuse of the process of any court or to secure the ends of justice. It is equally well settled that the power is not to be resorted to if there is specific provision in the Code for the redress of the grievance of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

54. In different situations, the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power under Section 482 on either of the twin objectives, (i) to prevent abuse of the process of any court, or (ii) to secure the ends of justice, is a sine qua non.

55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim *quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest*. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. Ex debito justitiae is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection.

56. It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a straitjacket formula regulating the exercise of inherent powers under Section 482. No precise and inflexible guidelines can also be provided.

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.

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. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed."

7. In the matter of **Gyan Singh** (supra), the Hon'ble Apex Court has, in clear terms, spoke about the cases in which High Court

should or should not interfere. Paragraph 61 of the judgment is being quoted below:

"61. The position that emerges from the above discussion can be summarised 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 predominately 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 proceeding."

8. In the present case, the petitioner no. 1 and respondent no. 1 (husband and wife) first arrived at a compromise and a Deed

of Compromise was drawn by them. As per compromise, they filed a Divorce Petition under Section 13 (B) of Hindu Marriage Act and got a degree of divorce. They are living separately and the respondent no. 1, after her marriage is living with her husband at Cuttack. Considering all these facts, I have no doubt that if the trial is permitted to proceed against the accused/applicant, the ultimate fate of trial shall result in the acquittal of the petitioners. In fact, no useful purpose shall be served if the trial is permitted to proceed further. By permitting the trial to proceed further, the ends of justice shall not be achieved and same will be a futile exercise. In such situation, continuation of the criminal proceeding would tantamount to abuse of process of law.

9. Consequently, proceedings of G.R. Case No. 192 of 2016 (State of Sikkim vs. Asish Asawa & Anr.) under section 4 of the Dowry Prohibition Act, 1961 and under sections 498(A), 420, 468, 471, 34 of the Indian Penal Code, 1860, pending in the Court of the Judicial Magistrate, Chungthang Sub-Division, stationed at Gangtok, are hereby quashed.

10. Crl. M. C. No. 01 of 2019 stands disposed of.

11. Copy of this Order be sent to the Court of the concerned Judicial Magistrate, forthwith.

Chief Justice
02.04.2019

Index: Yes/~~No~~
Internet: Yes/~~No~~

jk/bp