

GAHC010125272024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./727/2024

PALLAB DAS
S/O SRI KUSHAL CH DAS, R/O VILL- NORTH GUWAHATI, MAZGAON, P.O.
AND P.S.-NORTH GUWAHATI, DIST- KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:SMTI BANALATA BHUYAN
D/O SRI GUNESWAR BHUYAN
W/O SRI PALLAB DAS
R/O VILL NAMSHALA SARTHEBARI BARPETA
P.O. AND P.S.-BARPETA
DIST- BARPETA
ASSAM
PIN-781307
PRESENTLY R/O HOUSE NO 26
C/O MRS CHAYNIKA BHUYAN
NIGAJI PAAM PATH
AMBIKAGIRI NAGAR
P.O.-ZOO ROAD
PIN-78102

Advocate for the Petitioner : MR. D HAZARIKA, C M DEKA,MR. S J SARMAH,MR. R PHUKAN

Advocate for the Respondent : PP, ASSAM, MS S KAKATI (r-2),MR N P DAS (r-2)

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

28/08/2024

Heard Mr. S J Sarma, learned counsel for the petitioner and Mr. B Sarma, learned Additional Public Prosecutor, Assam for the State respondent No. 1. Also heard Ms. S Kakati, learned counsel for the respondent No. 2.

2. Brief facts of the case is that the respondent No. 2 on 29.04.2022 lodged a written Ejahar before the Officer-in-Charge of North Guwahati Police Station stating that though the petitioner married her on 25.07.2021 and since then she had been residing in her matrimonial home with her husband, but the petitioner thereafter made lots of demand from her and her family and due to instigation of her sister-in-law as well as brother-in-law, her husband the petitioner physically and mentally tortured her on many occasions and inspite of being three months pregnant, due to compelling situation she had to leave her matrimonial home on 28.04.2022.

3. Said FIR of the respondent No. 2 was registered as North Guwahati Police Station Case No. 42/2022 under Section 498A IPC read with Section 4 of the Dowry Prohibition Act, 1961 as amended, corresponding to G.R. No. 692(K)/2022 against the petitioner.

4. The petitioner stated that he and respondent No. 2 were married on 08.03.2021 under the Special Marriage Act 1954 and since then they had been living together as husband and wife. However, there was certain disputes and differences between him and his wife respondent No.2 in their matrimonial relationship and the change in temperament and perception led to incompatibility between them for which since 18.04.2022 they lived separately. Petitioner stated that the respondent No.2 falsely lodged the FIR before the North Guwahati Police Station on 29.04.2022 against him without any basis and with afterthought, only to harass him and to take vengeance against him

5. Petitioner stated that in the meanwhile he filed a case before the Principal Judge, Family Court, Kamrup (Metro) at Guwahati under Section 27 of the Special Marriage Act 1954 being F.C. (Civil) Case No. 477/2022 praying for granting a decree of divorce or dissolution of

marriage with the respondent No.2. During mediation between them, after having a detail discussion pertaining to their ongoing marital dispute, realizing that their marriage has been broken down and that there is no scope of reunion between them and therefore, they agreed to settle their differences mutually and live separately. As such, they jointly decided to dissolve their marriage by a decree of divorce on mutual consent and also decided to withdraw the cases filed against each other.

6. In that regard, both the petitioner and the respondent No. 2 had entered into a deed of agreement on 09.12.2023 that was sworn before the Notary at Kamrup (Metro), Guwahati, copy of which is annexed as Annexure-2 to this petition.

7. Hence, this criminal petition by the petitioner praying amongst others to set aside and quash the said North Guwahati Police Station Case No. 42/2022 under Section 498A IPC read with Section 4 of the Dowry Prohibition Act, corresponding to G.R. No. 692(K)/2022 registered against him.

8. Today, Ms. Kakati, learned counsel appearing for the respondent No. 2/informant on instruction submitted that since in the meanwhile, the respondent No. 2 and the petitioner have dissolved their disputes outside the Court and that their marriage has been dissolved by a decree of divorce on mutual consent, therefore, said respondent No.2 has no objection if said North Guwahati Police Station Case No. 42/2022 that was registered on the basis of her FIR dated 29.04.2022 against the petitioner is quashed.

9. During the deliberation of the matter, Mr. B Sarma, learned Additional Public Prosecutor, Assam, on instructions submitted that after investigating the said North Guwahati P.S. Case No. 42/2022 that was registered on the basis of the FIR dated 29.04.2022 lodged by the respondent No. 2, police submitted the charge-sheet in the said North Guwahati P.S. Case on 31.05.2022 vide Charge-Sheet No. 23/2022 presently pending before the Court of learned Chief Judicial Magistrate, Kamrup at Amingaon.

10. Referring its earlier judgments in the cases of *Madhavrao Jiwajirao Scindia -Vs- Sambhajirao Chandrojirao Angre*, reported in (1988) 1 SCC 692 and *G.V. Rao -Vs- L.H.V. Prasad*, reported in (2000) 3 SCC 693, the Hon'ble Supreme Court in the case of *B.S. Joshi*

-Vs- *State of Haryana*, reported in (2003) 4 SCC 675 have held that —

“While exercising inherent power of quashing under Section 482 CrPC, 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 are 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. The special features in such matrimonial matters are evident. It becomes the duty of the court to encourage genuine settlements of matrimonial disputes. For determining the approach required to be kept in view in a matrimonial dispute by the courts, the Court observed 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.

There is no doubt that the object of introducing Chapter XX-A containing Section 498-A in the Penal Code, 1860 was to prevent torture to a woman by her husband or by relatives of her husband. Section 498-A 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 counterproductive 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 XX-A of the Penal Code, 1860”.

11. In the case of *Gian Singh -Vs- State of Punjab*, reported in (2012) 10 SCC 303, the

Hon'ble Supreme Court (a Bench consisting of three Hon'ble Judges) have held as follows:

“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.

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 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 proceeding."

12. The Hon'ble Supreme Court, consisting of three Hon'ble Judges, in the case of *Jitendra Raghuvanshi -Vs- Babita Raghuvanshi*, reported in (2013) 4 SCC 58 have held that —

"15. In our view, it is the duty of the courts to encourage genuine settlements of matrimonial disputes, particularly, when the same are on considerable increase. Even if the offences are non-compoundable, if they relate to matrimonial disputes and the Court is satisfied that the parties have settled the same amicably and without any pressure, we hold that for the purpose of securing ends of justice, Section 320 of the Code would not be a bar to the exercise of power of quashing of FIR, complaint or the subsequent criminal proceedings.

16. There has been an outburst of matrimonial disputes in recent times. The institution of marriage

occupies an important place and it has an important role to play in the society. Therefore, every effort should be made in the interest of the individuals in order to enable them to settle down in life and live peacefully. If the parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law, in order to do complete justice in the matrimonial matters, the courts should be less hesitant in exercising their extraordinary jurisdiction. It is trite to state that the power under Section 482 should be exercised sparingly and with circumspection only when the Court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of process of court or that the ends of justice require that the proceedings ought to be quashed. We also make it clear that exercise of such power would depend upon the facts and circumstances of each case and it has to be exercised in appropriate cases in order to do real and substantial justice for the administration of which alone the courts exist. It is the duty of the courts to encourage genuine settlements of matrimonial disputes and Section 482 of the Code enables the High Court and Article 142 of the Constitution enables this Court to pass such orders."

13. In view of the above discussion, on hearing both the petitioner and the respondent No. 2, considering that both of them have amicably settled their matrimonial disputes by mutual agreement without any pressure, this Court in exercise of its inherent powers under Section 482 of the Code of Criminal Procedure set aside the FIR relating to North Guwahati Police Station Case No. 42/2022 under Section 498A IPC read with Section 4 of the Dowry Prohibition Act, 1961 as amended, corresponding to G.R. No. 692(K)/2022 that was registered on the basis of written Ejahar dated 29.04.2022 submitted by the respondent No. 2.

14. Consequently, the Charge-Sheet No. 23/2022 dated 31.05.2022 submitted by the authority concerned in said North Guwahati Police Station Case No. 42/2022 and/or any other proceeding arising out of said North Guwahati Police Station Case No. 42/2022 is also set aside and quashed.

15. Accordingly, this criminal petition stands allowed.

JUDGE

Comparing Assistant