

**THE HIGH COURT OF SIKKIM AT GANGTOK
(Criminal Jurisdiction)**

J U D G M E N T

S.B. Crl. M. C. No. 07 of 2014

Shri Manmeet Singh Khambay,
Son of Shri S. Mola Singh Khambay,
Resident of E5/04-Gajanan Darshan,
CHS Ltd. Sector-7, Sanpada East,
Navi Mumbai, Maharashtra.

..... **Petitioner.**

- versus -

1. State of Sikkim.
2. Ms. Namrata Gurung,
D/o Shri Raj Bikram Gurung,
Lower Burtuk,
Gangtok, Sikkim.

..... **Respondents.**

CORAM

**HON'BLE THE CHIEF JUSTICE
MR. JUSTICE N. K. JAIN**

Date of Judgment : 25.07.2014

For Petitioner : Ms. Sedenla Bhutia, Advocate.
Mr. Manmeet Singh Khambay,
petitioner, present in person.


For Respondent No. 1 : M/s. S.K. Chettri and Pollin Rai,
Asstt. Public Prosecutors.

For Respondent No. 2 : Mr. Ajay Rathi, Advocate.
Shri Raj Bikram Gurung, father
of Respondent No. 2, present in
person

Jain, CJ (Oral).

Heard learned counsel for the parties.

2. The petitioner/husband has preferred this Crl. Misc. Petition under Section 482 Cr. P.C. for quashing the proceedings of G.R. Case No. 11/2013 State of Sikkim vs. Manmeet Singh Khambay, pending in the Court of Chief Judicial Magistrate (East & North) at Gangtok, East Sikkim arising out of FIR No. 74(07)12 dated 09.07.2012 under Section 498A IPC, on the ground that petitioner/husband and respondent No. 2, Ms. Namrata Gurung/wife, have settled their disputes out of Court by executing a Compromise Deed in writing dated 25.03.2014. It is stated



in the petition that the marriage of the petitioner and respondent No. 2 was solemnized according to Hindu rites and rituals on 13.03.2009 at Gangtok. On 09.07.2012, the respondent No. 2, Ms. Namrata Gurung filed a written complaint against the petitioner under Section 498A IPC, wherein a charge-sheet was submitted against the petitioner and cognizance was taken and G.R. Case No. 11/2013 was registered. The said case is pending in the Court of Chief Judicial Magistrate (East & North) at Gangtok, East Sikkim.

3. It is also stated that the petitioner filed a Transfer Petition (Crl.) No. 479/2013 before the Hon'ble Supreme Court of India for transferring of above G.R. Case No. 11/2013 from Sikkim to New Delhi. The Hon'ble Supreme Court issued notice to opposite party on the submission of petitioner that he intends to settle the matter. During the pendency of the Transfer Petition, the parties resolved their disputes and differences amicably outside the Court and the Transfer Petition (Crl.) No. 479/2013 preferred before the Hon'ble Supreme Court was disposed off vide order dated 28.03.2014. The interim order dated 09.12.2013 and final order dated 28.03.2014 passed in Transfer Petition (Crl.)

No. 479/2013 by the Hon'ble Apex Court are reproduced as under:

"Date: 09/12/2013 This petition was called on for hearing today.

CORAM:

HON'BLE MR. JUSTICE SUDHANSU JYOTI
MUKHOPADHAYA
HON'BLE MR. JUSTICE V. GOPALA GOWDA

For Petitioner(s) Mr. Satbir Pillania, Adv.
Mr. Somvir A., Adv.
Mr. R.C. Gubrele, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following

ORDER

We were not inclined to entertain the Transfer Petition at the instance of the husband-petitioner. However, as the learned counsel for the petitioner submits that he intends to settle the dispute with wife, we allow the petitioner to implead the complainant-wife as party Respondent No. 2 to the Transfer Petition to find out the possibility of settlement.

Cause-title be amended accordingly.

Let notice be issued returnable within eight weeks on newly impleaded Respondent No. 2 on the limited question whether she intends to settle the dispute with the petitioner, if petitioner bears all cost of transfer the case from Sikkim to New Delhi and her stay at newly Delhi.

Dasti, in addition, is permitted.

In the meantime, petitioner will pay a sum of Rs.20,000/- in favour of the newly impleaded Respondent No. 2 for her appearance."

x

x

x

“ O R D E R

The learned counsel for the parties submit that the dispute has been settled between the parties.

In view of the settlement reached between the parties, no order is required to be passed.


The Transfer Petition stands disposed of.

(SUDHANSU JYOTI MUKHOPADHAYA, J.)

(DIPAK MISRA, J.)

NEW DELHI,
MARCH 28, 2014.”

4. Thereafter, this petition was preferred before this Court for quashing the proceedings of G.R. Case No. 11/2013, pending in the Court of Chief Judicial Magistrate (East & North) at Gangtok, East Sikkim, against the petitioner. The petition was admitted and notice was issued to respondents and in response thereto, respondent No. 2 has filed her written reply supported by an affidavit of her father, Shri Raj Bikram Gurung, wherein he has admitted that respondent No. 2 has entered into a compromise with petitioner and the Compromise Deed has been executed between the parties on 25.03.2014.



5. It is relevant to mention that petitioner, Manmeet Singh Khambay is present in person and respondent No. 2, Ms. Namrata Gurung is not present in person, but her father, Shri Raj Bikram Gurung, is present in person. It is stated that respondent No. 2 has gone to Thailand as she is doing her job there. The petitioner present in person as well as Shri Raj Bikram Gurung, both admitted the contents of the Compromise Deed between the parties. The original Compromise Deed has been placed on record, which is signed by both the parties. In addition to respondent No. 2, Ms. Namrata Gurung, the Compromise Deed is signed by her father, Shri Raj Bikram Gurung also. Shri Raj Bikram Gurung has also filed his Power of Attorney duly executed in his favour by respondent No. 2, Ms. Namrata Gurung.

6. This Court in *Shri Phuchung Tshering Bhutia & Others vs. State of Sikkim*, Crl. M.C. No. 04/2014, decided on 19.05.2014, relied upon its earlier judgment in *Mr. Tara Rai vs. State of Sikkim and another*, Crl. M.C. No. 21/2013 and three-Judge Bench judgment of Hon'ble Apex Court in *Gian Singh vs. State of Punjab and another*, reported in

(2012) 10 SCC 303 and quashed the proceedings of criminal case under Section 498A IPC.

7. Paragraphs 6, 7, 8 and 9 of the judgment dated 19.05.2014, referred above, are reproduced as under: -

"6. This Court in **Mr. Tara Rai vs. State of Sikkim and another, Crl. M.C. No. 21 of 2013** decided on 12.12.2013, has considered the three-Judge Bench judgment of Hon'ble Apex Court in **Gian Singh vs. State of Punjab & Another** reported in **(2012) 10 SCC 303** and held that although offence under Section 498A IPC is not compoundable, but if the parties have entered into a compromise, then it being a case arising out of matrimonial dispute, the proceedings of criminal case pending can be quashed.

7. Paragraphs, 13, 14, 15 and 16 of the above referred Judgment are reproduced as under: -

"13. The larger Bench consisting of three-Judge of Hon'ble Apex Court in **Gian Singh's** case (supra), considered a reference, referred by a two-Judge Bench, to see the correctness of the decisions of Hon'ble Apex Court in **B.S. Joshi vs. State of Haryana : (2003) 4 SCC 675, Nikhil Merchant vs. CBI : (2008) 9 SCC 677** and **Manoj Sharma vs. State : (2008) 16 SCC 1**, wherein the Hon'ble Apex Court had permitted compounding of non-compoundable offences relating to matrimonial and civil disputes. Hon'ble Apex Court in **Gian Singh's** case (supra) considered its various judgments and also the judgment of five-Judge Bench of Punjab & Haryana in **Kulwinder Singh vs. State of Punjab** reported in **(2007) 4 CTC 769** and a judgment of three-Judge Bench of the Bombay High Court in **Abasahib Yadav Honmane vs. State of Maharashtra** reported in **(2008) 2 MAH LJ 856**. Hon'ble Apex Court considered the powers of High Court under Section 482 of the Cr. P.C. and also provision of Section 320 Cr. P.C.

14. The Hon'ble Apex Court in **Gian Singh's case** (supra) answered the reference and held that it cannot be said that **B.S. Joshi, Nikhil Merchant** and **Manoj Sharma cases** (supra) were not correctly decided. The Hon'ble Apex Court held that 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. 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 in the case.

15. It has further been held by Hon'ble Apex Court that 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. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on a different footing for the purposes 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. Paragraph 61 of the **Gian Singh's** judgment is reproduced as under: -

"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."
(Emphasis Supplied)

16. From the above, it is clear that Hon'ble Apex Court is specifically barred the compounding of the non-compounding offences in respect of heinous and serious offences mentioned in paragraph 61 of the judgment but allowed the High Court to quash the criminal proceedings, if in its view, on the basis of compromise of non-compoundable offences, where the offences arise 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."

8. Since, the present matter also arises out of matrimonial dispute and parties have entered into compromise, a written Deed of Compromise has been placed on record. The parties are present in person and they have admitted their signature on Deed of Compromise and also the contents thereof. In these circumstances, I am of the view that the ends of justice will meet in case the proceedings of the trial Court are quashed.

9. Consequently, this petition is allowed. Further proceedings of GR Case No. 09 of 2014 State of Sikkim vs. Phuchung Tshering Bhutia, arising out of FIR No. 57/2013 dated 23.11.2013, pending in the Court of Judicial Magistrate (West) at Gyalshing are quashed and set aside."

8. Since, both the parties i.e. petitioner/husband and respondent No. 2/wife, have settled their disputes, Compromise Deed duly signed by them has been placed on record, therefore, no useful purpose will be served in keeping the said case pending anymore.

9. In these circumstances, I find this case is to be fit one to quash the proceedings of the trial Court.



Consequently, this Crl. Misc. Petition is allowed, the proceedings of Crl. Case G.R. Case No. 11/2013 State of Sikkim vs. Manmeet Singh Khambay, pending in the Court of Chief Judicial Magistrate (East & North) at Gangtok, East Sikkim, arising out of FIR No. 74(07)12 dated 09.07.2012 are quashed and set aside.

10. A copy of this order be sent to the concerned Court for information and compliance.

(N.K. Jain)
Chief Justice
25.07.2014

Approved for reporting: Yes / ~~No~~
Internet : Yes / ~~No~~

pm/jk