



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

J U D G M E N T

S.B. Crl. M. C. No. 04 of 2014

1. Shri Phuchung Tshering Bhutia,
S/o Tashi Chewang Bhutia,
R/o Chungbong Busty,
Gyalshing, West Sikkim.
2. Smt. Sonam Peden Bhutia,
W/o Shri Phuchung Tshering Bhutia,
R/o Chungbong Busty,
Gyalshing, West Sikkim.
3. Shri Tasho Bhutia,
S/o Topgay Bhutia,
R/o Chungbong Busty,
Gyalshing, West Sikkim.

.....

Petitioners.

- versus -

State of Sikkim,
Through:
The Ld. Public Prosecutor,
High Court of Sikkim,
Gangtok.

.....

Respondent.

CORAM

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



Date of Judgment : 19.05.2014

For Petitioners : Mr. Tashi R. Barfungpa, Advocate.
Mr. Phuchung Tshering Bhutia, petitioner No. 1, Mrs. Sonam Peden Bhutia, petitioner No. 2 and Mr. Tasho Bhutia, petitioner No. 3 present in person.

For Respondent : Ms. Pollin Rai, Asstt. Public Prosecutor.

Jain, CJ (Oral).

Heard learned counsel for the parties.

2. A joint petition on behalf of petitioners No. 1 and 2, who are husband and wife and petitioner No. 3, who is father-in-law of petitioner No. 1, has been preferred for quashing the further proceedings of G.R. Case No. 09 of 2014 (State of Sikkim vs. Phuchung Tshering Bhutia) pending in the Court of Judicial Magistrate (West) at Gyalshing, on the ground that parties have entered into a compromise and it being a case arising out of matrimonial dispute, the proceedings be quashed.



3. It is stated in the petition that petitioners No. 1 and 2 were married in the year 1997 and they have two minor daughters from their wedlock. A Criminal Complaint was filed on 23.11.2013 by petitioner No. 3 against petitioner No. 1 and on that basis an FIR No. 57/2013 was registered on 23.11.2013 under Section 498A IPC. After completion of investigation, the police submitted a charge-sheet against petitioner No. 1 in the trial Court, where, it was registered as GR Case No. 09 of 2014. It is also stated that during the pendency of the criminal case, parties have amicably settled their dispute and at present the petitioners No. 1 and 2 are residing together with their minor daughters. Therefore, it has been prayed that further proceedings of GR Case No. 09 of 2014 be quashed.

4. Petitioners No. 1, 2 and 3, namely, Mr. Phuchung Tshering Bhutia, Mrs. Sonam Peden Bhutia and Mr. Tasho Bhutia respectively, are present in person. They submitted that they have settled their disputes out of Court, the pendency of criminal case may create/develop bad relations between them, therefore, it will be proper to quash the criminal proceedings pending against petitioner No. 1. The

written compromise duly signed by them has been placed on record, the contents of which are reproduced as under: -

" COMPROMISE DEED

COMPROMISE DEED made on this 25th day of April 2014 at Gyalshing, West Sikkim.

BETWEEN

Shri Phuchung Tshering Bhutia S/o Tashi Chewang Bhutia, R/o Chungbong Busty, Gyalshing, West Sikkim hereinafter referred to as **"THE FIRST PARTY"**.

AND

Smt. Sonam Paden Bhutia, W/o Shri Phuchung Tshering Bhutia, R/o Chungbong Busty, Gyalshing, West Sikkim hereinafter referred to as **"THE SECOND PARTY"**.

AND

Shri Tasho Bhutia, S/o Topgay Bhutia, R/o Chungbong Busty, Gyalshing, West Sikkim, hereinafter referred to as **"THE THIRD PARTY"**.

The First Party, Second Party and the Third Party are hereinafter jointly referred to as "the Parties".

WHEREAS the First Party and the Second Party to these present are legally married husband and wife. Their marriage was solemnized sometime in the year 2007 according to Sikkimese, Bhutia, customs and traditions. The Third Party is the father of the Second Party.

AND WHEREAS the First and Second parties have two minor daughters from their marriage, the elder daughter named Chimila Bhutia, born on 10.04.2000 and the younger daughter named Pinkila Bhutia, born on 23.02.2003.

AND WHEREAS based on a complaint lodged by the Third Party against the First Party at Gyalshing Police Station on 23.11.2013, a case was registered against the First Party by the Gyalshing Police Station as FIR



No. 57/2013 dated 23.11.2013, under Section 498-"A" of the Indian Penal Code, 1860.

AND WHEREAS after the completion of the investigation, a charge-sheet was prepared by the Police and filed against the First Party and the same is registered as G.R. Case No. 9 of 2014, before the Ld. Judicial Magistrate (West) at Gyalshing, West Sikkim.

AND WHEREAS pending proceedings of the above mentioned case, the Parties have held series of meetings on their own motion and interaction between along with them along with each other's respective family members to resolve their disputes and differences amicably outside court and after series of such meetings have arrived at an amicable settlement acceptable to them now.

NOW THIS DEED WITNESSETH AND IT IS HEREBY AGREED AND UNDERSTOOD BY THE PARTIES TO THESE PRESENT AS FOLLOWS:

1. That it is agreed between the Parties that the First and Second Party, taking into consideration the well-being of their two daughters shall resolve all differences and maintain a good relationship and live together as husband and wife.
2. That the First Party shall undertake not to misbehave and ill-treat either the Second Party or any of her family members and shall always maintain a good environment at home.
3. That it is agreed by the Parties to jointly approach the appropriate court to Quash the FIR made by the Third Party against the First Party (FIR No. 57/2013 dates 23.11.2013 under Section 498-"A" of the Indian Penal Code) and GR Case No. 9 of 2014 pending before the court of the Ld. Judicial Magistrate (West) at Gyalshing, West Sikkim.
4. That after understanding the contents of the present agreement and with due desire without any threat, coercion or any undue influence, all the parties herein have signed this agreement in their free state of mind and in full presence of mind and future none of the parties will dispute the contents of this deed.



IN WITNESS WHEREOF all the Parties above named has hereunder set their hands and seal on the day, month and year first above written.

FIRST PARTY

Sd/-
(Phuchung Tshering Bhutia)

SECOND PARTY

Sd/-
(Sonam Peden Bhutia)

THIRD PARTY

Sd/-
(Tasho Bhutia)"

5. Learned counsel for the petitioners submitted that there is some typing mistake in the Compromise Deed, the marriage of petitioner No. 1 and 2 took place 'in the year 1997', whereas due to typing mistake it has been mentioned as 'in the year 2007', which may be read as '1997'. Petitioners No. 1, 2 and 3 admitted this fact that the marriage took place in the year 1997. Therefore, the year of marriage of petitioners No. 1 and 2 will be read as '1997' in place of '2007' in the Deed of Compromise reproduced above. The parties have admitted their signatures and the contents of Deed of Compromise.

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 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."

(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.

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

Sd/-
(N.K. Jain)
Chief Justice
19.05.2014