



THE HIGH COURT OF SIKKIM : GANGTOK
(Criminal Jurisdiction)

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

Crl. M. C. No. 07 of 2017

- 1. Birendra Prasad,
Aged about 37 years,
Son of Shivji Prasad,
Resident of Lall Bazar,
Singtam, East Sikkim.

- 2. Bramadeo Prasad,
Aged about 26 years,
Son of Shivji Prasad,
Resident of Lall Bazar,
Singtam, East Sikkim.

- 3. Shivji Prasad,
Aged about 60 years,
Son of Jabab Ram Saha,
Resident of Lall Bazar,
Singtam, East Sikkim.

- 4. Smt. Sanju Devi,
Aged about 34 years,
Wife of Birendra Prasad,
Resident of Lall Bazar,
Singtam, East Sikkim.

... Petitioners.

versus

State of Sikkim
Represented by and through
the Public Prosecutor,
Government of Sikkim,
Gangtok, East Sikkim.

... Respondent.



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

Appearance:

Mr. A. Moulik, Senior Advocate with Ms. K. D. Bhutia
and Mr. Ranjit Prasad, Advocates for the Petitioners.

Mr. J. B. Pradhan, Public Prosecutor with Ms. Pollin
Rai, Assistant Public Prosecutors for the State.

ORDER
(29.05.2017)

Satish K. Agnihotri, CJ

The petitioners, who are close relatives, have come up with this petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, the Code), seeking quashing of the criminal proceedings bearing G.R. Case No.129 of 2014 (State of Sikkim vs. Birendra Prasad and others) along with the First Information Report (FIR) dated 20.11.2013 and charge-sheet, therefor, pending on the file of the Chief Judicial Magistrate, East Sikkim at Gangtok.

2. Fourth petitioner is the legally wedded wife of the first petitioner, second petitioner is the brother of the first petitioner and the third petitioner is the father-in-law of the fourth petitioner, i.e. father of the first petitioner. The criminal proceedings culminated on the basis of a FIR lodged by the



fourth petitioner on 19.11.2013 (sic. 20.11.2013) at around 11:35 hours, complaining that on 07.02.2013, the first petitioner had eloped with another woman and, thereafter, she was constantly tortured by her in-laws, namely, the second and third petitioners. It was further alleged that on 03.10.2013, the second petitioner had stabbed the fourth petitioner with a knife and absconded thereafter.

3. A case was registered vide FIR No.74/2013 on 20.11.2013 under Sections 498A/324/34 of the Indian Penal Code, 1860 (for short, IPC) against the first, second and third petitioners. After investigation, a charge-sheet for having committed offences against the first petitioner under Sections 494/498A of the IPC, against the second petitioner under Sections 498A/324 IPC and against the third petitioner under Section 498A IPC, was filed and charges were framed accordingly.

4. During pendency of the trial, the fourth petitioner (complainant) made a submission before the trial Court, expressing her intention to settle the matter with the accused persons. Further, in the meantime, the first petitioner, who had eloped earlier with other woman, started living with the fourth petitioner and also begot a child within the wedlock on



12.12.2015. All the petitioners, who are close relations, entered into a compromise as recorded under 'Deed of Compromise' dated 01.08.2016 annexed in the petition as Annexure-P4, undertaking that the accused/petitioners will not do any mischief, wrong, assault, hurt or commit any act of harm to the fourth petitioner. It was also agreed that a share of the properties held by the third petitioner and his wife would be given to the fourth petitioner. The accused/petitioners have further undertaken to take proper care of the children and also to provide proper education to them. Thus, the instant petition is filed to quash the criminal proceedings, FIR and charge-sheet therefor.

5. Referring to the observations made by the Supreme Court in ***Gian Singh vs. State of Punjab & Anr.***¹, Mr. A. Moulik, learned Senior Counsel appearing for the petitioners, would contend that to maintain peace, harmony and also to uphold the family fabrics, the FIR leading to criminal proceedings may be quashed. The quashing of FIR and criminal proceedings would be in the interest of settlement of minor children and also the family to maintain peace and tranquility.

6. Joining learned Senior Counsel, Mr. J. B. Pradhan,

1 (2012) 10 SCC 303



learned Public Prosecutor submits that since the husband and wife have started living together and they have decided to live peacefully, the criminal proceedings may be quashed in the interest of family and society.

7. Heard learned Counsel for the parties, examined the submissions put forth by learned Senior Counsel for the parties carefully, perused the pleadings and documents appended thereto.

8. On perusal of all the documents, it is manifest that the petitioners are very close relations, namely, husband, wife, brother-in-law, father-in-law. The complaint was lodged after the husband, first petitioner, ran away with other woman and assault was made by the second and third petitioners on the fourth petitioner.

9. With the passage of time, the parties settled amicably, husband started living with wife and also a child was born within the wedlock. Indisputably, there are three children, who need proper care and education. Parties, particularly first, second and the third petitioners, who are present in Court, unequivocally stated that they will not do any mischief or wrong in future, which may disturb the peace and harmony in the family. The fourth petitioner will not be hurt by anyone.



10. In the Deed of Compromise, it is clearly stated that in the event the fourth petitioner is hurt by any party, she may be free to take recourse to police help by lodging a complaint. In the Court, the wife came forward and pleaded for relief in favour of amicable settlement, which is taken on record. The accused/petitioners have filed one more Bond in the course of the arguments signed by all of them to the following effect: -

“ **BOND FOR GOOD BEHAVIOUR**

WHEREAS We,

1. **Birendra Prasad,**
Aged about 37 years,
Son of Shivji Prasad,
Resident of Lall Bazar,
Singtam, East Sikkim.
2. **Bramadeo Prasad,**
Aged about 26 years,
Son of Shivji Prasad,
Resident of Lall Bazar,
Singtam, East Sikkim.
3. **Shivji Prasad,**
Aged about 60 years,
Son of Jabab Ram Saha,
Resident of Lall Bazar,
Singtam, East Sikkim.

the petitioner nos. 1 to 3 herein have been called upon to enter into a bond to maintain good behavior with petitioner no.4 i.e.

Smt. Sanju Devi,
Aged about 34 years,
Wife of Birendra Prasad,
Resident of Lall Bazar,
Singtam, East Sikkim.

and not to do any act that may cause harm or injury of any nature to the petitioner no.4 in any manner whatsoever in future. We hereby bind ourselves to maintain peace within the family and to comply with the terms contained in the **Deed of Compromise dated 1/8/2016 (Annexure-P4)** in Crl.M.C. No.07/2017 (Birendra Prasad & others Vs. State of Sikkim).

We sign this Bond on this the **26th day of May, 2017** at Gangtok, East Sikkim.

Petitioner nos. 1 to 3:

sd/-

1. Birendra Prasad,
sd/-

2. Bramadeo Prasad,
sd/-

3. Shivji Prasad. “



11. Considering all aspects of the matter, it is imperative that the settlement arrived at between the parties be accepted and criminal proceedings bearing G.R. Case No.129 of 2014 (State of Sikkim vs. Birendra Prasad and others) along with the First Information Report (FIR) dated 20.11.2013 and charge-sheet, pending on the file of the Chief Judicial Magistrate, East Sikkim at Gangtok, deserve consideration for quashing.

12. A larger Bench of Supreme Court in ***Gian Singh vs. State of Punjab & Anr.*¹**, examining the correctness of the decisions of the Supreme Court in ***B. S. Joshi & Ors. vs. State of Haryana & Anr.*²**, ***Nikhil Merchant vs. Central Bureau of Investigation & Anr.*³** and ***Manoj Sharma vs. State & Ors.*⁴** in reference made in ***Gian Singh vs. State of Punjab & Anr.*⁵** settled the proposition of law 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 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

2 (2003) 4 SCC 675
3 (2008) 9 SCC 677
4 (2008) 16 SCC 1
5 (2010) 15 SCC 118



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.”

13. Subsequently, in **Ashok Sadarangani & Anr. vs. Union of India & Ors.**⁶, referring to earlier decision rendered by the Supreme Court, 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.”

14. Applying the well-settled proposition of law, as analyzed hereinabove to the facts of the case wherein the close relationship of the complainant and accused/petitioners is established, I am of the considered opinion that this is a fit

6 (2012) 11 SCC 321



case wherein the discretion may be exercised to quash the proceedings pending in the trial court.

15. Resultantly, considering the totality of the fact in the larger interest of peace, harmony and interest of minor children of the first and fourth petitioners, criminal proceedings bearing G.R. Case No.129 of 2014 (State of Sikkim vs. Birendra Prasad and others) along with the First Information Report (FIR) dated 20.11.2013 and charge-sheet, therefor, pending on the file of the Chief Judicial Magistrate, East Sikkim at Gangtok, are hereby quashed.

16. The petition is ordered accordingly.

Chief Justice
29.05.2017

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

pm