

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

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**S.B.: HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI, CJ.**  
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**Crl. M. C. No. 03 of 2018**

1. Shri Narayan Sharma (Dawari),  
Son of Churamani Dawari,  
Aged about 35 years,  
R/o Development Area,  
Near Congress Bhawan,  
P.O. & P.S. Gangtok, East Sikkim.

and

2. Smt. Leela Giri @ Lila,  
Wife of Shri Narayan Dawari (Sharma),  
Aged about 36 years,  
R/o Development Area,  
Near Congress Bhawan,  
P.O. & P.S. Gangtok, East Sikkim.

... **Petitioner (s).**

**versus**

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

... **Respondent.**

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

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Appearance:

Mr. Tempo Gyatso Bhutia, Advocate for the  
Petitioners.

Mr. Karma Thinlay and Mr. Thinlay Dorjee Bhutia,  
Addl. Public Prosecutors with Ms. Pollin Rai, Asstt.  
Public Prosecutor for the State.

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**ORDER**  
**(18.04.2018)**

**Satish K. Agnihotri, CJ**

Invoking extraordinary jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 (for short, "Cr. P.C."), the petitioners, who are husband and wife, have come up with this petition seeking to quash the First Information Report (FIR) No. 254 of 2014 dated 01<sup>st</sup> August, 2014 and the consequential proceedings in General Register Case No. 193 of 2015 [State of Sikkim vs. Narayan Sharma (Dawari)], pending on the file of the Chief Judicial Magistrate, East Sikkim at Gangtok, East Sikkim.

**2.** The facts, as stated, are that the first petitioner is the husband of legally wedded wife, the second petitioner. The second petitioner lodged an FIR on 01<sup>st</sup> August, 2014, for taking cognizance under Section 498A of the Indian Penal Code, 1860 (for short, "IPC") stating that the first petitioner had tortured and also assaulted her. It was also stated that the first petitioner also threw household goods namely, TV, Refrigerator on her with the purpose to kill her. It was further stated that she had made a complaint to the Women Commission also on 12<sup>th</sup> December, 2013.

**3.** The cognizance of the report was taken after investigation and the case was registered as G.R. Case No. 193

of 2015 under the provisions of Section 498A of the IPC, on 30<sup>th</sup> June, 2015. During currency of the trial, the matter was referred to mediation on 19<sup>th</sup> October, 2016. The mediator reported settlement. However, the case could not be closed as the offence under Section 498A of the IPC is not compoundable. Thus, the instant petition filed by both the parties jointly. It is stated that both the parties have also entered into a written compromise on 17<sup>th</sup> December, 2016, as under: -

- "1. That the second party shall not harass the First Party or the First Party shall not harass the Second party in what so ever manner in future.
2. That the First party and the Second Party shall live peacefully in the future and will have no grievance against each other in what so ever manner.
3. That both the parties hereby agree to abide by the terms, conditions and stipulations of the agreement herein contained.
4. That both the Parties undertakes that if the party shall violate/infringe the terms and conditions of this compromise deed, both the parties shall takes necessary legal action against the Party in the court of law.
5. That this compromise deed is made bonafide."

**4.** Mr. Tempo Gyatso Bhutia, learned counsel appearing for the petitioners would contend that the petitioners, being husband and wife, have amicably settled the disputes between them and have decided to move ahead happily. It is further decided that there will not be any assault or torture on the part of the husband, the first petitioner. They are blessed with a daughter, who is now 12 years age. Thus, in the interest of their daughter, it has been decided by both of them to seek quashing of FIR No. 254 of 2014 and live in a peaceful homely atmosphere.

**5.** In response, Mr. Karma Thinlay, learned Addl. Public Prosecutor, appearing for the State would submit that the allegations made by the second petitioner against her husband i.e. first petitioner is very serious in nature and also the offence is not compoundable. It is also reiterated that the compromise is vague, which may not be acted upon.

**6.** Having heard the learned counsel appearing for the parties and also examined the pleadings, documents appended thereto, it is evident that the first and second petitioners are husband and wife. It is also not in dispute that they have 12 years old daughter. They seem to be keen and interested in welfare of the daughter. Thus, in the interest of peace and cordial relationship in the family and for the betterment of family and daughter, the petition is required to be examined.

**7.** The question as to whether an offence which is not compoundable may be compounded by the Court in exercise of its power under Section 482 Cr. P.C. came up for consideration in *Yogendra Yadav and others vs. State of Jharkhand and another*<sup>1</sup>, wherein the offence committed, *inter alia*, was triable under Section 307 IPC, not compoundable, the Supreme Court held as under: -

"4. Now, the question before this Court is whether this Court can compound the offences under Sections 326 and 307 IPC which are non-compoundable? Needless to say that offences which are non-compoundable cannot be compoundable by the court.

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<sup>1</sup> (2014) 9 SCC 653

Courts draw the power of compounding offences from Section 320 of the Code. The said provision has to be strictly followed (*Gian Singh v. State of Punjab : (2012) 10 SCC 303*). However, in a given case, the High Court can quash a criminal proceeding in exercise of its power under Section 482 of the Code having regard to the fact that the parties have amicably settled their disputes and the victim has no objection, even though the offences are non-compoundable. In which cases the High Court can exercise its discretion to quash the proceedings will depend on facts and circumstances of each case. Offences which involve more turpitude, grave offences like rape, murder, etc. cannot be effaced by quashing the proceedings because that will have harmful effect on the society. Such offences cannot be said to be restricted to two individuals or two groups. If such offences are quashed, it may send wrong signal to the society. However, when the High Court is convinced that the offences are entirely personal in nature and, therefore, do not affect public peace or tranquility and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice, it should not hesitate to quash them. In such cases, the prosecution becomes a lame prosecution. Pursuing such a lame prosecution would be waste of time and energy. That will also unsettle the compromise and obstruct restoration of peace."

**8.** It is well-settled principles of law that the High Court is competent to exercise its extraordinary jurisdiction under Section 482 Cr. P.C. to quash the criminal proceedings, even in non-compoundable cases, in the facts and circumstances of the case, which do not fall in the category of heinous and serious offences and also does not involve offences like rape, murder, etc. However, the High Court is required to exercise its jurisdiction sparingly, conscientiously to secure ends of justice to bring peace and cordiality in the family life. [See *Manoj Sharma vs. State & Ors.: (2008) 16 SCC 1*, *Sushil Suri vs. Central Bureau of Investigation & Anr. : (2011) 5 SCC 708*, *Gian Singh vs. State of Punjab & Anr. : (2012) 10 SCC 30*, *Ashok Sadarangani & Anr. Vs. Union of*

*India & Ors. : (2012) 11 SCC 321 and Narinder Singh and others vs. State of Punjab and another : (2014) 6 SCC 466].*

**9.** Applying the well-settled principles to the facts of the case, it is established that the FIR was filed by the wife; during currency of the trial an attempt to settle the dispute under mediation was made, which ended in success. However, the same could not be acted upon in view of the fact that the offence alleged was non-compoundable. Examination of witnesses has not yet commenced. The parties are present in the Court. They have stated in categorical term that they have decided to live peaceful life for their betterment and also in the interest and welfare of their daughter; it is desirable that the criminal proceedings should come to an end. Thus, I am of the considered view that the petition deserves to be allowed.

**10.** Resultantly, FIR bearing No. 254 of 2014 dated 01<sup>st</sup> August, 2014 and the consequential proceedings in GR Case No. 193 of 2015 [State of Sikkim versus Narayan Sharma (Dawari)] pending on the file of the Chief Judicial Magistrate, East Sikkim at Gangtok, East Sikkim, are quashed.

**11.** Thus, the petition is allowed. No order as to costs.

**Chief Justice**  
**18.04.2018**

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