

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Jurisdiction)

DATED: 8th JULY, 2016

S.B. : HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

Crl. M.C. No. 06 of 2016

Petitioner : Sahil Shah,
S/o Late Sher Ali Shah,
R/o Bhagavantapur,
P/o Shahabad,
P/S. Rampur,
District Rampur,
Uttar Pradesh.

versus

Respondents : 1. State of Sikkim,
through the Chief Secretary,
Government of Sikkim,
Gangtok, East Sikkim.

2. Smt. Jharia Devi,
W/o Late Biswanath Ram,
R/o of Dikchu, Rakdong,
Zang Busty, East Sikkim.

Appearance

Mr. N.Rai, Senior Advocate with Ms. Tamanna Chhetri, Advocate for the Petitioner.

Petitioner in person.

Smt. Jharia Devi (Complainant) in person.

Smt. Nirmala Kumari Ram (alleged Victim) in person.

Mr. J.B. Pradhan, Public Prosecutor and Mr. Karma Thinlay Namgyal, Additional Public Prosecutor with Mr. S. K. Chettri, Assistant Public Prosecutor for the State-Respondent.

ORDER

Meenakshi Madan Rai, J.

1. On 19.5.2013, the Respondent No.2 lodged a First Information Report (for short "FIR") before the Officer-in-Charge, Sadar Police Station informing therein that her daughter was missing from her school since 17.5.2013, the Petitioner a resident of Dikchu, having taken her forcibly was also missing. Investigation was launched and Charge Sheet was submitted against the Petitioner under Sections 363/366/368 of the Indian Penal Code, 1860 (for short "IPC, 1860"). On receipt of summons from the Court of the learned Chief Judicial Magistrate, East & North Sikkim at Gangtok, he appeared before the Court on 13.4.2015. The matter was committed to the learned Sessions Court, East District at Gangtok which after hearing the parties framed Charge against the Petitioner under Section 363 of the IPC, 1860 and returned the matter to the Court of the Learned Chief Judicial Magistrate for trial.

2. Now, the matter is at the stage of examination of Prosecution witnesses, but the Respondent No.2 (mother-in-law of the Petitioner) does not seek to proceed with the case, the matter having been amicably settled between her and the Petitioner, which however cannot be compounded in view of the legal bar imposed by Section 320 of the Code of Criminal Procedure, 1973 (For short "Cr.P.C"). Hence, the Petition under Section 482 of the Cr.P.C., inter *alia*, submitting that the Petitioner and the Respondent No.2 are now related by marriage and she does not seek to pursue prosecution. The Petitioner and the alleged Victim are now married and have an infant child aged about 14 months, added to which the alleged Victim is on the family way again. Should the Petitioner be incarcerated at the end of the trial, the

Respondent No.2 will have to shoulder the burden of her daughter and her children. That, in view of the settlement no fruitful purpose would be served by proceeding with the instant matter. The Petition is supported by an Affidavit of the Petitioner (Page 11 of the Petition), an Affidavit of the alleged Victim (Annexure-5) and of the Respondent No.2 (Annexure-6). A 'Compromise' document (Annexure-7) executed between the Petitioner and the Respondent No.2 on 26.11.2015, in the presence of two independent witnesses has also been filed and relied on.

3. On 3.6.2016 when the matter was taken up for hearing, learned Senior Counsel for the Petitioner, sought to file an additional Affidavit. Vide I.A. No.2 of 2016 filed today, an additional Affidavit has been submitted by the Respondent No.2, being Annexure-1, sworn to the effect that her Victim daughter was admitted late in the school, as such her Date of Birth was recorded as 16.10.2001 but her actual Date of Birth is 16.10.1997. When the Complaint was lodged, as per the School records, the Victim's age was shown to be 13 years, but she was actually 16 years of age. Hence, the prayer for quashing of proceedings in G.R. Case No. 193 of 2013 pending before the Court of learned Chief Judicial Magistrate (East & North) Sikkim at Gangtok. To fortify his submissions, Learned Senior Counsel has placed reliance on the Orders of this Court in Crl. M. C. No. 01 of 2016 in the matter of Lok Nath Sharma & Ors. vs. State of Sikkim and Crl. M. C. No. 04 of 2011 in the matter of Shri Sunil Prasad @ Vickey & Ano. vs. State of Sikkim & Ano.

4. Learned Public Prosecutor for Respondent No.1 submits that considering the facts and circumstances as laid before this Court, along with the Affidavits and 'Compromise' document, it would indeed be an exercise in

futility to proceed with the matter. He, therefore, has no objection to the Petition.

5. I have heard and considered the submissions of both learned Counsel at length. I have also perused the records of the case, the Affidavits and 'Compromise' document placed before me.

6. In this context, it would be beneficial to refer to the decision of the Hon'ble Apex Court in ***B.S. Joshi & Others v. State of Haryana & Another : (2003) 4 SCC 675***. In the said matter, the question that fell for determination pertained to the ambit of the inherent powers of the High Court under Section 482 of the Cr. P.C., read with Articles 226 and 227 of the Constitution of India to quash criminal proceedings. In the said matter, it was observed that although this had been examined in a catena of earlier decisions by the Hon'ble Apex Court but in the said case it was required to be considered in relation to matrimonial disputes under Section 498-A of the IPC, 1860. The Hon'ble Apex Court mulled over the question as to whether on resolving of such matters, either by the wife agreeing to rejoin the matrimonial home or mutual separation of husband and wife as a result of which both parties approach the High Court and jointly pray for quashing of criminal proceedings or the FIR, can the prayer be declined on the ground that the offences are non-compoundable under Section 320 of the Cr.P.C., therefore, it is not permissible for the Court to quash the proceedings or FIR or Complaint. The High Court had in the said matter, by the impugned Judgment, dismissed the petition filed by the appellants, *inter alia*, on grounds that Sections 498-A and 406 of the IPC, 1860 are non-compoundable and the inherent powers under

Section 482 of the Cr.P.C. cannot be invoked to bypass the mandatory provisions of Section 320 of the Cr.P.C.

7. The Hon'ble Apex Court setting aside the impugned order observed as follows;

“14. There is no doubt that the object of introducing Chapter XX-A containing Section 498-A in the Indian Penal Code 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 hypertechnical 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 Indian Penal Code.

15. In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Code.”

8. In **Nikhil Merchant v. Central Bureau of Investigation and Another : (2008) 9**

SCC 677 decided on 20.8.2008, in a matter dealing with Section 120-B read with Sections 420, 467, 468 and 471 IPC, 1860 read with Sections 5(2) and 5(1)(d) of the Prevention of Corruption Act, 1947 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 referring to the decision of **B.S. Joshi** (supra), the Hon'ble Apex Court opined;

“31. On an overall view of the facts as indicated hereinabove and keeping in mind the decision of this Court in *B.S. Joshi case* [(2003) 4 SCC 675] and the compromise arrived at between the Company and the Bank as also Clause 11 of the consent terms filed in the suit filed by the Bank, we are satisfied that this is a fit case there technicality should not be allowed to stand in the way in the quashing of the Criminal proceedings, since, in our view, the continuance of the same after the compromise arrived at between the parties would be a futile exercise.

32. We, therefore, set aside the order passed by the High Court dismissing the petitioner's Revision Application No. 49 of 2003

in Special Case No. 80 of 1998 and quash the proceedings against the appellant. The appeal is accordingly allowed.”

9. On the same point, it would also be worthwhile to point out that in ***Manoj Sharma v. State and Others : (2008) 16 SCC 1*** decided on 16.10.2008, which involved Sections 420/468/471/34/120-B of the IPC, 1860, the question was whether an FIR under the above provisions can be quashed under Section 482 of the Cr. P.C. or under Article 226 of the Constitution of India, when the accused and the complainant have settled the matter between themselves. Once again the Hon’ble Apex Court referred to ***B.S. Joshi’s*** case (supra), pointing out that in that matter the Court drew a distinction between compounding of an offence under Section 320 Cr.P.C. and quashing of the complaint or criminal proceedings under Section 482 Cr.P.C. as also Article 226 of the Constitution. The decision on that count has already been reflected hereinabove. The Hon’ble Apex Court at Paragraph 9 of ***Manoj’s*** Judgment held as extracted herein below;

“**9.** As we have indicated hereinbefore, the exercise of power under Section 482 CrPC or Article 226 of the Constitution is discretionary to be exercised in the facts of each case. In the facts of this case we are of the view that continuing with the criminal proceedings would be an exercise in futility. We, accordingly, allow the appeal and set aside the order of the High Court and quash the criminal proceedings pending before the learned Additional Chief Metropolitan Magistrate, Karkardooma Court, Delhi, in FIR No. 50 of 1997 dated 31-1-1997, PS Vivek Vihar (East Delhi).”

10. Although, it was clarified at Paragraph 28 as follows;

“**28.** I am expressing this opinion because Shri B.B. Singh, learned counsel for the respondent has rightly expressed his concern that the decision in *B.S. Joshi* case [(2003) 4 SCC 675] should not be understood to have meant that Judges can quash any kind of criminal case merely because there has been a compromise between the parties. After all, a crime is an offence against society, and not merely against a private individual.”

11. In *Shiji alias Pappu and Others v. Radhika and Another : (2011) 10 SCC 705*, the Hon'ble Apex Court was deciding an appeal against the Order of the High Court of Kerala, which had dismissed a petition filed under Section 482 of the Cr.P.C. for quashing of criminal proceeding in commission of offences punishable under Sections 354 and 394 IPC, 1860. The High Court had taken the view that the offences with which the appellants stand charged, were not "personal in nature" so as to justify quashing the pending criminal proceedings on the basis of a compromise arrived at between the first informant/complainant and the appellants. The question, therefore, that arose for consideration is whether the criminal proceedings in question could be quashed in the facts and circumstances of the case having regard to the settlement that the parties had arrived at. Further discussing the facts of the matter, the Hon'ble Apex Court took into consideration observations made in several decisions by it, while also referring to the matter of *B.S. Joshi* (supra), as allowing the appeal opined as follows;

"17. It is manifest that simply because an offence is not compoundable under Section 320 CrPC is by itself no reason for the High Court to refuse exercise of its power under Section 482 CrPC. That power can in our opinion be exercised in cases where there is no chance of recording a conviction against the accused and the entire exercise of a trial is destined to be an exercise in futility. There is a subtle distinction between compounding of offences by the parties before the trial court or in appeal on the one hand and the exercise of power by the High Court to quash the prosecution under Section 482 CrPC on the other. While a court trying an accused or hearing an appeal against conviction, may not be competent to permit compounding of an offence based on a settlement arrived at between the parties in cases where the offences are not compoundable under Section 320, the High Court may quash the prosecution even in cases where the offences with which the accused stand charged are non-compoundable. The inherent powers of the High Court under Section 482 CrPC are not for that purpose controlled by Section 320 CrPC.

12. But at the same time, it was clarified at Paragraph 18 as follows;

“18. Having said so, we must hasten to add that the plenitude of the power under Section 482 CrPC by itself, makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. It is neither necessary nor proper for us to enumerate the situations in which the exercise of power under Section 482 may be justified. All that we need to say is that the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of the process of law. The High Court may be justified in declining interference if it is called upon to appreciate evidence for it cannot assume the role of an appellate court while dealing with a petition under Section 482 of the Criminal Procedure Code. Subject to the above, the High Court will have to consider the facts and circumstances of each case to determine whether it is a fit case in which the inherent powers may be invoked.”

13. In *Gian Singh vs. State of Punjab : (2012) 10 SCC 303*, once again the Hon'ble Apex Court faced the same question. In the said matter, when the special leave petition in *Gian Singh*, (2010) 15 SCC 118 came up for hearing before a two-Judge Bench in the Hon'ble Apex Court, the Bench expressed a doubt about correctness of the decisions of the Court in *B.S. Joshi, Nikhil Merchant and Manoj Sharma* and referred the matter to a larger Bench. The larger Bench comprising of three Judges took up the matter and after detailed discussions, concluded, *inter alia*, as follows;

“52. The question is with regard to the inherent power of the High Court in quashing the criminal proceedings against an offender who has settled his dispute with the victim of the crime but the crime in which he is allegedly involved is not compoundable under Section 320 of the Code.

53. Section 482 of the Code, as its very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior court to prevent abuse of the process of any court or otherwise to secure the ends of justice. It begins with the words, “nothing in this Code” which means that the provision is an overriding provision. These words leave no manner of doubt that none of the provisions of the Code limits or restricts the inherent power. The guideline for exercise of such power is provided in Section 482 itself i.e. to prevent abuse of the process of any court or otherwise to secure the ends of justice. As has been repeatedly

stated that Section 482 confers no new powers on the High Court; it merely safeguards existing inherent powers possessed by the High Court necessary to prevent abuse of the process of any court or to secure the ends of justice. It is equally well settled that the power is not to be resorted to if there is specific provision in the Code for the redress of the grievance of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

54. In different situations, the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power under Section 482 on either of the twin objectives, (i) to prevent abuse of the process of any court, or (ii) to secure the ends of justice, is a *sine qua non*.

55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim *quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest*. The full import of which is whenever anything is authorized, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorized in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. *Ex debito justitiae* is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is to wide amplitude but requires exercise with great caution and circumspection.

56. It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a straitjacket formula regulating the exercise of inherent powers under Section 482. No precise and inflexible guidelines can also be provided.”

14. Consequently, a distinction was made between the legal provision of Section 320 IPC, 1860 and the quashing of Criminal proceedings by the High Court in exercise of its inherent jurisdiction under Section 482 Cr.P.C. It was thus concluded as follows;

“**62.** In view of the above, it cannot be said that B.S. Joshi [(2003) 4 SCC 675], Nikhil Merchant [(2008) 9 SCC 677] and Manoj Sharma [(2008) 16 SCC 1] were not correctly decided. We answer the reference accordingly. Let these matters be now listed before the Bench(es) concerned.”

15. The above exercise of referring to the catena of decisions of the Hon'ble Apex Court is to point to the fact that the Hon'ble Court has expressly opined that when the parties have settled the matter amongst themselves, it would be an exercise in futility to proceed with the matter by pointing to the provision of Section 320 of the Cr.P.C. in non-compoundable offences, when inherent powers exist under Section 482 of the Cr.P.C. It also emerges that no straitjacket formula can be laid down for regulating the exercise of inherent powers under Section 482 of the Cr.P.C. The facts and circumstances of each case is to be taken into consideration by the High Court while exercising the power.

16. On the anvil of all of the above decisions, while considering the instant matter it is clear that the Respondent No.2, the Complainant in FIR No. 108(5)13, dated 19.5.2013, which is now at the stage of Prosecution evidence before the Learned Court of Chief Judicial Magistrate, East & North Sikkim at Gangtok, in G.R. Case No. 193 of 2013, desires not to pursue with the prosecution. The grounds do not need reiteration having been elucidated and spelt out hereinabove. Not only has the Respondent No.2 compromised the matter with the Petitioner vide Annexure-7, but the Petitioner and the alleged Victim are happily married as put forth by learned Senior Counsel for the Petitioner, and the alleged Victim has given birth to a daughter and is once again in the family way. The Respondent bears no acrimony towards the Petitioner anymore.

17. Thus, in view of the reconciliation of the parties, there is no doubt that should the trial be allowed to continue, the Prosecution would find no evidence to rely on. After perusal of Annexure-7 and the Affidavits filed by the

Petitioner and the Respondent No.2 as well as the alleged Victim, I am satisfied that this is a fit case where technicalities should not be allowed to stand in the way of quashing of the criminal proceedings.

18. In the result, the Petition is allowed.

19. The FIR No. 108(5)13 dated 19.5.2013 stands quashed. G.R. case No. 193 of 2013 pending in the Court of Learned Chief Judicial Magistrate East & North Sikkim at Gangtok, also stands quashed.

20. Copy of this Order be sent to the Court of learned Chief Judicial Magistrate, East & North Sikkim at Gangtok, for information and compliance.

Sd/-
(Meenakshi Madan Rai)
Judge
08-07-2016

Approved for reporting : **Yes**
Internet : **Yes**

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