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**(2007) 08 OHC CK 0031**  
**In the Orissa High Court**

Alekha Chandra Behera and Others

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

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**Date of Decision :** 08-08-2007

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 125, 156, 320, 482

Dowry Prohibition Act, 1961 — Section 4

Penal Code, 1860 (IPC) — Section 307, 313, 34, 376, 406

**Citation :** (2007) CLT 1109 (Suppl Crl) : (2008) 1 DMC 556 : (2007) 2 OLR 528

**Hon'ble Judges :** M.M. Das, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

M.M. Das, J.—The petitioners in this application filed u/s 482 of the Code of Criminal Procedure seek to quash the proceeding in G.R.Case No. 1522 of 2005.

2. The opp. party No. 2 - Sukanti Behera filed a complaint case being ICC Case No. 1525 of 2005 in the Court of the learned S.D.J.M., Bhubaneswar alleging that though she lodged an F.I.R. against the petitioners for commission of offence under Sections 493/376/ 506/313/498A/307/34 IPC read with Section 4 of the D.P.Act, as no steps were taken by the police, she lodged the complaint case. The said complaint petition was sent by the learned S.D.J.M. to the Baliana Police Station u/s 156(3) Cr.P.C. for investigation. On the basis of the said complaint petition, Baliana P.S.Case No. S3 of 2005 was registered and after completion of the investigation, a charge sheet has been filed for offences punishable under Sections 498A/ 307/313/34 IPC read with Section 4 of the D.P.Act and cognizance of the said offences has been taken by the learned Magistrate.

3. The prosecution case is that on 3.7.2000, the complainant was given in marriage to the petitioner No. 2. After few days of the marriage, the complainant went to her parents' house and even while staying in her father's house, her husband used to come to that place and they led conjugal life. On 15.12.2004,

the father-in-law of the informant, i.e. petitioner No. 1 went to her parents' house and wanted to bring her back. Accordingly, she came to her matrimonial home and the father-in-law of the complainant consulted with a doctor and gave certain medicines to her. By that time, she was pregnant for about four months and she denied to take the medicines for which she was assaulted by the accused persons and was threatened with dire consequences. Under such compulsion, she consumed the medicines and ultimately, there was abortion. Thereafter, it has been alleged that the complainant as subjected to torture on account of demand of dowry.

4. Learned Counsel for the petitioners submits that prior to initiation of the aforementioned criminal proceeding, the complainant filed an application u/s 125 Cr.P.C. against the husband of the petitioner No. 2, numbered as CMC No. 129 of 2004 in which she stated that as at the time of marriage, she was continuing her studies with consent of her in-laws, she was taken to her parents' house for appearing in the examination. Even after completion of her examination, since neither the petitioner No. 2 nor any of the in-laws was interested to take her back, the matter was brought before the gentlemen of the village. But as the petitioners did not pay any heed to the decision made by the gentlemen, she filed an application u/s 125 Cr.P.C. for grant of maintenance. After closure of evidence from the side of the complainant in the said proceeding for maintenance, she was further re-examined and deposed on oath that the disputes between the parties have been settled with the help of village gentlemen and she had received Rs. 1,60,000/- as lump sum amount towards life time maintenance and she was not interested to prosecute the said case any further as well as the criminal proceeding initiated by her. A joint compromise to that effect was filed before the learned J.M.F.C. in the petition u/s 125 Cr.P.C.

5. On this basis, learned Counsel for the petitioners submits that continuation of the criminal proceeding would be abuse of the process of the Court and there appears to be material contradiction so far as the allegation made in the complaint petition and the petition u/s 125 Cr.P.C. In view of which, there is no chance of conviction of the petitioners at the conclusion of the trial and the opp. party No. 2 - complainant has expressed her intention not to prosecute the criminal case against the petitioners. He, therefore, contends that in these premises, it is just and equitable to quash the criminal. proceeding.

6. To buttress his argument, learned Counsel for the petitioners relies upon the decisions in the cases of B.S. Joshi and Ors. v. State of Haryana and Anr. 2003 (II) OLR (SC)101 : (2003) 25 OCR (SC) 99 Pragyandipta Panda and Others Vs. State of Orissa and Another, ; Basanta Samal and Another Vs. State of Orissa and Others, Sarbeswar Pradhan and Ors. v. State of Orissa and Anr. 2006 (I) OLR 47 : (2006) 33 OCR 334 Bidyadhar Rout v. Jita " Jiten Samal and Ors. (2006) 33 OCR 336 and Tej Kishore Srivastav and Others Vs. State of Orissa and Another,

7. Before discussing the above judgments on which the learned Counsel for the petitioners relies upon, it would be profitable to refer to the annexures made to

the present application. It appears from the joint petition filed by the complainant and the petitioner No. 2 in the maintenance case annexed as Annexure-3 to this petition that the said husband and wife being the complainant and the petitioner No. 2 agreed upon the terms mentioned in the said petition. One of the terms of compromise was that in view of the amicable settlement, there is no dispute between the parties and they do not want to proceed any further in the said case. It appears from the judgment passed in the said case (Annexure-4) that the learned J.M.F.C. taking into consideration the compromise petition held as follows:

After the evidence from the side of the petitioner was over the petitioner was further re-examined after recall and has stated that she has filed this case against her husband for maintenance and as she has received Rs. 1,60,000/- from the O.P. today by way of two cheques bearing No. 040001 amounting Rs. 1,00,000/- and another cheque bearing No. 040002 amounting to Rs. 60,000/- from the father of the O.P. as a lump sum amount she is having no further claim over the O.P. and the matter has been settled by the help of village gentlemen. She also submitted that she does not want to proceed further with the case and also admitted categorically in her cross-examination that she will never claim anything in future from the O.P.

8. In the instant case when the petitioner is not interested to bring the O.P. into record the commission of the alleged offence in view of receipt of a lump sum amount of Rs. 1,60,000/- from the O.P., the whole case of the petitioner falls to the ground and accordingly this criminal Misc. Case is dismissed.

8. In the case of B.S.Joshi and others (supra), the husband alongwith other accused persons sought for quashing a proceeding initiated by the wife against them for alleged commission of offence under Sections 498A/406 IPC. The Supreme Court while dealing with the said case took note of the fact that matrimonial disputes of the kind in the said case have been on considerable increase in recent times resulting in filing of complaints by wives under Sections 498A/406 IPC not only against the husbands but other family members also. When such matters are resolved either by wife agreeing to rejoin the matrimonial home or mutual separation of husband and wife and also mutual settlement of other pending disputes, both the sides approach the High Court or jointly pray for quashing of the criminal proceedings or the F.I.R. or the complaint filed by the wife. The Supreme Court posed a question to itself as to whether such prayer can be declined on the ground that since the offences are non-compoundable u/s 320 of the Cr.P.C, it would not be permissible for the Court to quash the criminal proceedings or F.I.R. or complaint? Upon referring to various previous decisions of the Supreme Court, it was held as follows:

14. There is no doubt that the object of introducing Chapter XX-A containing Section 498A in the Indian Penal Code was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498A 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 hyper-technical view would be counter productive 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 XXA of 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 u/s 482 of the Code.

Similar view was taken by this Court in the other decisions referred to by the learned Counsel for the petitioners.

9. It is, therefore, clear that the law, as settled, permits the High Court to quash a criminal proceeding between the husband and wife as well as other in-laws if the interest of justice so demands, to bring peace and harmony in the life of the wife as well as the husband when they themselves state that they have resolved their disputes. Such quashing of criminal proceeding can be done by exercise of the inherent power u/s 482 Cr.P.C. It would be seen from the decision in the case of B.S.Joshi and others (supra) that the Supreme Court took note of the fact that Section 498A was introduced in Chapter XX-A of the Indian Penal Code to prevent torture to a woman by her husband or by relatives of her husband. The said section was introduced with a view to punish the husband and his relatives who harassed or tortured the wife for satisfying unlawful demand of dowry. Even then, the Supreme Court held that taking a hyper technical view would be counter productive and would act against the interest of the women and against the object for which the said provision was added and 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 the disputes earlier which is not the object for which the said provision was added.

10. In the facts of the present case, it is revealed that the complainant-wife was re-examined in the maintenance case and deposed on oath that the dispute has been settled between her and her husband and she is not interested to proceed any further either in the maintenance case or in the criminal case as she has already received the amount settled as maintenance for life time.

11. In view of such settlement between the parties, this Court is of the opinion that keeping the criminal case pending would not only amount to an abuse of the process of the Court which definitely would end in an order of acquittal and would result in a frivolous exercise to be gone through by the Court as well as by the parties and would be deterrent to the interest of both the wife and the husband as well as counter productive to the purpose for which Section 498A IPC was added to Chapter XXA of the I.P.C. Applying the ratio of the above decisions to the facts of the case as well on analysis of the intention of the parties in settling the disputes for all times to come, this Court is of the view that the

criminal proceeding should be quashed.

12. Accordingly, the proceeding in G.R.Case No. 1522 of 2005 arising out of I.C.C.Case No. 1525 of 2005 pending before the learned S.D.J.M., Bhubaneswar is quashed.

The CRLMC is accordingly allowed.