
(2014) 12 GAU CK 0024
In the Gauhati High Court
Case No : Criminal Pet. No. 556 of 2014

Amitabh Goswami

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 09-12-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 320(2)(g), 397, 401, 482 —
Penal Code, 1860 (IPC) - Section 406, 468, 471

Citation : (2015) 2 GLT 237

Hon'ble Judges : M.R. Pathak, J.

Bench : Single Bench

Advocate : B.K. Mahajan, A. Choudhury, R. Ali, P.K. Das and N.J. Das, for the Appellant; G.K. Das and N. Saberlin, for the Respondent

Final Decision : Allowed

Judgement

M.R. Pathak, J. Heard Mr. B.K. Mahajan, learned counsel appearing for the petitioner. Also head Mr. K. Munir, learned Additional Public Prosecutor, Assam, appearing for the State/opposite party No. 1 and Ms. G. Kataki, learned counsel appearing for the private respondent No. 2. The petitioner has filed this application under Section 482/397/401 Cr.P.C. for setting aside the order dated 09.05.2014 passed by learned Sessions Judge Golaghat in Criminal Appeal No. 25 of 2013 and also to set aside the judgment of conviction & sentence dated 10.07.2013 passed by learned Chief Judicial Magistrate, Golaghat in C.R. Case No. 317 of 2008 under Sections 406/468/471 of the IPC, as the petitioner and the opposite party No. 2 being husband & wife respectively, compromised/settled their dispute between them outside the Court.

2. A brief fact of the case is that the opposite party No. 2, wife of the petitioner as a complainant filed a complaint against the accused/petitioner herein before the learned Chief Judicial Magistrate, Golaghat being C.R. Case No. 317/2008. The learned Magistrate, Golaghat after taking cognizance of the case, issued process to the accused/petitioner and he stood the trial. The learned magistrate

framed charges under Sections 406/468/471 IPC against the accused/petitioner and when charges were read over & explained to him, the accused/petitioner pleaded not guilty. Even in his Section 313 Cr.P.C. statement he denied the allegations those were brought against him and also declined to adduce evidence. After recording evidence and on hearing the arguments of both the sides, the learned Chief Judicial Magistrate, Golaghat by his judgment and order dated 10.07.2013 passed in said C.R. Case No. 317/2008 convicted the accused/petitioner under Sections 406/468/471 of the IPC and sentenced him to pay a fine of Rs. 20,000/- only under Section 406 IPC, in default, to undergo simple imprisonment; for committing offence under Section 468 IPC, the accused/petitioner was sentenced to undergo simple imprisonment for two months and to pay a fine of Rs. 20,000/-, in default, one month simple imprisonment and for the offence under Section 471 IPC, he was sentenced to undergo simple imprisonment for two months and to pay a fine of Rs. 20,000/-, in default, one month simple imprisonment.

3. Being aggrieved with the aforesaid judgment & order of conviction and sentence of the learned Trial Court, the accused petitioner preferred an appeal before the learned Sessions Judge, Golaghat being Criminal Appeal No. 25 of 2013.

4. During the pendency of the said Criminal Appeal, both the complainant/opposite party No. 2 and the accused/petitioner herein entered into an agreement on 31.08.2013 and on fulfilling all the terms & conditions of the said agreement by the accused/petitioner, towards full and final satisfaction of the complainant/opposite party No. 2; both the accused/appellant/petitioner and the complainant/respondent/opposite party No. 2 filed a joint petition being Petition No. 2044/13 dated 31.08.2013 before the learned Sessions Judge, Golaghat annexing a copy of the said joint agreement dated 31.8.2013, stating therein that they have amicably settled their disputes between them outside the Court and prayed before the Court that they do not have any intention to proceed further in the matter with regard to the disputes involved between them and the complainant/opposite party No. 2 submitted before the learned Appellate Court that the accused/appellant/petitioner herein be acquitted of the charges under Section 406/468/471 of the IPC as convicted & sentenced in C.R. Case No. 317/2008 on the basis of her complaint in the said joint petition, it was also submitted that though Section 468 & 471 of the IPC are non-compoundable offences, but considering the decision passed by the Hon"ble Apex Court as well as this High Court, the learned Appellate Court may allow the said joint petition alongwith the appeal preferred by the accused/appellant/petitioner.

5. The learned Sessions Judge, Golaghat after considering the matter and the aforesaid joint petition dated 31.08.2013, preferred by the parties, came to a conclusion that Section 468/471 of the IPC are non-compoundable and following the provisions of Section 320(2)(g) of the Cr.P.C., rejected the same and hence this Criminal Petition.

6. The Hon''ble Apex Court in the case of Gian Singh Vs. State of Punjab and Another, as well as in the case of Narinder Singh and Others Vs. State of Punjab and Another, has held that-

"Power conferred under Section 482 of the Cr.P.C. is to be distinguished from the power which lies in the Court to compound the offences. No doubt that under Section 482 of the Code the High Court has inherent power to quash the criminal proceeding even in those cases which are not compoundable where the parties have settled the matter between themselves. However, the said power is to be exercised sparingly and with caution. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure: (i) ends of justice, or (ii) to prevent abuse of the process of any Court. While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives. Such a power is not to be exercised in that prosecution which involves heinous and serious offences of mental depravity or offences like murder, rape, docility etc. Such offences are not private in nature and have a serious impact on society. Similarly for the offences alleged to have been committed under the special statute like Prevention of Corruption Act or the offence committed by the public servant while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender. On the other hand those criminal cases having overwhelmingly and pre-dominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases."

7. The opposite party No. 2/complainant has clearly stated that the dispute between her and the petitioner/accused has been amicably settled and to that extent both of them have entered in to an agreement dated 31.8.2013 and she does not have any further grievances against the petitioner/accused as she received compensation from the petitioner to her complete and final satisfaction and she does not want that the petitioner/accused be punished under Sections 406/468/471 of the IPC in terms of her Complaint being C.R. Case No. 317/2008 filed before the learned Chief Judicial Magistrate, Golaghat.

8. The case in hand relates to disputes between the husband and wife and the parties have amicably settled their disputes outside the Court and to that extent they have entered in to an agreement dated 31.08.2013.

9. In light of the above observations of the Hon''ble Supreme Court in Gian Singh and Narinder Singh, the Court is of the view that in this case if the continuation of criminal proceedings is allowed, it would tantamount to abuse of process of law and would defeat ends of justice, since the alleged offences are not heinous

offences showing extreme depravity nor they are against the society and the offences involved in the case are personal in nature and allowing the parties to bury their hatchets, it is expected that it would bring peace and amity between the two contesting parties.

10. In the circumstances of the case and for the ends of justice, the proceedings of both the Criminal Appeal No. 25/2013, pending before the learned Sessions Judge, Golaghat as well as the C.R. Case No. 317 of 2008 and the orders of conviction & sentence dated 10.07.2013 passed by learned Chief Judicial Magistrate, Golaghat in the said C.R. Case No. 317/2008 are hereby set aside and quashed.

11. The bailor/surety, if any, is discharge from his liability and the bail bond stands cancelled. In terms of the above, this criminal petition is allowed.