

(2020) 09 SIK CK 0011

In the Sikkim High Court

Case No : Criminal Miscellaneous Case No. 04 Of 2020

Ghausul Azam @ Guddu And Others

APPELLANT

Vs

State Of Sikkim

RESPONDENT

Date of Decision : 30-09-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482

Indian Penal Code, 1860 — Section 34, 120(B), 232, 307, 323, 324, 342, 420, 468, 471, 498(A)

Constitution Of India, 1950 — Article 226

Citation : (2020) 09 SIK CK 0011

Hon'ble Judges : Meenakshi Madan Rai, J

Bench : Single Bench

Advocate : Thupden Gyatso Bhutia, Sudesh Joshi, Sujan Sunwar

Final Decision : Disposed Of

Judgement

Meenakshi Madan Rai, J

1. By filing this Petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, Cr.P.C.), the Petitioner No.1 and the Petitioner No.2, being husband and wife, seek quashing of the FIR filed by the Petitioner No.2 against the Petitioner No.1, registered at the Sadar Police Station, Gangtok, as FIR No.76/2019 (sic, FIR No.78/2019) under Section 498A, 342 and 232 of the Indian Penal Code, 1860 (for short IPC), and as G.R. Case No.382 of 2019 (sic, G. R. Case No.282 of 2019), pending in the Court of the Learned Chief Judicial Magistrate, East Sikkim, at Gangtok.

2. Briefly narrated, the Petitioners' case is that, they were married on 12-12-2012 in Bihar according to Muslim rites and ceremonies and from the wedlock they have one daughter, now aged about 6/7 years. As the Petitioners were incompatible they started drifting apart which consequently led to an irretrievable breakdown of their marriage and since August 2018 they have been living separately. The Petitioner No.2 lodged a written Complaint before the

Sadar Police Station, Gangtok, East Sikkim, on 16-06-2019, informing therein that the Petitioner No.1 after their marriage initially treated her well, however after six months he started verbally abusing her. She accompanied him to Mumbai after the marriage where she was physically assaulted on several occasions and restrained from contacting her guardians besides being confined inside her room. Following these incidents she returned home to Sikkim along with her daughter. Later, her husband repented and apologized to her, pursuant to which, on the intervention of well-wishers the Petitioner No.2 returned to Mumbai with the Petitioner No.1, who, however, repeated his verbal and physical assaults on her. Her complaint was duly registered, investigation taken up and a prima facie case made out against the Petitioner No.1 under Sections 498A, 342 and 323 of the IPC and Charge-sheet was submitted against him in the Court of the Learned Chief Judicial Magistrate, which came to be registered as G. R. Case No.282 of 2019 (State of Sikkim vs. Ghausul Azam @ Guddu). The matter is presently pending at the stage of hearing on consideration of the Charge and fixed on 15-10-2020. During the pendency of the matter, the Petitioner No.1 and the Petitioner No.2 again on the intervention of their relatives and the Muslim Community in Gangtok have mutually settled the matter, agreeing to dissolve the marriage with no claims against each other except the conditions agreed to between themselves in terms of a Compromise deed executed by them in the presence of witnesses.

3. Learned Counsel for the Petitioners contended that both the Petitioners have agreed that the Petitioner No.1 will pay a total sum of Rs.1,00,000/- (Rupees one lakh) only, towards full and final settlement of all past, present and future claims in lieu of maintenance and this would include all claims of permanent alimony. That, it was also agreed between them that this amount will be paid by the Petitioner No.1 to the Petitioner No.2 on the disposal of the case pending before the Court of the Learned Chief Judicial Magistrate. That, the Petitioner No.2 has no grievances against the Petitioner No.1 and should this Court not exercise its discretion under Section 482 of the Cr.P.C., the trial before the Learned Court of the Chief Judicial Magistrate will be an exercise in futility as no evidence would be forthcoming against the Petitioner No.1. It was next advanced that the Compromise Deed (Annexure P3) was duly executed between the parties in the presence of the witnesses and have been signed by both the Petitioners of their own free-will sans coercion. That it may be considered that the dispute pertains to one between a husband and a wife and as they now bear no ill will towards each other, the FIR and the G.R. Case supra may be quashed.

4. Learned Public Prosecutor appearing for the State-Respondent submitted that in view of the fact that the Petitioners are husband and wife and have amicably settled the matter amongst themselves, it concludes that should the matter go into trial the Prosecution would not be able to establish its case as the Petitioner No.2 would not depose against the Petitioner No.1 depriving the Prosecution of the opportunity of establishing its case. That, in view of the said circumstances the State-Respondent has no objection to the Petition under Section 482 of the

Cr.P.C.

5. I have duly considered the submissions put forth by Learned Counsel for the Petitioners and Learned Public Prosecutor and perused documents placed before me.

6. Relevant reference may be made to the ratio in *Manoj Sharma vs. State and Others*¹, where the question involved was whether an FIR under Sections 420/468/471/34/120B of the IPC deserves to be quashed either under Section 482 of the Cr.P.C. or under Article 226 of the Constitution of India, when the accused and the complainant have compromised and settled the matter between themselves. The Supreme Court observed follows;

"8. In our view, the High Court's refusal to exercise its jurisdiction under Article 226 of the Constitution for quashing the criminal proceedings cannot be supported. The first information report, which had been lodged by the complainant indicates a dispute between the complainant and the accused which is of a private nature. It is no doubt true that the first information report was the basis of the investigation by the police authorities, but the dispute between the parties remained one of a personal nature. Once the complainant decided not to pursue the matter further, the High Court could have taken a more pragmatic view of the matter. We do not suggest that while exercising its powers under Article 226 of the Constitution the High Court could not have refused to quash the first information report, but what we do say is that the matter could have been considered by the High Court with greater pragmatism in the facts of the case."

7. In *Gian Singh vs. State of Punjab and Another*², the Hon^{ble} Supreme Court would hold 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 material on record as to whether the ends 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."

8. It is worthwhile to mention here that in *Narinder Singh and Others vs. State of Punjab and Others*³, the Hon'ble Supreme Court while considering a matter where the FIR was registered under Sections 307/324/323/34 of the IPC, observed as follows;

"33. We have gone through the FIR as well which was recorded on the basis of statement of the complainant/victim. It gives an indication that the complainant was attacked allegedly by the accused persons because of some previous dispute between the parties, though nature of dispute, etc. is not stated in detail. However, a very pertinent statement appears on record viz. "respectable persons have been trying for a compromise uptil now, which could not be finalised". This becomes an important aspect. It appears that there have been some disputes which led to the aforesaid purported attack by the accused on the complainant. In this context when we find that the elders of the village, including Sarpanch, intervened in the matter and the parties have not only buried their hatchet but have decided to live peacefully in future, this becomes an important consideration. The evidence is yet to be led in the Court. It has not even started. In view of compromise between parties, there is a minimal chance of the witnesses coming forward in support of the prosecution case. Even though nature of injuries can still be established by producing the doctor as witness who conducted medical examination, it may become difficult to prove as to who caused these injuries. The chances of conviction, therefore, appear to be remote. It would, therefore, be unnecessary to drag these proceedings. We, taking all these factors into consideration cumulatively, are of the opinion that the compromise between the parties be accepted and the criminal proceedings arising out of FIR No. 121 dated 14-7-2010 registered with Police Station Lopokey, District Amritsar Rural be quashed. We order accordingly."

9. Based on the principles enunciated in the above matters, it is evident that the High Court can exercise its powers under Section 482 of the Cr.P.C. where the need arises and there is justification for interference. The parties herein are husband and wife they have compromised the matter amongst themselves. Proof of this has been indicated in the Compromise Deed (Annexure P3). Although the offence under Sections 342 and 323 of the IPC are compoundable by the person on whom the offence was perpetrated, however Section 498A of the IPC is a non-compoundable offence. Nevertheless, considering the entire facts and circumstances and the settlement between the Petitioners No.1 and 2, as evident from the Compromise Deed, and the submissions of Learned Counsel for both the parties, I am of the considered opinion that pursuing prosecution would be an abuse of the process of law besides being an exercise in futility as no evidence would be forthcoming against the Petitioner No.1 from the Petitioner No.2. This is therefore a fit case where the inherent powers of this Court under Section 482 of the Cr.P.C. can be exercised.

10. Resultant, the FIR bearing No.78/2019, dated 16-06-2019, of the Sadar Police Station, Gangtok, East Sikkim, stands quashed as also G.R. Case No.282 of 2019 before the Court of the Learned Chief Judicial Magistrate, East Sikkim, at Gangtok.

11. Crl.M.C. No.04 of 2020 stands disposed of.

12. Copy of this Order be forwarded to the Learned Court of the Chief Judicial Magistrate, East Sikkim, at Gangtok, for information.