
(2012) 11 GAU CK 0047
In the Gauhati High Court
Case No : Criminal Petition No. 586 of 2012

Hasna Begum (Musstt.) and Others

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 21-11-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Penal Code, 1860 (IPC) — Section 307, 34, 496, 498A

Citation : (2013) 1 GLT 271

Hon'ble Judges : C.R. Sharma, J

Bench : Single Bench

Advocate : Alhajj Inam Uddin and Mrs. R. Momtaz, for the Appellant;

Final Decision : Allowed

Judgement

C.R. Sarma, J.—By this joint application filed u/s 482 read with Section 320 Cr.P.C., the petitioners have prayed for quashing the proceeding of G.R. Case No. 597/2007 (Hojai P.S. Case No. 159/2007) u/s 498(A) IPC, pending in the Court of the learned Sub-Divisional Judicial Magistrate, Hojai, Sankardev Nagar, in the District of Nagaon, Assam.

The petitioner No. 1 as informant lodged an FIR against her cousin-in-law (Petitioner No. 2) and her brother-in-law (Petitioner No. 3) alleging that she was subjected to harassment both physical and mental in connection with demand of dowry. Accordingly, police submitted charge sheet u/s 498(A) IPC giving rise to the said proceeding, pending before the learned Sub-Divisional Judicial Magistrate, Hojai, Sankardev Nagar. By this application, the petitioners have submitted that they have amicably settled the matter. They have prayed for quashing the said criminal case. The learned counsel for the petitioners has submitted that the petitioners have amicably settled the matter and that there is no dispute between them. As the offence u/s 498(A) IPC is not compoundable, the learned counsel, for the petitioners has submitted that continuance of this proceeding aforesaid will adversely affect their family life and as such the same

is liable to be quashed.

In support of this contention, the learned counsel for the petitioners has relied upon the cases of *Rajiv Saxena and Others Vs. State (NCT of Delhi)* and *Another, and Arun Chandra Bora Vs. State of Assam*, (Crl. Revision Petition No. 427/1997, decided on January, 2, 2001).

2. In the case of *Rajiv Saxena & Ors. (supra)*, the Supreme Court in a case under Sections 498(A)/496 read with Section 34 IPC allowed the prayer for quashing of the proceeding on the ground that the parties have mutually settled the matter. In the case of *Arun Ch. Bora (supra)*, a learned single Judge of this Court referring to the case of AIR 1988 2111 (SC) , observed as follows:

(12). Now, the question is whether the offence u/s 498(A) can be compounded under the provisions of Section 320 Cr. P.C. The learned counsel, appearing for the petitioner submits that Section 498(A) IPC can be allowed to be compounded though it is not a compoundable offence. Supporting his argument, Mr. Agarwal, learned counsel for the petitioner has placed reliance on various decision of the Apex Court as well as this Court.

13. In AIR 1988 2111 (SC) , the Apex Court held that in a special case the offence which is not compoundable under the law can be permitted to be compromised. Relevant paragraphs of the said judgment is quoted as under: "2). The accused were acquitted by the trial Court, but they were convicted by the High Court for the offence u/s 307 IPC. This offence is not compoundable under law. The parties, however, want to treat it a special case, in view of the peculiar circumstances of the case. It is said and indeed not disputed that one of the accused is a lawyer practicing in the lower Court. There is a counter case arising out of the same transaction. It is said that the case has already been compromised. The decision of this Court in *Y. Suresh Babu Vs. State of A.P. and Another*, has been also in support of the plea for permission to compound the offence. 3) We gave our anxious consideration to the and also the plea put forward for sitting permission to compound the offence. After examining the nature of the case and the circumstances under which the offence was committed, it may be proper that the trial Court shall permit them to compound the offence."

(14). The ratio of *Maheschand's case (supra)* was accepted in *Smt. Saraswati Sutradhar and Others Vs. State of Tripura*, in a decision of this Court. This case relates to Section 498A IPC. It was held in the said case that the prayer for composition can be accepted in an offence u/s 498(A) IPC. Having regard to the above mentioned judicial decisions, and submission of the learned counsel of the parties, I am of the view that the ratio of those decisions is also applicable to the case in hand.

In the case at hand, it appears that though the offence u/s 498(A) IPC is not compoundable, the parties, including the husband and the wife i.e. the petitioner Nos. 1 and 2 have amicably settled their dispute and they have been enjoying a

peaceful family life. Therefore, continuance of the said proceeding will not yield any fruitful result, rather it may adversely affect the family life of the petitioners. Therefore, ends of justice demands closure of the case afore-mentioned.

In view of the above decisions and the principles laid down thereon and considering the entire aspect of the matter, I find it to be fit case to allow the prayer for quashing the proceeding. Accordingly, the proceeding of G.R. Case No. 597/2007 (Hojai P.S. Case No. 159/2007) u/s 498(A) IPC, pending in the Court of the learned Sub-Divisional Judicial Magistrate, Hojai, Sankardev Nagar is quashed.

The criminal petition is allowed.