

(2023) 02 GAU CK 0029
In the Gauhati High Court
Case No : Criminal Petition No. 163 Of 2022

Sachin Deka And Anr

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

Date of Decision : 17-02-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 200, 320, 397, 482
Indian Penal Code, 1860 — Section 34, 120B, 294, 323, 341, 406, 498A
Hindu Marriage Act, 1955 — Section 13B

Citation : (2023) 02 GAU CK 0029

Hon'ble Judges : Mitali Thakuria, J

Bench : Single Bench

Advocate : S Sarma

Final Decision : Disposed Of

Judgement

1. Heard Mr. S. Sarma, learned counsel for the petitioners. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State respondent No. 1 and Mr. G. Choudhury, learned counsel appearing on behalf of the respondent No. 2.
2. This is an application under Section 482 read with Section 397 of the Code of Criminal Procedure, 1973, praying for quashing the complaint registered as C.R. Case No. 3645/2017 (Smt. Reema Das Vs. Sri Sachin Deka & Anr.), pending before the Court of learned Judicial Magistrate 1st Class, Kamrup (M), Guwahati, and also prays for setting aside the impugned order dated 18.08.2018, whereby, the learned Judicial Magistrate 1st Class, Kamrup (M), Guwahati, framed charge against the present accused/petitioners under Sections 498A/323/34 of the Indian Penal Code, as well as the impugned order dated 31.08.2019, whereby, the learned Judicial Magistrate 1st Class, Kamrup (M), Guwahati, rejected the prayer of the complainant/respondent No. 2 for withdrawal of the complaint case bearing C.R. Case No. 3645/2017.
3. The brief facts of the case, leading to filing of the present petition, is that the accused/petitioner No. 1 and the respondent No. 2 got married as per Hindu rites

and custom and after some days of their happy married life, some dispute arose between the parties and for which, the respondent No. 2 lodged a complaint before the learned Chief Judicial Magistrate, Kamrup (M), which is, accordingly, registered as C.R. Case No. 3645/2017, under Section 120B/323/294/341 /406/34 of the Indian Penal Code. Accordingly, the learned Court below, after examining the witnesses under Section 200 of the Code of Criminal Procedure, pleased to take cognizance against the present accused/petitioners under Sections 498A/323/34 of the Indian Penal Code. After examination of the witnesses and on appearance of the accused/petitioners, the learned Court below framed charge against the accused/petitioners under Section 498A/323/34 of the Indian Penal Code vide order dated 18.08.2018. During the pendency of the said C.R. Case, the entire dispute between the parties were settled and accordingly both the accused/petitioner No. 1 and the respondent No. 2 entered into a Deed of Settlement and agreed to dissolve their marriage mutually and it has been settled at an amount of Rs. 3 Lakhs towards permanent ailment.

4. Further, it is stated that both the accused/petitioner No. 1 and the respondent No. 2 jointly filed a mutual divorce petition under Section 13B of the Hindu Marriage Act, 1955 before the learned Principal Judge, Family Court, Kamrup (M), which was accordingly registered as F.C. (Civil) Case No. 188/2019 and the learned Principal Judge, Family Court, Kamrup (M), was pleased to grant the mutual divorce to the petitioner No. 1 and the respondent No. 2 vide order dated 06.09.2019. Accordingly, both the petitioner No. 1 and the respondent No. 2 jointly filed the petition No. 2281/2019, under Section 320 of the Code of Criminal Procedure, before the learned Court below praying for compounding of the case. In the said petition, the complainant/respondent No. 2 specially stated that she had initiated the proceeding against the accused/petitioners due to some illegal activities, but when the accused/petitioners approached the respondent No. 2, seeking apology, their dispute has been resolved with the intervention of their family members and well wishers and for which, they have decided to withdraw the complaint as both the parties had already agreed to dissolve their marriage by mutual consent. But the learned Court below rejected the petition vide order dated 31.08.2019 on the ground that the learned Court below does not have the inherent power under the Code and as such, the learned Court below did not allow the petition for compromise filed under Section 320 of the Code of Criminal Procedure and for which, the accused/ petitioners have preferred the instant petition under Section 482 of the Code of Criminal Procedure for quashing of entire proceeding of C.R. Case No. 3645/2017, along with the impugned orders dated 18.08.2018 and 31.08.2019, passed by the learned Judicial Magistrate 1st Class, Kamrup (M), Guwahati.

5. The learned counsel for the petitioners, Mr. S. Sarma, has submitted that after the amicable settlement between the parties and also after getting the divorce decree on mutual consent, they are not interested to proceed with the case and they have also entered into a mutual agreement, wherein, the respondent No. 2

has agreed to withdraw the complaint to compromise the matter accordingly.

6. The learned counsel appearing on behalf of the respondent No. 2, Mr. G. Choudhury, has submitted that it is a fact that both the parties have mutually settled the matter and at present, the respondent No. 2 has no grievance against the present accused/petitioners. But, it is submitted by the learned counsel for the respondent No. 2 that there cannot be a ground for quashing of the petition, however the direction may be given to the learned Court below to compound the case under the provision of Section 320 of the Code of Criminal Proceeding.

7. In this context, the learned Additional Public Prosecutor, Mr. D. Das, as well as the learned counsel for the accused/petitioners have submitted that the petition filed before the learned Court below was rejected solely on the ground that the learned Court below does not have the authority to exercise the inherent power to compromise a non-compoundable offence by taking resort of Section 320 of the Code of Criminal Procedure. Further, it is submitted that as the parties have already compromised the matter and hence in no case there is any possibility of conviction of the present accused/petitioners, rather it will be an abuse of the process of the law.

8. Relying on a decision of the Hon'ble Supreme Court in *Gian Singh Vs. State of Punjab & Anr.*, reported in (2012) 10 SCC 303, it is submitted by the learned counsel for the petitioners that the High Court in quashing the criminal proceeding or F.I.R. or complaint for exercise of inherent jurisdiction is distinct and different from the power given to a Criminal Court for compounding the offence under Section 320 of the Code of Criminal Procedure. However, it has to be exercised to secure the ends of justice or to prevent abuse of the process of any Court.

9. In the aforesaid judgment, the Hon'ble Supreme has held that "Sections 482 and 320 - relative scope - inherent power of High Court under Section 482 to quash criminal proceedings involving non-compoundable offences in view of compromise arrived at between the parties - Whether bailable - If so, then when may such power be exercised - Social impact of crime in question vis-à-vis its individuals impact, as decisive criterion for exercise of quashment power in such cases - Guidelines for and limitations on exercise of quashment power of the High Court in such cases, laid down - whether Section 320 creates a bar/limits inherent power of High Court under Section 482, examined -whether B.S. Joshi, (2003) 4 SCC 675, Nikhil Merchant, (2008) 9 SCC 677 and Manoj Sharma, (2008) 16 SCC 1 require reconsideration - Held, power of High Court in quashing a criminal proceedings or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from power of a criminal Court of compounding offences under Section 320 - Cases where power to quash criminal proceedings may be exercised where circumstances of each case - Before exercise of inherent quashment power under Section 482, High Court must have due regard to nature and gravity of the crime and its societal impact."

10. Here in the instant case, from the submissions made by the learned counsels for the parties and also considering the fact of compromise/settlement between the parties, I am of the view that if the further proceeding is allowed to be continued, the same will only be an abuse of the process of the Court as both the parties have already settled the matter amicably and there is remote chance of conviction of the parties. And, in the same time, in the instant case, it is seen that the respondent No. 2 herself appeared before the learned Court below praying for compounding the case in terms of settlement between the parties.

11. Under the facts and circumstances discussed hereinabove, I am of the considered opinion that this is a fit case where the extra-ordinary power under Section 482 Cr.P.C. can be invoked to quash the proceeding in C.R. Case No. 3645/2017, pending before the Court of learned Judicial Magistrate 1st Class, Kamrup (M), Guwahati.

12. Accordingly, the impugned orders dated 18.08.2018 & 31.08.2018, and subsequent proceeding in C.R. Case No. 3645/2017, pending before the Court of learned Judicial Magistrate 1st Class, Kamrup (M), Guwahati, stands set aside and quashed.

13. The criminal petition stands disposed of in terms above.