
(2012) 10 GAU CK 0063

In the Gauhati High Court

Case No : Criminal Miscellaneous Application 9 of 2012

Sh. P.C. Zothansanga and Others

APPELLANT

Vs

State of Mizoram and Another

RESPONDENT

Date of Decision : 11-10-2012

Acts Referred:

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

Citation : (2013) CriLJ 272 : (2013) 2 GLT 503

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : R. Lalawmpuia and Lalchanliana Khiangte, for the Appellant;

Final Decision : Allowed

Judgement

Ujjal Bhuyan, J.—This is an application u/s 482 of the Code of Criminal Procedure, 1973 for quashing of FIR in Bawangkawn P.S. Case No. 344/2011 leading to CrI. Tr. No. 2751/2011 pending in the Court of Judicial Magistrate, First Class, Aizawl. Petitioner No. 1 is the husband of the informant, who has been impleaded as respondent No. 2 in the present proceeding. Petitioner No. 2 is the mother and petitioner No. 3 is the sister of petitioner No. 1.

2. Respondent No. 2 as the informant lodged a first information dated 5-12-2011 alleging that on 4-12-2011 (Sunday) at around 7:30 in the evening, the petitioners prevented her from taking her children to their grandmother by using criminal force. She also alleged physical assault on her by the petitioners. On receipt of the above information, Bawangkan P.S. Case No. 344/2011 u/s 498(A)/34 IPC was registered. The said police case has given rise to CrI.Tr. No. 2751/2011 pending in the Court of Judicial Magistrate, First Class, Aizawl.

3. The informant filed an application dated 14-12-2011 before the Chief Judicial Magistrate, Aizawl for withdrawal of the FIR on the ground that the matter has been compromised between the parties. Similar prayer was also made before the

learned court below.

4. As offence u/s 498-A is a non-compoundable offence, no decision could have been taken by the authorities below. In such circumstances, the present petition has been filed with the prayer as indicated above.

5. This Court by order dated 20-06-2012, while admitting the petition, had stayed further proceedings in the criminal case.

6. Respondent No. 2/informant has filed an affidavit dated 13-09-2012 wherein she has stated that she is now residing with her husband (petitioner No. 1) alongwith their minor children. She has stated that she does not want to press the allegation against the petitioners as that would cause trouble to them and thereby disturb her marital life. She has also stated that she would have no objection if the FIR is quashed.

7. It is true that an offence u/s 498-A IPC is not compoundable u/s 320 of the Code of Criminal Procedure, 1973. But in an appropriate case, where the parties to matrimonial disputes wishes to bury the past and revive their conjugal life, the High Court may come to their aid by exercising its inherent power u/s 482 of the Code of Criminal Procedure, 1973.

8. In the case of B.S. Joshi and Others Vs. State of Haryana and Another, , the Hon"ble Supreme Court observed that it is the duty of the Court to encourage genuine settlements of matrimonial disputes. Explaining the object behind introduction of Section 498-A in the Indian Penal Code, the Apex Court observed that it was added with a view to punish a husband and his relatives who harassed or tortured the wife to coerce her or her relatives to satisfy their unlawful demand. I may add here that this provision is not meant to be used to permanently damage matrimonial relationships where the allegations are relatable to normal domestic skirmishes which had led to temporary domestic discord. As held by the Apex Court in the above case, a hyper technical approach in such cases would be counter-productive and would act against the very object of the provision itself. In such matters, High Court would be justified in exercising its inherent power to quash the proceedings to allow the parties to resume their conjugal life.

9. In a recent judgment dated 24-09-2012 in the case of Gian Singh v. State of Punjab & Anr. the Hon"ble Supreme Court after discussing the law relating to the power of the High Court in quashing a criminal proceeding, observed that criminal cases having overwhelming and pre-dominantly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising out of matrimonial disputes. In such cases, where the wrong as basically private or personal in nature, if the parties have resolved their disputes, the High Court may quash criminal proceedings if, in its view, because of the compromise between the offender and the victim, possibility of conviction is remote and continuation of the criminal case would put the accused to great oppression, prejudice and injustice despite settlement and compromise between the victim

and the wrongdoer.

10. Considering the factual context of the present case and in the light of the pronouncements of the Hon"ble Supreme Court as adverted to above, this Court is of the considered opinion that in view of the nature of allegation made in the first information and the categorical assertion of the informant that the parties have resolved their differences and are now residing together, the present is a fit case for invoking the inherent power of the Court to terminate the criminal proceeding by setting aside and quashing the FIR in Bawngkawn P.S. Case No. 344/2011 leading to CrI. Tr. No. 2751/2011 in the Court of Judicial Magistrate, First Class, Aizawl as allowing the criminal proceeding to continue would be unfair and contrary to the interest of justice. Accordingly, the said FIR stands quashed. Criminal petition is allowed. However, in the peculiar facts and circumstances of the case, there shall be no order as to cost.