
(2017) 02 BOM CK 0117

In the Bombay High Court

Case No : Criminal Writ Petition No. 139 of 2016

Shri. Bharat Daswani

APPELLANT

Vs

State of Goa

RESPONDENT

Date of Decision : 13-02-2017

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 228, Section 320, Section 482
Penal Code, 1860 (IPC) — Section 304B, Section 306, Section 498A

Citation : (2017) 1 AIRBomRCri 791 : (2017) ALLMRCri 1961 : (2017) 2 BomCR(Cri) 396 : (2017) 2 MhLJCrI 34

Hon'ble Judges : F.M. Reis and Nutan D. Sardessai, JJ.

Bench : Division Bench

Advocate : Shri G. Agni with Shri E. Usapkar, Advocates, for the Petitioners;
Shri P. Faldessai, Additional Public Prosecutor on behalf of the State, for the Respondents

Final Decision : Dismissed

Judgement

Nutan D. Sardessai, J.— Heard Shri G. Agni, learned Advocate for the petitioner and Shri P. Faldessai, learned Additional Public Prosecutor on behalf of the State-respondent no.1.

2. Rule. Heard forthwith with the consent of the learned counsel appearing for the parties. Shri P. Faldessai, learned Public Prosecutor waives service on behalf of the State.

3. The petitioner has invoked the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 for quashing of the charge-sheet filed before the Sessions Judge, Mapusa in the Sessions Case No.3/2014 on account of the settlement arrived at between the petitioner and the respondents no.2 and 3 who do not wish to pursue the case any further. It was briefly his case that he was married to the deceased Geeta under the personal law applicable to them which was performed with much fanfare in the presence of a large number of family, friends

and relatives. He had travelled to Goa for a family holiday on 28th September, 2012 along with his wife, since deceased, and the family members and were scheduled to return to Mumbai 5-6 days later after checking into a hotel at Arpora. On 3.10.2012 he was not in his room between 13.30 hours to 13.45 hours when his wife Geeta committed suicide by hanging herself in the hotel room. He had come to the hotel room and was shocked and shattered to see that his wife had committed suicide by hanging herself and had informed the same to her family members who had thereupon lodged an FIR against him alleging that she had committed suicide by hanging on account of the alleged continuous demands for dowry, deprivation of physical relationship etc. The Anjuna Police Station had accordingly registered an FIR against him and thereafter a charge-sheet was filed against him under Section 173 CrPC for the offences punishable under Sections 498A, 306, and 304B read with Section 34 IPC along-with his other family members. The Sessions Court had discharged two of his family members by the order dated 18.8.2016 while his mother had expired during the pendency of the charge-sheet and he alone was facing the charges.

4. It was his case that in the meantime the complainant who was the mother of the deceased, her family members and the petitioner with his family members had arrived at a mutual and amicable family settlement and resolved their differences and disputes including all the misunderstandings surrounding the suicide by his wife. The alleged offence was arising purely out of the alleged matrimonial and family disputes and was purely of a private character. The respondents no.2 and 3 were no longer desirous of pursuing their complaint dated 4.10.2016 as well as the charge-sheet and did not wish to pursue the case any further. The parties were therefore desirous of having the offences compounded and the charge-sheet quashed and set aside. The offences alleged against him were neither heinous nor serious as would shock the conscience of the society or have a serious impact on the society. The compounding of the offences ought to be granted to secure the ends of justice and to prevent the abuse of the process of the Court and as further continuation of the proceedings could be an exercise in futility and thereby entitling him to the writ in the manner prayed for. The petition was supported by the affidavits of the mother and the sister of the deceased, both of them reiterating on oath that they were aware of the proceedings filed by the petitioner for quashing of the charge-sheet and that they had come to a family settlement, resolved all their differences and disputes including the misunderstandings surrounding the suicide of the deceased and were therefore no longer desirous of pursuing their complaint as well as charge-sheet against the petitioner.

5. Shri G. Agni, learned Advocate relied on the charge-sheet filed before the Sessions Court, Mapusa and the records to submit at the outset that the charge against the petitioner was dropped under Section 498A IPC and the charges which survived were those under Sections 306 and 304B IPC. It was his contention that once the offence under Section 498A IPC no longer survived, the offence under Section 304B which stemmed out of such an offence and being an

aggravated form no longer survived on its plain reading. He relied in *Gian Singh v. State of Punjab* and another [(2012)10 SCC 303], referred to paragraph 8 and the observations of the Apex Court to canvass a plea that the offence under Section 304B IPC was not at all involved in the case before the Hon'ble Apex Court in *Gian Singh (supra)*. He further placed reliance in *Jitendra Raghuvanshi and others v. Babita Raghuvanshi and another* [(2013) 4 SCC 58] and *Javed Alam @ Soni v. The State (Govt. of NCT of Delhi)* and another [2016 0 Supreme (Del) 395] of the Delhi High Court to contend that this Court was well equipped with the powers to quash the proceedings and the charge-sheet against him also on considering the affidavits filed by the family members of the deceased.

6. Shri P. Faldessai, learned Additional Public Prosecutor on behalf of the respondent no.1 adverted to the judgment in *Gian Singh (supra)* and the observations of the Hon'ble Apex Court in the matter of offence under Section 304B IPC, *M. Sharma v. State* [(2008) 16 SCC 1], which was referred to in *Gian Singh* and that in *Pathan Mohammed Suleman Rehmatkhan v. State of Gujarat and others* [(2014) 4 SCC 149] to substantiate his contention that the offence under Section 304B of IPC could not be compounded even with the permission of the Court. The question which remained at large was whether the relative of the victim could be permitted to compound an offence under Section 304B IPC. Besides he relied in a Division Bench judgment of this Court in *Aannapaa Avdhut Haladvdru and ors. v. The state of Maharashtra and others* [2016 ALL MR (Cri) 3529] where Their Lordships had held clearly that even an offence under Section 307 IPC could neither be compounded nor quashed and distinguished the judgment in *Javed Alam @ Soni v. The State (Govt. of NCT of Delhi)* and another (*supra*) on the premise that it was made on the basis of a concession made by the learned Public Prosecutor. The offences alleged against the petitioner particularly under Section 304 IPC was a serious offence and could not be compounded nor the charge-sheet quashed even on the basis of the supporting affidavits of the family members of the deceased and therefore the petition was liable for dismissal.

7. We have heard Shri G. Agni, learned Advocate for the petitioner and Shri P. Faldessai, learned Additional Public Prosecutor on behalf of the State-respondent no.1 at a considerable length and also considered the judgments relied upon by them apart from the import of Section 304B IPC qua Section 498A IPC. Section 304B IPC is an offence of dowry death which reads thus, "(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death". Sub-section (2) thereof deals with the extent of punishment prescribed for the offence which shall not be less than seven years but which may extend to imprisonment for life.

8. A bare reading of the provision would substantiate the contention of Shri G. Agni, learned Advocate for the petitioner that the death of the deceased occurring otherwise than under normal circumstances and within seven years of her marriage has to be in the context of she being subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry to qualify as a dowry death. In other words, such a death had necessarily to arise out of the victim being subjected to cruelty or harassment by her husband or his relative for or in connection with any demand for dowry. In that context, the contention of Shri G. Agni, learned Advocate for the petitioner would appear plausible that once the charge against him under Section 498A IPC was dropped, the offence under Section 304B IPC would automatically not survive. However, the learned Sessions Judge in his wisdom dropped the charge against the petitioner under Section 498A IPC and yet ordered the charges to be framed under Section 304B IPC in particular and Section 306 IPC .

9. Section 304 IPC in its real import would be applicable if cruelty or harassment was inflicted by the husband or any of his relative, for, or in connection with the demand for dowry, immediately preceding the death by bodily injury or by burning as to make it a case of dowry death. The prosecution would also have to discharge the burden of proving that the harassment or cruelty was related to the demand for dowry and it was inflicted by the husband or his relative before her death. Section 113B of the Indian Evidence Act, 1872 dealing with the presumption as to dowry death would have to be read and understood in its proper perspective to understand the import of dowry death contemplated under Section 304B of the Indian Penal Code. Section 113B reads thus: "Presumption as to dowry death :- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death. In other words, even to draw such a presumption, it would be material to show that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with any demand for dowry to draw the presumption on dowry death. Therefore, on a conjoint reading of Section 304B IPC with the Section 113B of the Indian Evidence Act, 1872 and in the backdrop of the fact that the learned Sessions Judge had not deemed it appropriate to frame the charge under Section 498A IPC, the contention of Shri G. Agni would carry much force that the charge under Section 304B IPC would not per se survive against the petitioner.

10. In *Gian Singh (supra)*, a three-Judge Bench of the Hon'ble Apex Court was seized with the question regarding the inherent powers of the High Court under Section 482 CrPC in quashing the proceedings against an offender who had settled his dispute with the victim of the crime but the crime in which he had allegedly involved was not compoundable under Section 320 CrPC and as a two-Judge Bench has doubted the correctness of the decisions in *B.S. Joshi v. State*

of Haryana [(2003) 4 SCC 675], Nikhil Merchant v. CBI [(2008) 9 SCC 677] and Manoj Sharma v. State [(2008) 16 SCC 1] and referred the matter to a larger Bench. The Hon'ble Apex Court answering the reference held at paragraph nos. 57 and 61 as:

"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".

"61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and

prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding".

11. The Apex Court considered the judgment in B.S. Joshi (supra), where an FIR was registered at the instance of the wife under Sections 498A and 406 IPC and the High Court dismissed the petition for quashing of the FIR as in its view the offences under Sections 498A and 406 IPC were non-compoundable and the inherent powers under Section 482 of the Code could not be invoked to bypass Section 320 of the Code giving rise to the appeal before the Apex Court when it was held that the High Court could quash the criminal proceedings or the FIR or the complaint in exercise of its inherent powers and Section 320 of the Code did not limit or affect the powers under Section 482 of the Code.

12. In Gian Singh (supra) the three-Judge Bench considered the judgment in Manoj Sharma (supra), where the Court was concerned with the question whether the FIR under Sections 420, 468 and 471 read with Section 34 IPC read with 120B IPC could be quashed either under Section 482 CrPC or under Article 226 of the Constitution of India when the accused and the complainant had compromised and settled the matter between themselves. The Apex Court observed that the ultimate exercise of discretion under Section 482 CrPC or under Article 226 of the Constitution of India was with the Court which had to exercise the jurisdiction in the facts of the case. It had been explained that the said power was no way limited by the provision of Section 320 CrPC. Once the complainant decided not to pursue the matter further, the High Court could have taken a more pragmatic view of the matter and that continuing with the criminal proceedings would be an exercise in futility in the facts of the case. The other Judge (Shri M. Katju, J) however observed that the question may have to be decided preferably by a larger Bench as to which non-compoundable cases could be quashed under Section 482 of the Code or under Article 226 of the Constitution of India on the basis that the parties had entered into a compromise and in that context observed that, ""There can be no doubt that the case under Section 302 IPC or other serious offences like those under Sections 395, 307 or 304B IPC cannot be compounded and hence the proceedings in those provisions cannot be quashed by the High Court in exercise of its power under Section 482 CrPC or in writ jurisdiction on the basis of a compromise. However in some other cases (like those akin to a civil nature), the proceedings can be quashed by the High Court if the parties have come to an amicable settlement even though the provisions are not compoundable". It needs reckoning that neither in B.S. Joshi (supra) nor in Manoj Sharma (supra) were the two-Judge Benches of the Apex

Court concerned with the exercise of the inherent jurisdiction by the High Court under Section 482 CrPC or its writ jurisdiction under Article 226 of the Constitution of India qua the offence under Sections 304B IPC. Therefore, the observation of Shri M Katju, J. in Manoj Sharma (supra), to which a reference was made by Shri P. Faldessai learned Additional Public Prosecutor on behalf of the State, would have to be considered accordingly and it is not as if it was held by the Hon'ble Apex Court that there was a blanket bar to the compounding of the offences like those under Section 304B of IPC amongst others.

13. In State of Rajasthan (supra), the respondents were charge-sheeted for the offences punishable under Sections 307, 323, 325, 427 read with Section 34 IPC who were tried before the Court of the Additional Sessions Judge, Kota Rajasthan and found guilty of the offence punishable under Section 307 read with Section 34 IPC but acquitted of the other charges. The accused approached the High Court challenging the order of conviction and sentence and during the course of hearing of the appeal the complainant who was present in the Court stated that he and the accused persons had entered into compromise and based on that compromise he had received the compensation from the accused for the injuries caused to him. Consequently, it was pointed out that he did not wish to pursue the appeal. The counsel appearing for the complainant submitted before the High Court that since the parties had buried their differences and since the offence committed was "against an individual" rather than "against the State," no fruitful purpose would be served by keeping the accused persons behind the bars and therefore to compound the case and to allow the appeal. The High Court acceded to their request and on examining the scope of Sections 482 and 320 CrPC quashed the case on the basis of the compromise, held that it would be in the interest of justice and allowed the appeal acquitting the accused of the offence under Section 307 read with Section 34 IPC giving rise to the appeal at the instance of the State.

14. In State of Rajasthan (supra), a reference was made to the judgment in Gian Singh (supra), and the various guidelines laid down by the Hon'ble Apex Court and found from the facts and the finding of the Trial Court that the accused persons acting in furtherance of their common intention had gone to the shop of the injured armed with an iron rod and a strip of iron in furtherance of their common intention and had caused serious injuries on his body, one being on his head which was of a serious in nature and opined by the Doctor examined in the case to be grievous and fatal for life. Their Lordships held that they were not prepared to say that the crime alleged to have been committed by the accused persons was the crime against the individual and on the other hand it was the crime against the society at large. Criminal Law was designed as a mechanism for achieving social control and its purpose was the regulation of the conduct and activities within the societies. Section 307 IPC was held to be non-compoundable because the Code had identified which conduct should be brought within the ambit of non-compoundable offences which were not meant just to protect the individual but the society as a whole and the High Court was not rightly thinking

that it was only an injury to the person and as the accused persons had received the monetary compensation and settled the matter, the crime as against them was wiped off. Criminal justice system had a larger objective to achieve that the safety and protection of the people at large and it would be a lesson not only to the offender but to the individuals at large so that such crime would not be committed by anyone and the money would not be a substitute for the crime committed against the society. Taking a lenient view on the serious offence would leave a wrong impression of criminal justice system and would encourage further criminal acts which would endanger the peaceful co-existence and welfare of the society at large and set aside the judgment of the High Court.

15. In *Aannapaa Avdhut Haladvdru* (supra), a Division Bench of this Court was dealing with a petition for quashing the criminal proceedings by consent at the instance of the petitioners and the respective complainants in both the petitions where offences were registered under Sections 143, 147, 148, 149, 307, 323, 324, 341, 504 and 506 IPC and Sections 4 and 25 of the Arms Act, 1959 along with Section 135 of the Maharashtra Police Act, 1951. In C.R. No.45/2015 there was a dispute relating to the property and in the course of which the appellant and others came armed with the sticks and sword, threatened the complainant and his brother that they would be killed and the complainant was assaulted on his head by a sickle and his brother was assaulted with the sword giving rise to the registration of the FIR at Umadi Police Station, Sangli. Another FIR was registered vide C.R. No.44/2015 at the instance of the second respondent and the petitioners were implicated as the accused. The petitioners in both the petitions had approached this Court and submitted that the parties involved in both the cases were closely related to each other, that on intervention of the elderly persons the disputes between them were settled and therefore the FIR in the respective petitions may be quashed and set aside with the consent of the respondent/complainant. The affidavit to that effect was also tendered before the Court by the complainant in C.R. No.45/2015 as also the other injured stating therein that they had no objection to quash the FIR.

16. In *Aannapaa Haladvdru* (supra), a Division Bench of this Court considered the judgment in *Narinder Singh and others v. State of Punjab* and another [2014 (6) SCC 466], *B.S. Joshi* (supra) amongst others. It was also submitted that the Apex Court had quashed and set aside the proceedings wherein the charge under Section 307 IPC was also invoked. The learned Additional Public Prosecutor had vehemently opposed the prayer made by the petitioners on the premise that the accused had committed serious offences and that the Court should not interfere in the impugned FIR. The crime committed by the accused was heinous and therefore the Court should not invoke the writ jurisdiction or the inherent powers under Section 482 CrPC for quashing the impugned FIR. Their Lordships found that although the parties were related to each other, the manner in which the offences were committed showed that they have no fear of law. They had used deadly weapons like sword, sickles and axe for committing the offences and taking into consideration the nature and gravity of the offence, they were not

inclined to quash the impugned proceedings. It was also not possible to give a finding that the accused had not committed the offence punishable under Section 307 IPC and therefore it was not a fit case to exercise the powers under Article 226 of the Constitution of India or the inherent powers under Section 482 CrPC to quash the FIR which were the subject matter in both the petitions. Their Lordships had considered the judgment in *Gian Singh (supra)*, where the Apex Court had laid down the principle that in respect of serious offences or offences of mental depravity, the powers of quashing should not be exercised and mere settlement between the parties would not be a ground to quash the proceedings by the High Court. Their Lordships had also considered the judgment in *Narinder Singh (supra)*, where the Apex Court had made the following observations at para 26:-

"26. In *Raj Kapoor and others v. State and others* the Court explained the width and amplitude of the inherent power of the High Court under Section 482 vis-à-vis the revisional power under Section 397 as follows:

"10. ??The opening words of Section 482 contradict this contention because nothing of the Code, not even Section 397, can affect the amplitude of the inherent power preserved in so many terms by the language of Section 482. Even so, a general principle pervades this branch of law when a specific provision is made: easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same Code. In *Madhu Limaye's* case this Court has exhaustively and, if I may say so with great respect, correctly discussed and delineated the law beyond mistake. While it is true that Section 482 is pervasive it should not subvert legal interdicts written into the same Code, such, for instance, in Section 397(2). Apparent conflict may arise in some situations between the two provisions and a happy solution "would be to say that the bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one or the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397 (2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction".

In short, there is no total ban on the exercise of inherent power where abuse of the process of the court or other extraordinary situation excites the court's jurisdiction. The limitation is self-restraint, nothing more. The policy of the law is clear that interlocutory orders, pure and simple, should not be taken up to the High Court resulting in unnecessary litigation and delay. At the other extreme, final orders are clearly capable of being considered in exercise of inherent power, if glaring injustice stares the court in the face. In between is a tertium quid, as Untwalia, J. has pointed out as for example, where it is more than a purely interlocutory order and less than a final disposal. The present case falls under that category where the accused complain of harassment through the court's process. Can we state that in this third category the inherent power can be exercised? In the words of Untwalia, J.: (SCC p. 556, para 10) "The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible." I am, therefore clear in my mind that the inherent power is not rebuffed in the case situation before us. Counsel on both sides, sensitively responding to our allergy for legalistics, rightly agreed that the fanatical insistence on the formal filing of a copy of the order under cessation need not take up this court's time. Our conclusion concurs with the concession of counsel on both sides that merely because a copy of the order has not been produced, despite its presence in the records in the court, it is not possible for me to hold that the entire revisory power stands frustrated and the inherent power stultified."

17. Yet however considering the factual matrix of the case, the manner in which the crime was committed and taking into consideration the observations made by the Apex Court in *Gian Singh and Narinder Singh (supra)*, it was held that the power of quashing should not be exercised in the present case on the ground of settlement and in that view of the matter dismissed the writ petition.

18. Javed Alam (*supra*), sought to quash the FIR registered at the Jahangirpuri Police Station, Delhi under Section 482 CrPC in respect of the offences punishable under Sections 498A, 304B read with Section 34 IPC and the consequential proceedings emanating therefrom it. Initially the FIR was registered under Sections 498A, 304A read with Section 34 of IPC, but the charges were framed against the petitioner only for the offences punishable under Section 498A IPC. It was contended on his behalf that though the FIR was registered on the complaint of the respondent no.2 mainly the father of the deceased consequent upon the matrimonial and domestic disputes that had arisen between the parties, nonetheless they had amicably settled their disputes before the Delhi Mediation Centre, Delhi and consequent to which certain amount were paid to him which were not disputed. In the facts of that case, the

respondent no.2 was personally present in the Court along with his counsel and moreover as rightly submitted by Shri P. Faldessai, learned Additional Public Prosecutor on behalf of the State that the learned Additional Public Prosecutor had submitted that the matter was a matrimonial one which the respondent no.2- complainant did not wish to pursue further against the petitioner, no purpose would be served if he was directed to face trial and therefore the State has no objection if the petition was allowed and in those circumstances and considering the judgment in Gian Singh (supra) and Narinder Singh (supra), the High Court of Delhi having concluded that the subject matter of the FIR was essentially matrimonial which stood mutually and amicably settled between the parties, the matter deserved to be given a quietus as continuance of the proceedings would be an exercise in futility and quashed not only the FIR but all the proceedings emanating therefrom.

19. Coming back to the facts of this case and even assuming at the highest that the parties had amicably settled the matter and the mother and sister of the deceased had come-forth with their affidavits that they did not wish to pursue the matter afresh. Nonetheless the offence allegedly committed by the petitioner even under Section 306 IPC cannot be said to be a matter qualifying to be an offence of a private nature and not having serious impact on the society. It is far from being one having a predominantly civil flavour even though it arises out of matrimonial disputes. It would fall within the category of serious offence and cannot be fittingly quashed even though the victim's family and the offender have settled the dispute.

20. In view of the law laid down in Gian Singh (supra) and State of Rajasthan (supra) and considering the judgment of this Court in Aannapaa (supra), and in the factual matrix of the present case, we are not inclined to exercise the power under writ jurisdiction and or the inherent powers under Section 482 of the Code. The petitioner shall be at liberty to move the learned Sessions Court to canvass a case that an offence under Section 304B IPC is not made out and seek for a discharge accordingly.

21. In view of the above, we pass the following order:

Order

1. Criminal Writ Petition is dismissed with no order as to costs. Rule is discharged.