

(2016) 08 SIK CK 0003
In the Sikkim High Court
Case No : Crl. M.C. No. 07 of 2016

Shri Sushil Kumar Shah

APPELLANT

Vs

State of Sikkim

RESPONDENT

Date of Decision : 24-08-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 34, Section 498A

Citation : (2016) 168 AIC 551 : (2017) 1 ECrC 594

Hon'ble Judges : Mr. Satish K. Agnihotri, ACJ.

Bench : Single Bench

Advocate : Mr. Ajay Rathi, Mr. Rahul Rathi, Mr. Aditya Makkhim, Ms. Phurba Diki Sherpa and Mr. Pramit Chhetri, Advocates, for the Petitioner; Mr. J.B. Pradhan, Public Prosecutor and Mr. Karma Thinlay, Additional Public Prosecutor with Mr. S.K. Chettri and Mrs. Polli

Final Decision : Allowed

Judgement

Satish K. Agnihotri, A.C.J. - The Petitioners 1 to 4, being the alleged accused, and the Petitioner No.5, being the complainant, who are stated to be family members, have come up with this petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, the Code), seeking to quash the first information report (for short, FIR) bearing No.47(12)14 dated 25.12.2014 and the consequential proceedings in General Register Case No.237 of 2015 (State of Sikkim v. Sushil Kumar Shah and Ors.) pending on the file of the Court of Judicial Magistrate (First Class), East Sikkim at Gangtok.

2. The facts, in nutshell relevant for adjudication and disposal of the case, are that the Petitioner No.1 was married to the Petitioner No.5 in accordance with Hindu rites at Sahu Bhawan, Siliguri, West Bengal on 10.12.2013 and, thereafter, they began to live together at Rangpo, P.O. and P.S. Rangpo, East Sikkim. The Petitioner No.2 and the Petitioner No.3 are respectively the brother-in-law and sister of the Petitioner No.1 and the Petitioner No. 4 is the son of the Petitioners

2 and 3.

3. While living together, the Petitioner No.5 lodged a FIR at Jhalupara Beat House, Shillong on 30.04.2014, making a complaint against the Petitioners 1 to 4 of causing physical and mental torture to her and demanding dowry, wherein a criminal case was registered vide FIR bearing No. 36(4)14 dated 30.04.2014 under Section 498A/34 of the Indian Penal Code, 1860 (for short, the IPC) read with Section 4 of the Dowry Prohibition Act, 1961.

4. Being aggrieved, the Petitioner No.1 approached the High Court of Meghalaya at Shillong under provision of Section 438 of the Code in A.B. No.26 of 2014, wherein it was observed that the case did not fall within the jurisdiction of the Meghalaya Police and the said FIR be forwarded to the concerned Police Station for investigation.

5. Pursuant thereto, the said FIR was transferred to Rangpo Police Station wherein it was registered as FIR No.47(12)14 dated 25.12.2014 under provision of Section 498A/34 of the IPC and Section 4 of the Dowry Prohibition Act, 1961 against the Petitioners 1 to 4 on the complaint of the Petitioner No.5. The charge-sheet was, accordingly, filed in the Court of the Chief Judicial Magistrate, East and North Sikkim, Gangtok in General Register Case No.237 of 2015 which was made over to the Court of the Judicial Magistrate, East Sikkim for trial vide order dated 04.08.2016. During pendency of the afore-stated trial, it appears that the complainant as well as Petitioner No. 1/accused have reached to a family settlement, which occasioned filing of the instant petition jointly by the Petitioners 1 to 4/accused and the complainant, seeking quashing of FIR and charge-sheet, as afore-stated.

6. Mr. Rahul Rathi, learned Counsel appearing for the Petitioners, referring to and relying on a decision of the Supreme Court in *Gian Singh v. State of Punjab and Anr.*, (2012) 10 S.C.C. 303 would submit that the dispute, being family dispute, has been settled amicably and the alleged accused and the complainant have re-established their family relationship and living happily. Thus, the FIR, leading to the case pending in the trial court, be quashed in the interest of family settlement. It is further contended that the allegation is also not of such nature, which is not capable of settlement and the alleged accused are required to be dealt with for the alleged offence under provisions of law.

7. In response, Mr. Karma Thinlay, learned Additional Public Prosecutor, fairly submits that the nature of complaint is such which is required to be resolved and settled amicably. Since the parties have settled the dispute, it is proper not to proceed with the case.

8. Heard learned Counsel for the parties, perused pleadings and documents appended thereto.

9. The Petitioner No.5 has filed an affidavit in this Court on 18.08.2016, stating inter alia as under:

"7. That the instant case has been amicably settled and I do now have a peaceful relationship with my husband and rest of the petitioners."

10. The Petitioner No.5/complainant was also examined by the Investigating Officer (IO). The IO, by her Report dated 19.08.2016 annexing the statement recorded under provision of Section 161 of the Code, states that the complainant had clearly deposed that the family dispute has been settled and, as such, the complaint lodged by her be cancelled as she wants to continue her marriage with her husband, Shri Sushil Kumar Shah (Petitioner No.1). The Petitioner No.1, in support of his affidavit, has reiterated the same and expressed his desire to maintain a good relation with his wife, Petitioner No.5. The Petitioners 2 to 4 have also reiterated the same statement.

11. The question involved herein is as to whether charges relating to the offences punishable under Section 4 of the Dowry Prohibition Act, 1961 and Section 498A of the IPC, which are non-compoundable, may be quashed in exercise of jurisdiction under Section 482 of the Code.

12. As afore-stated, the complaint was lodged by wife against the husband and other relatives alleging mental and physical torture and demand of dowry. Thereafter, as posited by the Petitioner No. 1 (Accused) and the Complainant, who have filed this petition jointly, they have come to an amicable settlement between them to live together peacefully.

13. In the case of *Manoj Sharma v. State and Ors.*, 2008 16 S.C.C. 1 wherein the question involved was as to whether a first information report under Sections 420/468/471/34/120-B IPC can be quashed either under Section 482 of the Code of Criminal Procedure or under Article 226 of the Constitution, when the accused and the complainant have compromised and settled the matter between themselves. Hon"ble Mr. Justice Altamas Kabir (as he then was) observed as under:

"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." Concurring, Hon"ble Mr. Justice Markandey Katju (as he then was) observed as under:

"27. There can be no doubt that a case under Section 302 IPC or other serious

offences like those under Sections 395, 307 or 304-B cannot be compounded and hence 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 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. ?????????."

14. In yet another case, *Sushil Suri v. Central Bureau of Investigation and Anr.*, (2011) 5 SCC 708 while examining the scope, ambit and extent of Section 482 of the Code, the Supreme Court held as under:-

"16. Section 482 CrPC itself envisages three circumstances under which the inherent jurisdiction may be exercised by the High Court, namely, (i) to give effect to an order under CrPC; (ii) to prevent an abuse of the process of court; and (iii) to otherwise secure the ends of justice. It is trite that although the power possessed by the High Court under the said provisions is very wide but it is not unbridled. It has to be exercised sparingly, carefully and cautiously, *ex debito justitiae* to do real and substantial justice for which alone the Court exists. Nevertheless, it is neither feasible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court. Yet, in numerous cases, this Court has laid down certain broad principles which may be borne in mind while exercising jurisdiction under Section 482 CrPC. Though it is emphasised that exercise of inherent powers would depend on the facts and circumstances of each case, but the common thread which runs through all the decisions on the subject is that the Court would be justified in invoking its inherent jurisdiction where the allegations made in the complaint or charge-sheet, as the case may be, taken at their face value and accepted in their entirety do not constitute the offence alleged."

15. In *Rajiv Saxena and Ors. v. State (NCT of Delhi) and Anr.*, (2012) 5 SCC 627 the Supreme Court, recording the affidavit of wife who was the complainant in the FIR under provision of Sections 498A, 496 read with Section 34 of the IPC, quashed the charge and proceedings pending before the Magistrate.

16. A larger Bench of Supreme Court in *Gian Singh v. State of Punjab and Anr.*, (2012) 10 S.C.C. 303 examining the correctness of the decisions of the Supreme Court in *B.S. Joshi and Ors. v. State of Haryana and Anr.*, (2003) 4 SCC 675; *Nikhil Merchant v. Central Bureau of Investigation and Anr.*, (2008) 9 SCC 677 and *Manoj Sharma v. State and Ors.*, 2008 16 S.C.C. 1 in reference made in *Gian Singh v. State of Punjab and Anr.* (2010) 15 SCC 118 settled the proposition of law 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 end 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. ??????"

17. Subsequently, in *Ashok Sadarangani and Anr. v. Union of India and Ors.*, (2012) 11 SCC 321 referring to earlier decision rendered by the Supreme Court, the Supreme Court observed as under:

"24. Having carefully considered the facts and circumstances of the case, as also the law relating to the continuance of criminal cases where the complainant and the accused had settled their differences and had arrived at an amicable arrangement, we see no reason to differ with the views that had been taken in *Nikhil Merchant* case or *Manoj Sharma* case or the several decisions that have come thereafter. It is, however, no coincidence that the golden thread which runs through all the decisions cited, indicates that continuance of a criminal proceeding after a compromise has been arrived at between the complainant and the accused, would amount to abuse of the process of court and an exercise in futility, since the trial could be prolonged and ultimate, may conclude in a decision which may be of any consequence to any of the other parties."

18. Applying the well-settled proposition of law, as afore stated, to the facts of the case wherein the complaint was made by wife, Petitioner No.5 herein, against the husband and other relatives which led to lodging of FIR and filing of charge-sheet in the Court. After cognizance was taken by the Court, a settlement between the complainant and the accused took place, as stated herein above. Having regard to the relationship between the complainant and accused, Petitioner No.1 herein, and in the interest of justice to attain peace in the family and in the society, I have no hesitation to allow this petition.

19. Resultantly, FIR bearing No. 47 (12)14 dated 25.12.2014 and the consequential proceedings in General Register Case No.237 of 2015 (*State of Sikkim v. Sushil Kumar Shah and Ors.*) pending on the file of the Court of Judicial Magistrate (First Class), East Sikkim at Gangtok are quashed.

20. Petition is allowed.