

(2021) 03 GAU CK 0056
In the Gauhati High Court
Case No : Criminal Petition No. 971 Of 2019

Supratip Banerjee

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

Date of Decision : 18-03-2021

Acts Referred:

Indian Penal Code, 1860 — Section 294, 354, 498(A)
Code Of Criminal Procedure, 1973 — Section 320, 482

Citation : (2021) 03 GAU CK 0056

Hon'ble Judges : Sudhanshu Dhulia, CJ

Bench : Single Bench

Advocate : N. Dey, S. Jahan, B. Chowdhury

Final Decision : Allowed

Judgement

1. Heard Ms. N. Dey, learned counsel for the petitioner. Also heard Ms. S. Jahan, learned Additional Public Prosecutor, Assam, appearing for the respondent No.1 and Mr. B. Chowdhury, learned counsel, appearing for the respondent No.2.

2. The petitioner before this Court is the husband and the respondent No.2 is the wife. Their marriage was solemnized in the year 2011 and out of the wedlock, they also have two children.

3. From the averment in the petition on 29.06.2019, the respondent No.2 (wife) left her matrimonial house and the next day lodged an FIR against her husband, i.e. the present petitioner, before the Noonmati Police Station, which had been registered as Noonmati Police Station Case No.352/2019 under Sections 498(A)/354/294 IPC, on 30.06.2019. As of now the charge-sheet has also been filed by the police under the aforesaid offences.

4. The petitioner-husband has filed the present petition under Section 482 Cr.PC,

seeking relief from the criminal proceedings.

5. By an interim order dated 28.08.2019 passed in the present proceeding, a protection was granted to the petitioner-husband inasmuch as the police

authority was directed not to take any coercive action against the petitioner-husband. Subsequently, in the said case, charge-sheet had been filed.

6. Today this Court has been informed by the learned counsel appearing for the parties that during the pendency of the present petition before this

Court, better sense has prevailed between the parties and a compromise had taken place between the two. It has been submitted by Mr. B.

Chowdhury, learned counsel appearing for the wife that though she is presently residing at Kolkata but she is being well supported by her husband and

the children are also taken care of and she has absolutely no objection if the prayer for quashing of the FIR is allowed. Whether the present case is of

the nature which requires interference of this court under Section 482 Cr.PC is now the question.

7. Section 482 Cr.PC does not confer any power to the High Court. It only safeguards the existing powers of the High Court, which are to be used

“to prevent abuse of the process of any Court” and to secure the ends of justice”. In *Gian Singh -Vs- State of Punjab & Anr.* (2012) 10 SCC

303, in Paragraph 61, the Apex Court highlighting this aspect and the powers of the High Court under Section 482 Cr.PC said as under:-

“61. 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 FIR may be exercised where the offender and the 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 a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under

special statutes like the 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

predominantly civil flavour stand on a 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, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim,

the possibility of conviction is remote and bleak and continuation of the criminal case would put the 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 the wrongdoer and whether to secure the ends of justice, it is appropriate that the

criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its

jurisdiction to quash the criminal proceeding.â??

8. Later the Apex Court in *Parbatbhai Aahir -Vs- State of Gujarat & Anr.*, (2017) 9 SCC 641 relying upon *Gian Singh -Vs- State of Punjab & Anr.*

and other subsequent decisions of the Apex Court on the inherent powers of the High Court under Section 482 Cr.PC emphasised that powers under

Section 482 Cr.PC have to be performed to prevent an abuse of the process of any Court or to secure the ends of justice. It does not give new

powers to the High Court. It only recognises and preserves powers which inhere in the High Court. 3

9. In *Parbatbhai Aahir*, it was emphasised that the inherent powers of the High Court have a wide ambit and plenitude and these powers have to be

exercised to secure the ends of justice and to prevent an abuse of the process of any Court. The Apex Court then laid down certain guidelines in

Paragraph 16.4 to Paragraph 16.9, which are as under:-

16.4. While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice,

or (ii) to prevent an abuse of the process of any court.

16.5. The decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have

settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be

formulated.

16.6. In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must

have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as

murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such

offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such

cases is founded on the overriding element of public interest in punishing persons for serious offences.

16.7. As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil

dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.

16.8. Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an

essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

16.9. In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility

of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice.â??

10. Let us now revert to the facts of the present case. In the present case, the facts are as under:

The petitioner (husband) before this Court was married to the respondent No.2 (Sanjana Banerjee Mukhopadhyaya) in the year 2011 and out of the

wedlock, they have two children. It is alleged in the petition that the respondent No.2 (wife) had some altercations with the husband and on the

midnight of 29.06.2019, she packed up her baggage and gone to her matrimonial house. On the next day, i.e. on 30.06.2019, the respondent No.2

lodged an FIR before the Officer-in-Charge of Noonmati Police Station. She alleged cruelty against her husband. Therefore, a case was lodged under

Sections 498(A)/354/294 IPC and certain acts of obscenity against her husband.

11. Subsequent to filing of the FIR, charge-sheet had been filed. As stated above, the petitioner was granted an interim protection by this Court vide

order dated 28.08.2019. Now under these circumstances, as far as offences under Sections 498(A)/354/294 IPC are concerned, these are

compoundable offences.

12. Considering the total facts and circumstances of the case where the parties are now at peace with each other and the pendency of the present

case may jeopardize their matrimonial life, and the fact that they have two minor children who need the care and protection of their parents and in

view of the fact that the learned counsel appearing for the husband and the wife have categorically made a statement before this Court that there is

no animosity between the two and the husband is supporting his wife and the children are also taken care of by her husband, when by and large the

case between the parties is private in nature, in order to secure the ends of justice, the pending criminal case needs to be quashed.

13. With the above observation and direction, the criminal petition stands allowed. The FIR and the consequential charge-sheet filed before the

concerned Chief Judicial Magistrate in connection with Noonmati Police Station Case No.352/2019 under Sections 498(A)/354/294 IPC, is hereby

quashed. Consequently the interim order shall also stand vacated.