
(2022) 08 GAU CK 0035
In the Gauhati High Court
Case No : Criminal Petition No. 779 Of 2021

Wasim Akram @ Wasim Ali And 2 Ors.	APPELLANT
Vs	
State Of Assam	RESPONDENT

Date of Decision : 17-08-2022

Acts Referred:

Constitution Of India, 1950 — Article 142
Code Of Criminal Procedure, 1973 — Section 164, 320, 482
Indian Penal Code, 1860 — Section 366A, 506

Citation : (2022) 08 GAU CK 0035

Hon'ble Judges : Robin Phukan, J

Bench : Single Bench

Advocate : I Choudhury

Judgement

1. Heard Mr. I. Chowdhury, learned counsel for the petitioners and also heard Mr. D. Das, learned Additional P.P. for the State respondent.

2. This application, under Section 482 of the Code of Criminal Procedure, is jointly preferred by 3 petitioners, namely, (1) Wasim Akram @ Wasim Ali, (2) Md. Ritu Ali, and (3) Mrs. Risma Begum for quashing the F.I.R., dated 25.08.2017, of Dharamtul P.S. Case No. 86/2017, under Sections 366(A)/506 IPC and the subsequent proceeding pending before the Court of learned Addl. C.J.M., Morigaon.

3. The factual background, leading to filing of the present petition, is briefly stated as under:-

"On 25.08.2017, one Md. Ritu Ali (Petitioner No. 2) lodged one F.I.R. with the Officer-In-charge, Dharamtul P.S., to the effect that on 23.08.2017, at about 12.30 P.M., Wasim Ali (Petitioner No. 1) has kidnapped his 14 years old daughter- (Petitioner No.3), who was studying in Class-VIII at the relevant point of time, from Telahi M.V. School forcefully in his Super Splendor motorcycle, bearing Registration No. AS 21-F-1993. And thereafter on 24.08.2017, at about 1.54

P.M., the petitioner No.1 had threatened him not to take any legal recourse. Upon the said F.I.R., the Officer-In-charge Dharamtul P.S., registered a case being Dharamtul P.S. Case No. 86/2017, under sections 366(A)/506 IPC and endorsed S.I. Bhaben Ch. Nath, to investigate the case. The I/O then visited the place of occurrence, prepared sketch map, examined the witnesses, and recovered the victim girl and got her examined by Doctors and also got her statement recorded in the court under Section 164 Cr.P.C. Then after completion of investigation, the I.O. had laid Charge-sheet, being Charge-sheet No. 66/2017, dated 30.12.2017, against the petitioner No.1 to stand trial in the Court under Section 366(A)/506 IPC, showing him as absconder in the Charge-sheet, as he could not be arrested during investigation. While the case was pending before the learned Addl. C.J.M., Morigaon, the petitioners resolved their dispute amicably and they are no longer willing to pursue the matter, as the petitioner No.3 got married to petitioner No.1 lawfully, as per, Muslim rites and custom and living together as husband and wife and they were blessed with a baby girl on 16.06.2018. As the offence under Section 366(A) IPC is not compoundable under Section 320 Cr.P.C., the petitioners approached this Court by filing this present petition for quashing the F.I.R. dated 25.08.2017 of Dharamtul P.S. Case No. 86/2017, under Sections 366(A)/506 IPC and the subsequent proceeding, being P.R.C. Case No. 1148/2018, pending before the Court of learned Addl. C.J.M., Morigaon.

4. Mr. I. Chowdhury, learned counsel for the petitioners submits that after filing of the F.I.R., the petitioner No.1 and petitioner No.3 got married as per the Muslim rites and custom and the petitioner No. 2, who is the father-in-law of petitioner No.1, is not willing to pursue the matter further and that petitioner No.1 and 3 were blessed with a baby girl on 16.06.2018, and therefore, it is contended to allow the petition by setting aside the impugned F.I.R. and the subsequent proceeding of P.R.C. Case No. 1148/2018, pending before the Court of learned Addl. C.J.M., Morigaon. Mr. Chowdhury further submits that the Hon'ble Supreme Court in the case of Jitendra Raghuvanshi & Ors. Vs Babita Raghuvanshi & Anr., reported in (2013) 4 SCC 58, in support of his submission. Mr. Chowdhury, further submits that a Muslim girl, who attains the age of puberty i.e., age of 15, can get married without the consent of her parents and in support of his submission, Mr. Chowdhury referred one case law of Delhi High Court in Mrs. Tahira Begum Vs State of Delhi & Ors., W.P. (Crl) 446/2012, decided on 09.05.2012.

5. On the other hand, Mr. D. Das, learned Additional P.P. for the State respondent, submits that since the petitioner Nos. 1 and 3, in the meantime, got married and they are living a happy married life and also blessed with a girl child and decided not to pursue the matter further and therefore, the state has no objection in the event of allowing the petition.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record.

7. It appears that the F.I.R. of this case was lodged by petitioner No.2, who is

the father of petitioner No.3 with the allegation that on 23.08.2017, the petitioner No.1 has eloped his daughter (petitioner No.3), who was 14 years old at the relevant point of time and studying in Class-VIII in Telahi M.V. School, forcefully in his Super Splendor motorcycle, bearing Registration No. AS 21-F-1993. It also appears that on 24.08.2017, the petitioner No.1 threatened petitioner No.2, not to take any legal recourse. And upon the said F.I.R., Dharamtul P.S. Case No. 86/2017, under Sections 366(A)/506 IPC, has been registered and investigation was carried out and after completion of investigation, Charge-Sheet No. 66/2017, dated 30.12.2017, was laid against the petitioner No.1, to stand trial in the Court under Section 366(A)/506 IPC. While the case was pending before the learned Addl. C.J.M., Morigaon, the petitioners resolved their dispute amicably and they decided not to pursue the matter any further, and approached this Court to set aside the impugned F.I.R., and the subsequent proceeding of P.R.C. Case No. 1148/2018, pending before the Court of learned Addl. C.J.M., Morigaon.

8. It also appears that the petitioners have enclosed the Certificate of Marriage as Annexure-'H', with the petition. A cursory perusal of Annexure 'H' enclosed with the petition, which is a Marriage Certificate, No. 64/21, dated 09.12.2021, reveals that the petitioner Nos. 1 & 3 got married as per Muslim rites and custom. Further, it appears from the Annexure 'F', a certificate of birth, that they were blessed with a baby girl on 16.06.2018, and it also appears that now they are living together as husband and wife and leading a happy married life.

9. It is to be noted here that while dealing with the issue of quashing of the F.I.R. and subsequent proceeding, Hon'ble Supreme Court in the case of State of Madhya Pradesh Vs Laxmi Narayan & Ors., reported in (2019) 5 SCC 680, referring to its two earlier decisions in Gian Singh Vs State of Punjab, reported in (2012) 10 SCC 303 and Narinder Singh Vs State of Punjab (2014) 6 SCC 466, in paragraph No. 13, held as under:-

"13. i) that the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

10. In the case of Narinder Singh (Supra), Hon'ble Supreme Court has held that:-

"when the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any Court.

While exercising the power the High Court is to form an opinion on either of the

aforesaid two objectives.”

11. Again in the case of Jitendra Raghuvanshi & Ors. (Supra), referred by the learned counsel for the petitioner, during his argument, Hon’ble Supreme Court has held as under:-

“16. There has been outburst of matrimonial disputes in recent times. The institution of marriage occupies an important place and it has an important role to play in the society. Therefore, every effort should be made in the interest of the individuals in order to enable them to settle down in life and live peacefully. If the parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a Court of law, in order to do complete justice in the matrimonial matters, the Courts should be less hesitant in exercising its extraordinary jurisdiction. It is trite to state that the power under Section 482 should be exercised sparingly and with circumspection only when the Court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of the process of the Court or that the ends of justice require that the proceedings ought to be quashed. We also make it clear that exercise of such power would depend upon the facts and circumstances of each case and it has to be exercised in appropriate cases in order to do real and substantial justice for the administration of which alone the Courts exist. It is the duty of the Courts to encourage genuine settlements of matrimonial disputes and Section 482 of the Code enables the High Court and Article 142 of the Constitution enables this Court to pass such Orders.

14) In the light of the above discussion, we hold that the High Court in exercise of its inherent powers can quash the criminal proceedings or FIR or complaint in appropriate cases in order to meet the ends of justice and Section 320 of the Code does not limit or affect the powers of the High Court under Section 482 of the Code. Under these circumstances, we set aside the impugned judgment of the High Court dated 04.07.2012 passed in M.CR.C. No. 2877 of 2012 and quash the proceedings in Criminal Case No. 4166 of 2011 pending on the file of Judicial Magistrate Class-I, Indore.”

12. Here in this case, it appears that the dispute between the petitioners is a matrimonial relationship, and that the parties have resolved the entire dispute amongst themselves, and they are living a happy married life and blessed with a baby girl also. Under these circumstances, allowing the petition by quashing the F.I.R., and the subsequent proceeding would advance the cause of justice. Further, if the proceeding is allowed to continue before the learned Court below, yet, it is unlikely that the petitioner No.3, who got married to petitioner No.1 and living with him as husband and wife and living a peaceful life and blessed with a baby girl, will depose against him. Same is the condition in respect of the petitioner No.2 also. In such circumstances, allowing the proceeding to continue before the learned Court below would be an abuse of the process of the Court.

13. Under the facts and circumstances discussed hereinabove, this Court is 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 impugned F.I.R., and the subsequent proceeding of P.R.C. Case No. 1148/2018, pending before the Court of learned Addl. C.J.M., Morigaon.

14. Accordingly, the F.I.R. dated 25.08.2017 of Dharamtul P.S. Case No. 86/2017, under Sections 366(A)/506 IPC and the subsequent proceeding of P.R.C. Case No. 1148/2018, pending before the Court of learned Addl. C.J.M., Morigaon, stands set aside and quashed. The parties have to bear their own costs.