

GAHC010048372024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./257/2024

REJINA BEGUM AND ANR
W/O HAKIMUL HUSSAIN, R/O VILL-GORAIMARI, P.O.-GORAIMARI, P.S.
AND DIST- BONGAIGAON, ASSAM

2: HAKIMUL HUSSAIN @ HAKIMUL ISLAM
S/O DILBAR HUSSAIN
R/O VILL-GORAIMARI
P.O.-GORAIMARI
P.S. AND DIST- BONGAIGAON
ASSA

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:NABI HUSSAIN GAZI
(FATHER OF VICTIM REJINA BEGUM)
S/O LATE ABDUL HAMID GAZI
R/O VILL- GORAIMARI
P.O.-GORAIMARI
P.S. AND DIST- BONGAIGAON
ASSA

Advocate for the Petitioner : MR. M KHAN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 03.05.2024

Heard Mr. M. Khan, learned counsel for the petitioners. And also Mr. D. P. Goswami, learned Additional P.P. / respondent No. 1 and Mr. K.R. Patgiri, learned counsel representing Respondent No. 2.

2. This is an application u/s 482 CrPC filed by both the petitioners i.e., accused Hakimul Hussain @ Hakimul Islam and the victim praying for quashing the proceeding in Special (P) case no. 22 (BGN)/2020, pending in the court of Special Judge, Bongaigaon.

3. The factual matrix leading to the case is that on 12/10/2019, one Abbas Ali Gaji lodged an FIR before the officer-in-charge, Bongaigaon P.S. stating inter alia that his two nieces i.e., the victim girls were taken away by the accused persons and thereafter, their marriage was solemnized with the present petitioner no. 2 and Asad Ali through Notary. After that they were kept in a rented house at Guwahati wherein they committed rape on the victim girls.

4. Accordingly, a case was registered vide Bongaigaon P.S. Case no. 790/2019. After completion of investigation, charge sheet has been laid. Consequently, trial has been commenced in the court of Special Judge, Bongaigaon. Charge has been framed u/s 376/506 IPC against the present petitioner no. 2. The prosecution side examined all the witnesses. The case is now at the stage of argument.

5. Learned counsel for the petitioner has submitted that in the meantime,

after recording statement of the victim by the learned trial court, both the petitioner and the victim entered into marriage on 10/07/2023 and now they are living as husband and wife happily. As the victim is living along with the petitioner no. 2, as his legally married wife, she is not interested to proceed further with the trial of the case and prays for closure of the trial for the interest of justice.

6. It is further submitted by learned counsel for the petitioners that at the time of the incident, the victim was major. In fact, the victim had love affairs and voluntarily eloped with the petitioner no. 2. But subsequently, she changed her version on the pressure of her family members. Finally, they have entered into marriage tie and presently, they are living together as husband and wife peacefully.

7. It is also the submission of learned counsel for the petitioners that the offence u/s 376 IPC may be permitted to be compounded, in specific circumstances, including a situation where closure of such cases would promote the family life of the parties. In the case in hand, nothing is contrary against the said proposition of law.

8. According to learned counsel for the petitioners, continuation of the proceeding or convicting the accused who is the husband of the victim now shall gravely prejudice the parties. Hence, it is a fit case to interfere by this court in exercise of power conferred u/s 482 CrPC for the ends of justice.

9. In support of his submissions, learned counsel has relied on the following case laws –

- a. Criminal Appeal No. 796 of 2022 (K. Dhandapani vs. The State by Inspector of Police)

b. Criminal Appeal No. 1217 of 2022 (Kapil Gupta vs. State of NCT of Delhi & another)

10. Per contra, learned Additional PP has submitted that under the facts and circumstances of the case and looking to the nature of allegations, the proceedings may not be quashed on the ground of compromise. However, learned counsel for the respondent no. 2 submits that the informant has no objection if the proceeding of the case is quashed.

11. Considered the submissions of learned counsel for the parties.

12. Hon'ble Supreme court in the case of **Narendra Singh and others vs. State of Punjab & another**, reported in (2014) 6SCC 466 has held as under –

"29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings;

29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. 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.

29.3. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for offences alleged to have been committed under special statute like the [Prevention of Corruption Act](#) or the offences committed by Public Servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

29.6. Offences under [Section 307](#) IPC would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of [Section 307](#) IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of [Section 307](#) IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under [Section 307](#) IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can

refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under [Section 307](#) IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under [Section 307](#) IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime."

13. The Hon'ble Supreme Court in the case of ***Gian Singh Vs. State of***

Punjab, reported in (2012) 10 SCC 303 has held as under:-

"58. Where the High Court quashes a criminal proceeding having regard to the facts 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. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc. or other offences of mental depravity under [IPC](#) or offences of moral turpitude under special statutes, like the [Prevention of Corruption Act](#) or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavor having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed.

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."

14. Therefore, it is a cardinal principle of law that while deciding the application for compromise in exercise of powers under [Section 482](#) of Crp.c, the nature and the gravity of the offences are required to be considered. Merely because the individual has compromised the matter that by itself would not be sufficient to quash the proceedings on the basis of compromise, if the offence is against the society at large. It is further held in the case of [Narendra Singh](#) (supra) that the offences under the special statute should not be quashed on the basis of compromise.

15. Reverting to the case in hand, the case is at the stage of argument before

the trial court when this petition for quashing of proceeding was filed. The statement of the victim was recorded by the trial court wherein she implicated the accused, Hakimul for his involvement in the alleged offence. Subsequently, the statement of the victim has been again recorded as per direction of this court. In her second statement, the victim stated that she had love affairs with the petitioner no. 2 for three years prior to the incident. She got married to Hakimul on 10/07/2023 as per Muslim Shariat. After her marriage, she went to the house of Hakimul to lead conjugal life with him.

16. As the trial is going on before the Special Judge, Bongaigaon, at this stage, this court refrains from passing any comment on merit of the case or compromise made between the parties on their subsequent marriage after recording the evidence of the victim by the trial court.

17. In view of the aforesaid legal proposition and considering the facts and circumstances of the case, this court is of the view that the application for quashing of the proceeding of Special (P) case no. 22(BGN)2020, pending in the court of Special Judge, Bongaigaon, on the ground that the parties have compromised the matter on the marriage of the victim with the petitioner no. 2, cannot be allowed.

Hence the criminal petition is dismissed and disposed of accordingly.

JUDGE

Comparing Assistant