

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 162 of 2021

1. Ayush Poddar, S/o Shri Girdhar Poddar, Aged About 31 Years, Occupation – Private Service, R/o Rameshwaram, Marwaripara, Dhobi Gali, Sadar, Sambalpur, Tehsil & District- Sambalpur, Odisha.
2. Girdhar Lal Poddar, S/o Shri Rameshwar Poddar, Aged About 65 Years, Occupation – Business, R/o Marwaripara, Dhobi Gali, Sadar, Sambalpur, Tehsil & District- Sambalpur, Odisha.
3. Smt. Manju Poddar, W/o Shri Girdhar Poddar, Aged About 61 Years, R/o Marwaripara, Dhobi Gali, Sadar, Sambalpur, Tehsil & District- Sambalpur, Odisha.
4. Keshav Poddar, S/o Shri Rajkumar Poddar, Aged About 33 Years, Occupation – Chartered Accountant, R/o Kansaipara, Dhobi Gali, Sadar, Sambalpur, Tehsil & District- Sambalpur, Odisha.

---- Petitioners

Versus

1. State of Chhattisgarh, through the Station House Officer, Police Station- Darri, Tahsil District- Korba (C.G.)
2. Smt. Kajal Agrawal, W/o Shri Ayush Poddar, Aged About 28 Years, R/o Mig 428, Sada Colony, Jamnipali, Darri, Korba (C.G.) Tehsil & District- Korba (C.G.)

---- Respondents

For Petitioners : Mr. Rajeev Shrivastava, Sr. Adv. with Mr. Saurabh Sahu, Advocate.

For State/Res. No. 1 : Mr. Rakesh Sahu, Govt. Advocate. For Respondent No. 2 : Mr. Sanjay Patel, Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas Order On Board 16/06/2021

1. The petitioner has filed present petition under Section 482 of the Cr.P.C. for quashing of the FIR dated 27.11.2020 lodged against the petitioners for committing offence under Sections 498-A, 34 of I.P.C. before Police Station- Darri, District- Korba (C.G.). The said FIR was registered on the basis of complaint made by respondent No. 2, who is wife of petitioner No. 1.

2. The brief facts, as projected by the petitioners in this case, are that petitioner No. 1 is son of petitioner No. 2 and petitioner No. 3 & 4 are cousin brothers of petitioner No. 1. Marriage of petitioner No. 1 & respondent No. 2-COMPLAINANT was solemnized on 17.01.2019 as per Hindu rituals

and custom at Sambalpur. There was matrimonial dispute between petitioner No. 1 & respondent No. 2, therefore, petitioner No. 1 filed an application on 06.11.2020 under Section 13 of the Hindu Marriage act, 1955 for obtaining decree of divorce by mutual consent. Thereafter, respondent No. 2 filed a complaint on 27.11.2020 at Police Station- Darri, District- Korba against the petitioners alleging that the petitioners have tortured her and demanded dowry from her family. On the basis of that complaint, FIR bearing registration No. 0258 has been registered against the petitioners for committing offence under Section 498-A, 34 of I.P.C. The petitioners have preferred anticipatory bail before the trial court, which was rejected. This Court vide order dated 07.12.2020 has granted anticipatory bail to the petitioners. The family dispute between petitioners and respondent No. 1 relies their shortcoming and reached to amicable solution of compromise as per compromise agreement dated 24.01.2021 (Annexure P/4). Clause 3, 4 & 7 of the agreement reads as under:-

"3. That both the parties have mutually decided to end all pending litigations including criminal case between them. For quashing the FIR no. 0258/2020 of police station Darri, district Korba, CG, the second party will submit an application along with a copy of this MOU to the police station Darri for getting the said FIR closed by way of closure report and on submission of such application the first party will support filing of closure report by recording her statement in favour of closing the case. In case of legal embargo in closing the criminal case at police station Darri and in the court of concerned magistrate by way of closure report, the second party will file a petition under 482 of CRPC/226 constitution of India before the High Court of Chhattisgarh for quashing the said FIR and first party will support the petition by way of compounding the offense and investigation pending against the second party. The second party will also withdraw MAT 103 filed on 06.11.2020 in Sambalpur Family court, and a separate mutual divorce petition will be filed by both the parties in the Sambalpur Family Court as early as possible for which a suitable date may be arrived with the consent of both the parties. Both the party will be under obligation to take all necessary steps as agreed in this MOU for quashing the FIR of Darri police Station and both the parties will be under further obligation for filing the mutual divorce petition at Sambalpur Family court.

4. The second party had issued a defamation notice to the first party in connection with FIR 0258/2020 of Darri police station and the second party has agreed to declare all the allegation lavelled against the first party in the defamation notice null and void once the joint mutual divorce petition is filed as Family Court Sambalpur.

7. That it is also agreed between both the parties that upon filing of joint mutual divorce petition and joint petition for quashing of investigation of FIR 0258 dated 27.11.2020, educational and other documents belonging to first party will be handed over by Second Party to Sri Ashok Ji Agrawal who is a resident of Bilaspur. The handover will be done in presence of both First Party & Second Party and a document containing list of documents shall be signed in triplicate, a copy of which will be given to both the parties and Sri Ashok Ji Agrawal. Only upon disposal of FIR 0258 in Darri Police Station and successful dissolution of the marriage in Sambalpur Family

Court, Sri Ashok Ji Agrawal will hand over such documents to First Party in presence of both the parties. Such handover from Sri Ashok Ji Agrawal to Second Party will be documented in triplicate, a copy of which will be given to both the parties and Sri Ashok Ji Agrawal. A list of documents handed over to Sri Ashok Ji Agrawal is attached herewith and it will be a part and parcel of this MOU."

3. Thereafter, the petitioners have filed the present petition under Section 482 of the Cr.P.C. for quashing of the charges levelled against them under Sections 498-A, 34 of I.P.C.

4. On 16.02.2021, this Court admitted this petition for hearing and the petitioners and respondent No. 2 have given their appearance through their counsel. On that day, this Court directed the petitioners and respondent No. 2 to record their statements before Additional Registrar (Judicial) of this Court. In view of the order passed by this Court, the petitioners and respondent No. 2 have recorded their statements that they have mutually settled their grievance and this settlement has been arrived at between them without any pressure as well as without any undue advantage to either side. They also requested for closure of the case as per their settlement.

5. Learned counsel for the parties submit that since the compromise has been arrived at between the parties, offence under Section 498, 34 of I.P.C. can be quashed by this Court by exercising power under Section 482 of the Cr.P.C.

6. Learned counsel for the petitioners placed reliance upon the judgment of the Supreme Court in K. Srinivas Rao Vs. D.A. DEEPA¹, wherein the Supreme Court has quashed the proceeding initiated under Section 498-A of I.P.C. on the count that husband and wife have mutually settled their dispute, which is reproduced hereunder:-

"41. While purely a civil matrimonial dispute can be amicably settled by a Family Court either by itself or by directing the parties to explore the possibility of settlement through mediation, a complaint under Section 498-A of the IPC presents difficulty because the said offence is not compoundable except in the State of Andhra Pradesh where by a State amendment, it has been made compoundable. Though in Ramgopal & Anr.

v. State of Madhya Pradesh & Anr. (2010) 13 SCC

540), this Court requested the Law Commission and the Government of India to examine whether offence punishable under Section 498-A of the IPC could be made compoundable, it has not been made compoundable as yet. The courts direct parties to approach mediation centres where offences are compoundable. Offence punishable under Section 498-A being a non-compoundable 1 (2013) 5 SCC 226 offence, such a course is not followed in respect thereof.

42. This Court has always adopted a positive approach and encouraged settlement of matrimonial disputes and discouraged their escalation. In this connection, we must refer to the relevant paragraph from G.V. Rao vs. L.H.V. Prasad & Ors. (2000) 3 SCC 693, where the complaint appeared

to be the result of matrimonial dispute, while refusing to interfere with the High Court's order quashing the complaint, this court made very pertinent observations, which read thus:

"12. There has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their 'young' days in chasing their 'cases' in different courts."

43. In *B.S. Joshi v. State of Haryana* (2003) 4 SCC 675, after referring to the above observations, this Court stated that the said observations are required to be kept in view by courts while dealing with matrimonial disputes and held that complaint involving offence under Section 498-A of the IPC can be quashed by the High Court in exercise of its powers under Section 482 of the Code if the parties settle their dispute. Even in *Gian Singh v. State of Punjab* (2012) 10 SCC 303, this Court expressed that certain offences which overwhelmingly and predominantly bear civil flavour like those arising out of matrimony, particularly relating to dowry, etc. or the family dispute and where the offender and the victim had settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may quash the criminal proceedings if it feels that by not quashing the same, the ends of justice shall be defeated.

44. We, therefore, feel that though offence punishable under Section 498-A of the IPC is not compoundable, in appropriate cases if the parties are willing and if it appears to the criminal court that there exist elements of settlement, it should direct the parties to explore the possibility of settlement through mediation. This is, obviously, not to dilute the rigour, efficacy and purport of Section 498-A of the IPC, but to locate cases where the matrimonial dispute can be nipped in bud in an equitable manner. The judges, with their expertise, must ensure that this exercise does not lead to the erring spouse using mediation process to get out of clutches of the law. During mediation, the parties can either decide to part company on mutually agreed terms or they may decide to patch up and stay together. In either case for the settlement to come through, the complaint will have to be quashed. In that event, they can approach the High Court and get the complaint quashed. If however they chose not to settle, they can proceed with the complaint. In this exercise, there is no loss to anyone. If there is settlement, the parties will be saved from the trials and tribulations of a criminal case and that will reduce the burden on the courts which will be in the larger public interest. Obviously, the High Court will quash the complaint only if after considering all circumstances it finds the settlement to be equitable and genuine. Such a course, in our opinion, will be beneficial to those who genuinely want to accord a quietus to their matrimonial disputes. We would, however, like to clarify that reduction of burden of cases on the courts will, however, be

merely an incidental benefit and not the reason for sending the parties for mediation. We recognize 'mediation' as an effective method of alternative dispute resolution in matrimonial matters and that is the reason why we want the parties to explore the possibility of settlement through mediation in matrimonial disputes.

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7. Hon'ble the Supreme Court in case of State of Madhya Pradesh Vs. Laxmi Narayan & OTHERS², has summarized the law for quashing of FIR, which is as under:-

"15. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

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;

Such power is not to be exercised in those prosecutions which involved 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, such power is not to be exercised for the offences under the special statutes like 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;

Offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of 2 (2019) 5 SCC 688 powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. 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 framing

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. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh v. State of Punjab, (2014) 6 SCC 466, should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove; 15.5 While exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non- compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise, etc."

8. It is not in dispute that the offence under Sections 498-A, 34 has been registered against the petitioners, which relates to the family dispute and demand of dowry, which has been settled between the parties. The petitioners and respondent No. 2 have been examined before the Additional Registrar (Judicial) on 16.02.2021 and they have submitted that they have mutually settled their grievance and this settlement has been arrived at between them without any pressure or any undue advantage to either side.

9. In view of the said legal position, considering the facts and circumstances of the case, the fact that the parties have amicable settled dispute between them and no grudge remains between them, this court is of the considered opinion that there is sufficient material for this court to form an opinion to quash the criminal proceeding initiated against the petitioners. Further, this court is of the opinion that the continuation of criminal proceeding will be nothing, but to an abuse of process of law. Accordingly, FIR bearing registration No. 0258 dated 27.11.2020 registered against the petitioners at Police Station- Darri, District- Korba (C.G.) for committing offence punishable under Section 498-A, 34 of I.P.C., deserves to be and is hereby quashed. in the interest of justice.

10. In view of the above, the present petition is allowed to the extent indicated hereinabove. No order as to costs.

11. Copy of this order be sent to the concerned Judicial Magistrate for necessary compliance, in case of filing of final report.

Sd/-

(Narendra Kumar Vyas) Judge Arun