

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 86 of 2022

Abbas Uddin Sekh @ Abbasuddin Sk. @ Apel Sk. & Ors.

Versus

The State of West Bengal and Anr.

For the petitioner	:	Mr. Prosenjit Mukherjee Mr. Saptarshi Chakraborty
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For the State	:	Mr. Debasis Roy Mr. Imran Ali Ms. Debjani Sahu
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For the O.P. no.2`	:	Mr. Nirmalya Kumar Das Mr. Jahangir Hossain
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Heard on	:	11.11.2024
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Judgment on	:	12.12.2024
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Dr. Ajoy Kumar Mukherjee , J.:

1. The petitioner herein has sought for quashing of the criminal proceeding pending, before learned Additional Chief Judicial Magistrate, Rampurhat, being GR. Case no. 517 of 2021 under section 498A/302 of the Indian Penal Code read with section 3 & 4 of the Dowry Prohibition Act.

In the said proceeding after completion of investigation police submitted charge sheet against the petitioners/accused person under section 498A/306/34 of the Indian Penal Code read with section 3 & 4 of the Dowry Prohibition Act.

2. It is alleged in the FIR that the marriage ceremony between sister of the defacto complainant/victim and the accused petitioner no.1 was solemnized about 14-15 years back. It has been further alleged that the victim was subjected to mental and physical torture. Due to said wedlock one son and one daughter were born. The father of the defacto complainant on 19.03.2021 handed over Rs. 5 lakhs to the petitioner no.1 / accused person and his wife being the victim lady(since deceased) but inspite of such payment the accused petitioner put pressure to bring additional dowry of Rs. 5 lakhs. On 19.04.2021, in the evening the accused persons informed the defacto complainant over telephone that the victim lady, who is the wife of accused no.1, has committed suicide. However the defacto complainant believes that the accused/petitioners killed his sister by strangulation and had hanged her.

3. Being aggrieved by the said proceeding petitioners herein contended that no complaint of torture either mentally or physically has ever been made during their long matrimonial life for about 15 years. Moreover the daughter of the victim in her statement made before police and also before judicial magistrate while examined under section 164 Cr.P.C., has narrated the incident and has also clearly stated that her mother was suffering for psychiatric disorder and on several occasions, the victim lady was treated by different psychiatrists and she further stated that the relation among

her parents was very cordial. Learned counsel for the petitioner further argued that in the post mortem report, no injury has been detected. Moreover the medical documents annexed with the Application clearly suggests that she was suffering from acute mental illness and was treated by doctors.

4. It is further submitted that during pendency of the present proceeding the petitioners/accused persons and the opposite party/defacto complainant have amicably settled their dispute and to that extent they have executed one Memorandum of Understanding, wherein it has been stated that for the benefit and welfare of the two children of the victim and for maintaining their future welfare, both parties agreed to the terms of compromise and therefore prayed for quashing instant criminal proceeding, being CRAN 1 of 2024. Accordingly both the defacto complainant/opposite party herein and accused persons/petitioners made joint submissions before this court that in view of amicable settlement between the parties both the parties are not interested to proceed further with the present proceeding and further continuance of the said criminal proceeding will be an abuse of process of court, since there is no chance of conviction in view of the fact that the prosecution witnesses have decided not to depose in support of prosecution case.

5. Mr. Debasish Roy learned counsel appearing on behalf of the State submits that the charge sheet has been submitted in the present case under section 306 of IPC and cannot be quashed on the basis of compromise between the offender and the defacto complainant, since the offences involved in the instant proceeding includes offence under section

306 I.P.C which is grave and serious as well as non compoundable offence and which has impact in the society. The informant has no right in law to withdraw the complaint. In this context he relied upon judgment passed in ***Daxaben vs. State of Gujarat and others*** reported in **(2022) 16 SCC 117**.

6. Since learned Counsel appearing on behalf of the State has opposed the prayer to quash the FIR, contending that offence under section 306 IPC is heinous crime and quashing on the basis of compromise of such an offence cannot be allowed, the moot question to be adjudicated in the present context is whether the present proceeding can be quashed by the High Court invoking its power under section 482 of the Code of Criminal Procedure, on the basis of amicable compromise made by the parties.

7. It is undoubtedly true that offence under section 306 of the Code relating to abetment to commit is a grave and non compoundable offence. In what cases power to quash an FIR upon compromise can be exercised has been discussed in several judgments. In ***State of M.P. Vs. Laxmi Narayan and others***. reported in **(2019) 5 SCC 688**, a three judges Bench of the Apex court discussed the earlier judgments of the Court and laid down the principle in para 15 of the judgment which runs as follows:-

“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:*

15.1. *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;*

15.2. *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;*

15.3. Similarly, such power is not to be exercised for the offences under the special statutes 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;

15.4. 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 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/delicate 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 paras 29.6 and 29.7 of the decision of this Court in *Narinder Singh [Narinder Singh v. State of Punjab, (2014) 6 SCC 466 : (2014) 3 SCC (Cri) 54]* should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

15.5 [Ed.: Para 15.5 corrected vide Official Corrigendum No. F.3/Ed.B.J./22/2019 dated 3-4-2019.] . 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.”(emphasis added)

8. In ***Daxaben vs. State of Gujarat and others*** reported in **(2022) 16 SCC 117**, the accused was the wife of the deceased and her prosecution was sought for committing offence under section 306 IPC, and it was held by Supreme Court that FIR under section 306 IPC Cannot be quashed on the basis of financial settlement with informant, surviving spouse, parents, children, guardian, care givers or anyone else, but it was also held in para 37 as follows:-

37. Offence under Section 306IPC of abetment to commit suicide is a grave, non-compoundable offence. Of course, the inherent power of the High Court under Section 482CrPC is wide and can even be exercised to quash criminal

proceedings relating to non-compoundable offences, to secure the ends of justice or to prevent abuse of the process of court. Where the victim and offender have compromised disputes essentially civil and personal in nature, the High Court can exercise its power under Section 482CrPC to quash the criminal proceedings. In what cases power to quash an FIR or a criminal complaint or criminal proceedings upon compromise can be exercised, would depend on the facts and circumstances of the case.”

9. In view of aforesaid observation it is quite clear that power to quash FIR upon compromise even in a grave and non compoundable offence like 306 of IPC, whether can be exercised or not, would depend upon the facts and circumstances of the case. Supreme Court while dealt with section 307 IPC which falls in the category of heinous and serious offences and is to be treated as crime against society and not against individual, held as quoted above in ***State of M.P. Vs. Laxmi Narayan & Others (supra)*** that still the High Court had the scope to examine as to whether the incorporation of section 307 IPC is there for the sake of it or prosecution has collected sufficient evidence which if proved would lead to framing the charge.

10. Accordingly in the present case also since charge sheet has already been submitted under section 306/498A/34 IPC, this Court is required to see in the facts and circumstances of the case before considering prayer for quashing of proceeding on the basis of compromise, whether prosecution has collected sufficient evidence, which if proved would lead to frame charge under section 306 IPC or not against accused persons.

11. It appears from the record that the sister of defacto complaint/opposite party no.2 committed suicide after 14 to 15 years of marriage. It further appears from the statement recorded under section 164 of the Code of Criminal Procedure that the daughter of the victim lady made statement that none of the family members of the petitioner are

responsible for the death of her victim mother. The opposite party no.2 lodged the complaint before the concerned police station for unnatural death of his sister. That apart at the time of alleged incident the husband/petitioner no.1 was not present at the place of occurrence and he was at his work place. In fact there appears no incriminating material in the record or in the case dairy that the accused petitioner no. 1 to 4 abated or directly instigated to commit suicide. It is further submitted at the time of hearing that for the purpose of welfare of the son and daughter of the victim, the opposite party/complainant does not want to proceed with the instant criminal proceeding and for which joint compromise petition being CRAN 1 of 2024 has been filed.

12. Said daughter has also made statement while examined under section 164 Cr.P.C that her mother was also suffering from mental illness. In the FIR also no allegation of abetment to commit suicide has been stated. Complainant has stated in F.I.R that it is his belief that the accused persons have strangled her. The post-mortem report suggests that the death was due to anti mortem hanging.

13. It is settled law that the ingredients to constitute an offence under section 306 of IPC would stand fulfilled if the suicide is committed by the deceased due to direct and alarming incitement by the accused leaving no option but to commit suicide. The test that the court should adopt in this type of cases is to make an endeavor to ascertain on the basis of materials on record, whether there is anything to indicate even prima facie, that the accused intended the consequence of the act i.e. suicide.

14. In the present case there is no allegation of either direct or indirect incitement to the commission of such offence of abatement to commit suicide.

15. In ***Uday Singh and others Vs. State of Haryana*** reported in **(2019) 17 SCC 301**, it has been held that instigation means to goad, urged forward, provoke, incite or encourage to do an act. If the person who commits suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced persons to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. However, on the other hand if the accused by his act or by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four corners of section 306 IPC. Therefore, in order to convict a person under section 306 IPC, there has to be a clear *mens rea* to commit the offence.

16. In the instant preceding the FIR against the petitioner are quite vague and general in nature, with no specific attribution to anybody. During investigation prosecution has cited the name of 15 witnesses to prove prosecution case out of which 9-15 are police officers and medical officers. Complainant being witness no 1 and the son and daughter of victim i.e. witness no. 7 and 8 have decided not to depose in support of the persecution case. The other witnesses during examination under section 161 Cr.P.C has not stated anything that there was any direct or indirect act of incitement by the petitioner/accused person to the commission of offence of abatement to commit suicide. On fact, it is to be noticed that

there is no reasonable likelihood of accused being convicted of offence under section 306.

17. In such view of the matter I find that though the accused persons are being roped with grievous offence like 306 IPC along with 498A IPC and also under D.P. Act, but since the prosecution failed to collect sufficient evidence to bring home the charge of abatement to commit suicide against the accused persons, and other allegations are matrimonial and private in nature and parties have amicably settled their dispute, what would happen to the trial to the case where the prosecution witnesses do not support the imputation made in the FIR. In such circumstances it would not be proper to decline to exercise power of quashing only on the ground that it would be permitted to the parties to compound a non compoundable offence, on the contrary refusal of such prayer may become counter productive for the welfare of the children of the victim.

18. I find that the fact and circumstances of the case warrants to exercise the inherent power of the court under section 482 of the Code. The ***Daxaben case (Supra)*** is factually distinguishable from the present case, where original informant/complainant, a cousin brother and an employee of the deceased were only heard and the court held hearing a cousin-cum-employee of the deceased cannot and does not dispense with the requirement to give the wife of the deceased a hearing, who has greater interest than cousins and employees.

19. In such view of the matter **CRR 86 of 2022** along with the connected Application are allowed. The impugned preceding being G.R case no 517 of

2021 presently pending before learned Chief Judicial Magistrate, Rampurhat, Birbhum is hereby quashed.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)