



CRL.P No. 6214 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 02ND DAY OF AUGUST, 2022

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 6214 OF 2022

BETWEEN:

RAMA @ BANDE RAMA

...PETITIONER

(BY SRI. AIYAPPA K G., ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY BANNERUGHATTA POLICE STATION
BENGALURU,
REPRESENTED BY
THE STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
HIGH COURT BUILDING
BENGALURU – 560 001.

2. M.NAGAPPA

Digitally signed by
PADMAVATHI B K
Location: HIGH
COURT OF
KARNATAKA



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BENGALURU – 560 083.

...RESPONDENTS

(BY SMT.K.P.YASHODHA, HCGP FOR R1;
SRI GAURAV PATIL, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO ALLOW THIS CRIMINAL PETITION BY QUASHING THE CRIMINAL PROCEEDINGS PENDING BEFORE THE LEARNED ADDITIONAL DISTRICT AND SESSIONS JUDGE (FTSC-II) BENGALURU RURAL IN SPL.C.NO.193/2019 FOR THE OFFENCE P/U/S.363, 376(3) AND 366 OF IPC 1860 ALONG WITH SEC.4, 6 OF POCSO ACT 2012 AT ANNEXURE-E.

THIS CRIMINAL PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The subject petition is filed seeking the following prayer:

"a) Call for the relevant records;

b) Allow this Criminal Petition by quashing the criminal proceedings pending before the learned Additional District & Sessions Judge (FTSC - II), Bengaluru Rural in Spl.C.193/2019, for the offences punishable under Sections 363, 376(3) and 366 of the Indian Penal Code, 1860 along with Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012, at ANNEXURE E;

c) Grant any such other reliefs as this Hon'ble Court may deem fit in light of the facts and circumstances of the case, in the interest of justice and equity."



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2. Heard the learned counsel Sri.Aiyappa.G., appearing for the petitioner, Smt.K.P.Yashodha, learned High Court Government Pleader appearing for respondent No.1 and Sri.Gaurav Patil, learned counsel appearing for respondent No.2.

3. Brief facts that led the petitioner to this Court are as follows:

The second respondent - father of the prosecutrix registers a missing complaint of the prosecutrix initially and on 06.03.2019 alleging the offences punishable under Section 363 of the IPC and under Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act' for short) registers a crime in Crime No.27/2019, pursuant to which, the petitioner was remanded to judicial custody. The police, after investigation, file a charge sheet against the petitioner in Spl.C.C.193/2019 for offences punishable under Sections 363, 376(3), 366 and Sections 4 and 6 of the POCSO Act. It transpires that on 11.10.2019 the prosecutrix on being examined as P.W.1 deposes that the acts between the prosecutrix and the petitioner were consensual. On



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05.03.2020, after about a year of the alleged incident, the prosecutrix attains the age of 18 years, which would demonstrate that at the time of the incident the prosecutrix was 17 years and the petitioner was 20 years. On 25.06.2020 the prosecutrix again files an affidavit that the petitioner and the prosecutrix were in love and the physical relationship between them was consensual. After the said evidence, the petitioner was granted bail, after being in judicial custody for more than 18 months. On 09.11.2020, the petitioner and the prosecutrix get married and have registered their marriage in accordance with law on 09.11.2020 itself i.e., on the same day that they get married and therefore, from that day, are legally wedded couple.

4. It transpires that one year after the marriage, the couple also have a girl child born from the wedlock. The situation now is that the prosecutrix was 17 years at the time of the incident, falls in love with the petitioner, goes missing and a missing complaint is registered which turns into offences under the Act after being traced and get married after the petitioner was enlarged on bail on 09.11.2020, get their



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marriage registered before the Registrar of Marriages and have also appended a certificate of such marriage and they also have a girl child from the wedlock.

5. The couple have now approached this Court seeking closure of the proceedings on account of settlement of the dispute between themselves and have sought this Court to recognize the said settlement and resultantly close the proceedings against the petitioner-husband. The memorandum of Compromise Petition filed under Section 320 r/w Section 482 of the Cr.P.C. reads as follows:

"The Petitioner and Prosecutrix respectfully submit as follows:

- 1. The Petitioner has preferred the above Criminal Petition for quashing all criminal proceedings in SPL.C.C.No.193/2019 on the file of the Learned Addl. District and Sessions Judge (FTSC II), Bengaluru Rural.*
- 2. The Petitioner and the prosecutrix/victim herein have mutually agreed to compound the offences alleged in the above mentioned criminal proceedings pending on the file of the Learned Addl. District and Sessions Judge (FTSC II), Bengaluru Rural.*
- 3. The prosecutrix / victim had voluntarily approached the Petitioner herein and expressed her fervent intent and willingness to marry the Petitioner after she became a major. Consequently, the Petitioner and Respondent*



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No.3 have legally married each other on 09.11.2020, at Neelasandra, as per Hindu rites and customs, and are accordingly residing together as husband and wife since then, raising a family of their own. Also, from the wedlock a girl child has been born on 16.12.2021.

4. *Consequently, the Prosecutrix is consenting for quashing of the criminal proceedings against the Petitioner SPL.CC No.193/2019 on the file of Hon'ble Addl. District and Sessions Judge (FTSC – II), Bengaluru Rural to secure the ends of justice."*

6. It is germane to notice that several Constitutional Courts have closed the proceedings against the accused who gets married to the prosecutrix during the pendency of the proceedings and the said marriage being valid in the eye of law with production of adequate documents. In this regard, it would be useful to refer to the judgments of the Co-ordinate benches of this Court in plethora of cases. A Co-ordinate Bench of this Court in CrI.P.No.1415/2021 following the judgments rendered by other Co-ordinate Benches of this Court in the following cases:

- (i) CrI.P.No.4556/2020 DD 2-11-2020;
- (ii) CrI.P.No.136/2020 DD 8-01-2020;
- (iii) CrI.P.No.5922/2019 DD 11-09-2019;



(iv) Crl.P.No.3162/2018 DD 18-06-2018

by order dated 30-06-2021 has held as follows:

"2. The petitioners, who are accused Nos.1 to 3 in Special Case No.206/2017 pending on the file of Additional District and Sessions Judge, Hassan, arising out of Crime No.58/2017 registered by Arasikere Town Police Station, Hassan, for the offences punishable under Sections 363, 366A, 370, 376, Sections 4 and 8 of POCSO Act, 2012 of IPC and Sections 9, 10 and 11 of the Prohibition of Child Marriage Act, 2006, have approached this court with a prayer to quash the entire proceedings in the said case.

3. Learned counsel for the petitioners and the learned counsel for the second respondent-complainant would jointly submit that the marriage of the victim girl has been performed with the first petitioner herein on 5th July 2018 and the said marriage is also registered before the office of Registrar of Marriage, Arasikere. They submit that from the wedlock, the first petitioner and his wife, who is the victim girl have two children. They would submit that the dispute between the parties has been amicably settled and it is only thereafter marriage has taken place and they are all residing together happily. The affidavit of the complainant is also filed and paragraphs-2 to 4 of the said affidavit read as follows:

"2. I submit that the above criminal petition is filed by the petitioners seeking to quash the entire proceedings in Special Case No.206/2017 (Crime No.58/2017) registered by the 1st respondent pending on the file of the Additional District and Sessions Judge, Hassan District, Hassan, wherein the petitioners have been charge sheeted for the offences punishable under Section 363,366(A), 370, 376 of IPC and Sections 4,8 of the Protection of Children from Sexual Offence Act, 2012 and Sections 9,10 and 11 of Prohibition of Child Marriage Act 2006.

3. I submit that the petitioner No.1 is my son-in-law and the petitioner No.2 and 3 are his parents. I



submit that due to the intervention of the elder family members and well wishers the petitioners and my family and I have resolved my misunderstanding which was crept in.

4. I submit that my daughter by name Smt.Ranjitha has been legally married to the 1st petitioner and out of the wed-lock 2 children have been begotten by name Moulya aged 3.5 years and Monica aged about 9 months. The 1st petitioner and my daughter are leading their happy life till today. I submit that the above said complaint has been filed under a mistaken notion and I hereby withdraw the entire allegations made in Crime No.58/2017 (Spl.Case No.206/2017). I submit that I don't have any objection to quash the entire proceedings against all the petitioners who are accused Nos.4,5 and 6 before the trial court."

*4. The Hon'ble Supreme Court in the case of **Gian Singh -vs- State of Punjab & Others**¹, has held in paragraph-61 as under:*

"61. 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 FIR 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

¹ (2012)10 SCC 303



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. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on 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, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put 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 wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

5. In identical circumstances, this court in the following cases viz.,

- (i) Criminal Petition No.4556/2020 DD
02.11.2020;**
- (ii) Criminal Petition No.136/2020 DD
08.01.2020;**
- (iii) Criminal Petition No.5922/2019 DD
11.09.2019 and**
- (iv) Criminal Petition No.3162/2018 DD
18.06.2018,**



taking into consideration the settlement arrived at between the parties and also considering the fact that the victim is now married to the person, who had allegedly committed sexual assault on her, has quashed the entire proceedings, which were impugned in those petitions.

6. The respondent No.2-complainant has appeared before the court through video conference. She has been identified by her Advocate. She has stated that the settlement is voluntary and her daughter, who is the victim girl, is now married to the first petitioner herein and from the wedlock, they have got two children and they are all residing together happily.

7. Under the circumstances, no purpose would be served in continuing the further proceedings as against the petitioner and continuation of such proceedings would be futile and it will amount to abuse of the process of law. Therefore, for the purpose of securing the ends of justice, I deem it proper to quash the entire proceedings, which is impugned in this petition."

(Emphasis supplied)

In CrI.P.No.4556/2020 (*supra*), the Co-ordinate Bench of this Court holds as follows:

1. "The petitioner is before this Court seeking for quashing of the FIR registered in Crime No.26/2020 of Bantwala Town Police for offences punishable under Sections 376(2) (f), 376(2) (n), 506, 504, 323 of IPC pending on the file of Additional Civil Judge (Jr.Dvn.) and JMFC., Bantwal, D.K.District.
2. Respondent No.2 - complainant has filed an affidavit stating that she is engaged to be married and in view thereof, she does not want to continue the above proceedings. Respondent No.2 - complainant is before this Court by video conferencing and on enquiry she reiterates the averments made in the affidavit and she



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further submits that she has herself come forward to withdraw the above complaint since she does not want any complications in her future life.

3. *However, her requests not having been accepted, she has filed an affidavit before this Court stating no objection to quash all the above proceedings against the petitioner.*
4. *Respondent No.2 – complainant – Smt.Karishma Banu is identified by her counsel Sri.Syed Akbar Pasha, learned counsel for respondent No.2 and the petitioner – P.B.Abdul Hameed, who is also present before this Court by video conferencing is identified by his counsel Sri.Lethif B., learned counsel for the petitioner.*
5. *Accepting the affidavit filed by respondent No.2 and the statement made by her that she does not intend to continue with the proceedings any further and also taking into consideration the decisions of this Court in Crl.P 5922/2019 disposed of on 11.09.2019 **[Gowardan and others vs. The State of Karnataka]**, Crl.P No.3162/2018 disposed of on 18.06.2018 **[Ramanand Pattath and State of Karnataka and another]** as also the judgment of the Hon'ble Apex Court in the case of **Gian Singh vs. State of Punjab** and another reported in (2012) 10 SCC 303, wherein it has been held that even as regards offences as alleged herein to the parties have settled their dispute between themselves, this Court would have the necessary power to quash any criminal action arising out of the said offences."*

In Crl.P.No.136/2020 (*supra*), the Co-ordinate Bench of this Court has held as follows and quashed the proceedings:

2. Sri Vijaya Kumar S/o Sri Siddagangaiah @ Mariyappa and Smt.Nayana W/o Vijaya Kumar are



present before the Court. Today they have filed a joint affidavit of both petitioner-accused and respondent No.2-complainant. In the joint affidavit it is submitted that they have amicably settled the matter out of the Court. The petitioner-accused has agreed to take back respondent No.2 as his wife and they are ready to reunion and live together by dissolving their disputes. Even both the parents have agreed to take them back. It is further submitted that as per the school records the date of birth of respondent No.2 is 6.2.2001 and she has attained the age of majority and she is competent to enter into compromise. They have also further submitted that the said compromise is without there being any threat, force, coercion, fraud or misrepresentation. The said joint affidavit has been signed by the petitioner-accused and respondent No.2- complainant and same has been endorsed by the learned counsel appearing for the parties.

3. When the Court asked a question to both the parties, they submitted that since earlier they used to like each other and now they intended to jointly live together as husband and wife. At this juncture, it is worth to mention here itself a decision of the Hon'ble Apex Court in the case of **J.Ramesh Kamath and Others Vs. Mohana Kurup† and Others**, reported in **(2016) 12 SCC 179**, wherein the Hon'ble Apex Court has laid down certain principles as to under what circumstances the Court can quash the proceedings or compound the offences even in respect of a non-compoundable offences, wherein it has been held as under:-

"Held, power vested in High Court under S.482 is not limited to quashing proceedings within ambit and scope of S.320 of Cr.P.C., - In Gian Singh, (2012) 10 SCC 303, it was clearly expounded that quashing of criminal proceedings under S.482 of Cr.P.C., could also be based on settlements between private parties, and could also be on a compromise between the offender and victim - Only that, the



above power did not extend to crimes against the society – Further, jurisdiction vested in High Court under S.482 Cr.P.C., for quashing criminal proceedings was held to be exercisable in criminal cases having an overwhelming and predominatingly civil flavour, particular offences arising from commercial, financial, mercantile, civil, partnership, or such like transactions, or even offences arising out of matrimony relating to dowry, etc., or family disputes where wrong is basically private or personal. In all such cases, parties should have resolved their entire dispute by themselves, mutually.”

4. The Hon'ble Apex Court has reiterated the principles of law laid down in the case of **Gian Singh Vs. State of Punjab and another** reported in **(2012) 10 SCC 303**, wherein it has been observed that the Court can exercise the power under Section 482 of Cr.P.C. depending upon the facts and circumstances of each case and compound the offence. In the case of **Narinder Singh and others Vs. State of Punjab and another** reported in **(2014) 6 SCC 466**, it has been observed as under:

"8. We find that there are cases where the power of the High Court under Section 482 of the Code to quash the proceedings in those offences which are uncompoundable has been recognized. The only difference is that under Section 320(1) of the Code, no permission is required from the Court in those cases which are compoundable though the Court has discretionary power to refuse to compound the offence. However, compounding under Section 320(1) of the Code is permissible only in minor offences or in non-serious offences. Likewise, when the parties reach settlement in respect of offences enumerated in Section 320(2) of the Code, compounding is permissible but it requires the approval of the Court. Insofar as serious offences are concerned, quashing of criminal proceedings upon compromise is within the discretionary powers of the High Court. In such cases,



the power is exercised under Section 482 of the Code and proceedings are quashed. Contours of these powers were described by this Court in B.S.Joshi v. State of Haryana which has been followed and further explained/elaborated in so many cases thereafter, which are taken note of in the discussion that follows hereinafter.

9. *At the same time, one has to keep in mind the subtle distinction between the power of compounding of offences given to the Court under Section 320 of the Code and quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction conferred upon it under Section 482 of the Code. Once it is found that compounding is permissible only if a particular offence is covered by the provisions of Section 320 of the Code and the Court in such cases is guided solitarily and squarely by the compromise between the parties, insofar as power of quashing under Section 482 of the Code is concerned, it is guided by the material on record as to whether the ends of justice would justify such exercise of power, although the ultimate consequence may be acquittal or dismissal of indictment. Such a distinction is lucidly explained by a three-Judge Bench of this Court in Gian Singh v. State of Punjab. Lodha, J. speaking for the Court, explained the difference between the two provisions in the following manner: (SCC pp.340-41, paras 57 & 59).*

57. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on



record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.

59. B.S.Joshi, Nikhil Merchant, Manoj Sharma and Shiji do illustrate the principle that the High Court may quash criminal proceedings or FIR or complaint in exercise of its inherent power under Section 482 of the Code and Section 320 does not limit or affect the powers of the High Court under Section 482. Can it be said that by quashing criminal proceedings in B.S.Joshi, Nikhil Merchant, Manoj Sharma and Shiji this Court has compounded the non-compoundable offences indirectly? We do not think so. There does exist the distinction between compounding of an offence under Section 320 and quashing of a criminal case by the High Court in exercise of inherent power under Section 482. The two powers are distinct and different although the ultimate consequence may be the same viz. acquittal of the accused or dismissal of indictment.”

10. Apart from narrating the interplay of Section 320 and Section 482 of the Code in the manner aforesaid, the Court in Gian Singh case also described the extent of power under Section 482 of the Code in quashing the criminal proceedings in those cases where the parties had settled the matter although the offences are not compoundable. In the first instance it was emphasized that the power under Section 482 of the Code is not to be resorted to, if there is specific provision in the Code for redressal of the grievance of an aggrieved party. It should be exercised very sparingly and should not be exercised as against the express bar of law engrafted in any other provision of the Code. The Court also highlighted that in different situations, the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the



High Court before it exercises inherent power under Section 482 on either of the twin objectives, (i) to prevent abuse of the process of any court, or (ii) to secure the ends of justice, is a sine qua non.

11. As to under what circumstances the criminal proceedings in a non-compoundable case be quashed when there is a settlement between the parties, the Court provided the following guidelines: (Gian Singh case, SCC pp.340-41. para 58)

"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



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sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour 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."

12. *Thereafter, the Court summed up the legal position in the following words: (Gian Singh case, SCC pp.342-43, para 61)*

"61. The position that emerges from the above discussion can be summarized thus: the power of the High Court in quashing a criminal proceeding or FIR or a 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 plentitude with no statutory limitation but it has to be exercised in accord with the guidelines 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 predominately 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 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."

The Court in Gian Singh case was categorical that in respect of serious offences or other offences of mental depravity or offence of merely dacoity under special statute, like the Prevention of Corruption Act or the offences committed by Public Servant while working in that capacity. The mere settlement between the parties would not be a ground to quash the proceedings by the High Court and inasmuch as settlement of such heinous crime cannot have imprimatur of the Court."

5. Even in the case of **Srinivasan Iyenger v. Bimla Devi Agarwal** reported in **(2019) 4 SCC 456** at paragraph Nos.8 to 14 it has been observed as under:

"8. During the hearing of these appeals, the learned counsel for the appellants agreed to pay to the original complainant a total sum of Rs 10,00,000 (Rupees Ten lakh only) towards the full and final settlement of the claim of the original complainant and it is agreed that, on such payment, the claimant will not proceed with the complaint any further and that the parties may be permitted to compound the offences.

9. The learned counsel appearing on behalf of the original complainant has stated that the original complainant is agreeable to accept a total sum of Rs 10,00,000 offered and that, on such payment, the complainant has no objection if the offences against the appellants are compounded and the criminal proceedings initiated against them are quashed.

10. The learned counsel appearing on behalf of the original complainant has submitted that the appellants may deposit a total sum of Rs 10,00,000 in the bank account of the original complainant, the particulars of which are already on record, and on doing so, the appellants may be permitted to withdraw the amount of



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Rs 3,75,000 plus interest if any, already deposited by them.

11. Having heard the learned counsel appearing on behalf of the respective parties and that now the parties have settled the dispute amicably and that the dispute between the parties seems to be having predominant element of a civil dispute and the origin is predominantly or overwhelmingly a civil dispute, we are of the opinion that this is a fit case to exercise the power under Article 142 of the Constitution of India to meet the ends of justice.

12. We are of the opinion that on payment of total sum of Rs.10,00,000 by the appellants to the original complainant, as agreed between the parties, the criminal proceedings be quashed, considering the decisions of this Court in Parbatbhai Aahir v. State of Gujarat [Parbatbhai Aahir v. State of Gujarat, (2017) 9 SCC 641 : (2018) 1 SCC (Cri) 1] and Gian Singh v. State of Punjab [Gian Singh v. State of Punjab, (2012) 10 SCC 303 : (2012) 4 SCC (Civ) 1188 : (2013) 1 SCC (Cri) 160 : (2012) 2 SCC (L&S) 988] .

13. In view of the above and for the reasons stated above, we allow the parties to compound the offences, even though the offences alleged are non-compoundable, as the dispute between the parties predominantly or overwhelmingly seems to be of a civil nature and that the dispute is a private one and between the two private parties. Accordingly, it is ordered that on payment of a sum of Rs 10,00,000 by the appellants to the original complainant to be deposited in the bank account of the original complainant within a period of two weeks, the criminal proceedings being CR Case No. 40-C of 2014 pending in the Court of the learned CJM, Tinsukia, stand quashed. On furnishing proof of deposit of Rs 10,00,000, the Registry to return the amount of Rs 3,75,000 along with interest, if any, to the appellants herein, which the



appellants have deposited pursuant to the earlier order of this Court.

14. The present appeals stand disposed of accordingly in terms of the above."

6. Bearing in mind the above facts and circumstances and on perusal of the charge sheet material, though the offences leveled against the petitioner-accused are punishable under Sections 366A, 376 of IPC r/w Sections 4 and 6 of POCSSO Act and Sections 9 and 11 of Prohibition of Child Marriage Restraint Act, the said offences are non-compoundable in nature. But as could be seen from the records, the parties have compromised the matter amicably and the respondent-complainant has already attained the age of majority and she submits that now they are leading the matrimonial life and the petitioner-accused has accepted respondent No.2 – victim as his wife. When a family is going to be settled, it will be a boon to the society. Therefore, in my opinion if the said compromise is allowed by keeping in view the above said decision endorsed, the parties can lead a cordial life hereinafter.

7. Be that as it may. Even if the trial is held, the complainant herself has filed a joint memo for having amicably settled the dispute and she will not support the case of the prosecution and the trial held will be nothing but a futile exercise and waste of judicial time. The alleged offences are not punishable with death or imprisonment for life and the complainant and the accused are intending to join their hands and compound the offence and no bodily injury has also been caused to the victim. In the case of Gian Singh (quoted supra), it has been observed that the High Court is having power under



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Section 482 of Cr.P.C. to weigh the material on record and take an appropriate decision in accordance with law. Even subsequently also Hon'ble Apex Court while considering the Child Marriage Act has decided the same view depending upon the facts and circumstances of each case. When the parties have entered into amicable settlement and have compromised, then under such circumstances, I am of the considered opinion that if the compromise is accepted and the two families are going to be settled happily, the said settlement can be accepted. If the said settlement is not accepted, it is going to create a big gap between them. Their thoughts and ideas may be changed. Respondent No.2 will become destitute and it will be burden to the family to settle her life. By the time of settlement all the problems are going to be resolved.

8. Taking into consideration the above said facts and circumstance of the case, I am of the considered opinion that it is a fit case to exercise the power under Section 482 of Cr.P.C. and permit the parties to settle their disputes amicably as entered into."

(Emphasis supplied)

In Crl.P.No.5922/2019 the Co-ordinate Bench of this Court holds as follows:

"This petition is filed challenging the criminal proceedings in SC No.94/2018 initiated for offences punishable under Sections 376, 323, 506 r/w Section 34 of IPC. Second respondent-complainant registered FIR No.7/2018 in Bangarpet Police Station, KGF District, on 05.01.2018 alleging that first petitioner had married her on 04.01.2018 and that his relatives took away her



husband on the following day from railway station. Accordingly, she alleged commission of aforementioned offences against four accused. Accused No.4 Pillappa passed away whilst investigation was in progress. After investigation, police have filed charge sheet.

2. During the course of hearing today, learned advocates for the petitioners and second respondent jointly submitted that parties have reconciled matrimonial dispute and living happily. The couple have also been blessed with a male child. In the circumstances, they prayed that criminal proceedings against the petitioners be quashed.

3. Learned HCGP submitted that in view of the fact that prosecutrix herself has come forward before this Court with a prayer to quash the proceedings, this Court may consider the prayer.

4. I have carefully considered rival submissions and perused the records.

5. The complaint dated 05.01.2018 in substance shows that first petitioner and second respondent were married in Ganapathi Temple near Ramamandir. They stayed in the house of one Shri Sathish on that night. On the following day, first petitioner, his wife and her parents had purchased tickets to travel to Kakinada in Andhra Pradesh. In the railway station, accused Nos. 2 and 3 forcibly took away first petitioner and also assaulted second respondent's parents. Accordingly, FIR has been registered.

6. The joint affidavit of first petitioner and second respondent reads as follows:

JOINT AFFIDAVIT

"We, GOWARDAN, S/O LATE SUBRAMANI, AGED ABOUT 25 YEARS, R/AT KARAHALLI VILLAGE, BANGARPET TALUK, KOLAR DISTRICT and PARTHIBAN, S/O SARAVANAN K.V, AGED ABOUT 19 YEARS R/AT KARAHALLI VILLAGE, BANGARPET TALUK, KOLAR DISTRICT and UDAYAKUMAR, S/O MUNIRAJAPPA, AGED ABOUT 30 YEARS, R/AT KARAHALLI VILLAGE, BANGARPET TALUK, KOLAR



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DISTRICT and AISHWARYA. N, W/O GOWARDAN, AGED ABOUT 20 YEARS, R/AT KARAHALLI VILLAGE, BANGARPET TALUK, KOLAR DISTRICT. Today at Bengaluru do hereby state on solemn affirmation as follows.

1. We are the petitioners No.1 to 3 and respondents No.2 in the above petition, we are acquitted (sic acquainted) with the facts of the case and hence we are competent to swear to this affidavit.

2. We state that at the intervention of the elders and well wishers and family members, the petitioners and respondents have resolved their dispute amicably and reached to a settlement, out of court, which is culminated in this joint affidavit.

3. That the petitioner No.1 and respondent No.2 are married on 04/01/2018, out of their wedlock one male (sic child) was born namely Niharika, and happy married life till today, therefore, I have no objection to quash the charge sheet.

4. The parties have entered in to this joint affidavit on their own volition without any influence or coercion and after understanding the contents of the joint affidavit.

Wherefore, the parties herein respectfully pray that this Hon'ble court may kindly be pleased to quash the charge sheet in the learned II Addl. District and sessions judge Kolar, in SC.No.94/2018 for the offences punishable under section 376, 323, 506 r/w 34 IPC and 4, 8 POSCO Act 2012 in the interest of justice and equity."

7. The parents of second respondent have also filed a joint affidavit which reads as follows:

JOINT AFFIDAVIT

"We, Narendra Babu N, S/o late Natesh, aged about 67 years, R/at.Karahalli village, Bangarpet Taluk, Kolar District and Suryakumari W/o NarendraBabu N, aged about 45 years,



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R/at.Karahalli village, Bangarpet Taluk, Kolar District today at Bangalore. Do hereby state on solemnly affirmation as follows.

1. We are the parents of the respondent No.2/Aishwarya N, we are the acquitted (sic acquainted) with the facts of the case. And hence we are competent to swear to this affidavit.

2. We state that at the intervention of the elders and well-wishers and family members. The petitioners and respondents have resolved their dispute amicably and reached to a settlement, out of court, which is culminated in this joint affidavit.

3. that the petitioner No.1 is my son-in-law and respondent No.2 is my daughter are married on 04/01/2018, out of their wedlock one male (sic male) child was born namely Niharika and happy married life till today, therefore I have no objection to quash the charge sheet.

4. The parties have entered in to this joint affidavit on their own volition without any influence or coercion and after understanding the contents of the joint affidavit.

Wherefore, the parents herein respectfully pray that this Hon'ble court may kindly be pleased to quash the charge sheet in the learned II Addl. District and sessions judge Kolar, in SC.No.94/2018 for the offences punishable under section 376, 323, 506 r/w 34 IPC and 4, 8 POSCO Act 2012 in the interest of justice and equity."

8. Though aforesaid offences have been alleged against petitioners, the subsequent developments recorded in the affidavits show that parties have resolved the matrimonial dispute amicably. Petitioners, second respondent and her parents are present before the Court. They are identified by their respective advocates. The conspectus of facts of this case shows that complaint has emanated out of initial disagreement with regard to marriage.



Suffice to state that parties have admitted the marriage of first petitioner and second respondent and stated in the affidavit that they are happily living with the child. More so, complainant, her parents and first petitioner have resolved the differences amicably. In the circumstances, no useful purpose would be served in continuing the criminal proceedings.

9. Accordingly, all proceedings in SC.No.94/2018 pending on the file of II Additional District & Sessions Judge, Kolar, are quashed. The petition stands disposed of."

(Emphasis supplied)

In Crl.P.No.3162/2018 the Co-ordinate Bench of this Court, holds as follows:

*"The petitioner has approached this court seeking quashing of the Special CC No.194/2015 on the file of the II Addl. District and Sessions Judge, Bengaluru Rural District, registered against the petitioner for the offence punishable under Section 376 of IPC and also u/s.6, 8, 10 & 12 of Protection of Children from Sexual Offence Act [hereinafter referred to as "**POCSO Act**" for short].*

2. During the pendency of this petition, the petitioner and the second respondent who is no other than the mother of the victim girl and also the wife of the petitioner have filed a compromise petition before this court submitting that the matter has been compromised between themselves. The parties have also filed their detailed affidavit before this Court seeking permission to compromise the matter and also seeking quashing of this petition.

3. Before advertng to the contents of the compromise petition entered into between the parties



and their statement in the affidavit, it is just and necessary to have the brief factual matrix of this case:

The second respondent herein who is the wife of the petitioner and no other than the mother of two victim children i.e., the daughters of the petitioner and the respondent No.2, has lodged an FIR before the respondent No.1 police making serious allegations against her husband stating that her husband has been ill-treating and harassing sexually the twin daughters who are aged about 5 ½ years. It is stated that since 2014 after their marriage, the complainant has found some indifferent attitude in the conduct of her daughters and therefore, she meticulously examined and ascertained from them, then she came to know that the petitioner had been sexually harassing the said children by touching their private parts and also kissing the children etc., Quoting various instances the wife has filed such complaint and in fact after thorough investigation, the police have submitted the charge sheet before the competent court and the same has been culminated in Special CC No.194/2015.

4. After the charge sheet being filed and for the present, it appears, both the husband and wife have also decided to separate themselves. They have also filed Joint Petition for divorce in MC No.1697/2018 before the Family Court, Bengaluru.

5. In the above said facts and circumstances, the second respondent has come forward to compromise the matter with the husband for the better interest of the children, they have decided to live separately. Husband has also specifically given up all his rights over the children including the guardianship as well as visitation rights and also he has undertaken to provide a house as well as sufficient amount for the future development of the children.

6. In fact, the petitioner has denied all the allegations made against him.

7. The learned counsel for the petitioner during the course of these proceedings has also produced certain additional documents i.e., the report of the



Assistant Professor, Department of Child and Psychiatry, NIMHANS, Bengaluru. The documents produced before the court disclose that during the course of investigation, the Investigating Officer vide his letter dated 26.10.2015 has called for the report from the NIMHANS with regard to the examination of the children earlier on 10.6.2014 and 21.6.2014 when children were produced by the mother of the children for examination of the children before the NIMHANS Hospital.

8. In response to the same on 29.10.2015, the Assistant Professor, Department of Child and Adolescent Psychiatry, NIMHANS, Bengaluru, has reported that on assessment of the children, the doctor found that both the children have normal developmental milestones and did not have any obvious behavioral or emotional problems. Further, during the assessment using play therapy, the children have not voluntarily reported about any alleged sexual abuse incidents by their father.

9. Even the letter dated 27.7.2015 written by a lady by name Meenakshi Yaragatti, Executive of SJPU, which is the branch of Police, she also in fact examined the children and she has reported that the children have not made any allegations against their father.

10. Looking into the above said facts and circumstances of the case, though serious and heinous offence have been alleged against the petitioner, the mis-conception on the part of the mother of the children, under the above said doubtful circumstance, in my opinion, it cannot be ruled out. Therefore, if the compromise petition between the parties is beneficial not only to the petitioner and the second respondent, but also if it is more beneficial to the children, in such an eventuality, for the better interest and benefit of the children, the compromise petition can be accepted by the court.

11. In this context, it is worth to refer some rulings of the Hon'ble Apex Court in a decision rendered in **Gian Singh Vs. State of Punjab and Another** reported in **[(2012) 10 SCC 303]**, wherein the Apex Court has held thus:-



"Power of High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from power of a criminal court of compounding offences under S. 320 - Cases where power to quash criminal proceedings may be exercised where the parties have settled their dispute, held, depends on facts and circumstances of each case - Before exercise of inherent quashment power under S.482, High Court must have due regard to nature and gravity of the crime and its societal impact."

12. This Court in Criminal Petition No.3269/2017 disposed of on 12.12.2017 has elaborately discussed as to under what circumstances, the court can exercise power u/s.482 of Cr.P.C., to put an end to the dispute between the parties. Particularly referring to POCSO Act, this Court has considered the dispute between the parties particularly when the offences are punishable u/s.376 of IPC as well as under POCSO Act, this Court has made an observation that the power conferred u/s.482 of the Code is to be distinguished from the power which lies in the court to compound the offence u/s.320 of the Code. No doubt u/s.482 of the Code, the High Court has pecuniary inherent power to quash the criminal proceedings even in those cases, which are not compoundable, where the parties have settled the matter between themselves.

13. In another decision of the Hon'ble Apex Court reported in **(2014) 6 SCC 466** between **Narinder Singh and Others Vs. State of Punjab and another**, this court has considered that the offence though u/s.307 of IPC, falls within the category of serious and heinous offence and generally treated as crime against society, since power of quashing is taken away, the court has to examine the facts and circumstances of each case and on detailed meticulous circumspection to be made by the court where the particular case on fact is liable to be quashed on the basis of the compromise entered into between the parties, the court can exercise its extraordinary jurisdiction to quash such proceedings.

13. In another decision, which is reported in **(2018) 3 SCC 290** between **Anitha Maria Dias Vs. State of Maharashtra**, wherein the Hon'ble Apex Court



has made an observation at para 7, quoting the observations made at para Nos.29.5 and 29.6 in the case of **Narinder Singh**, cited supra. The sum and substance of the observation made by the Hon'ble Apex Court is that:

"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 u/s.307 of IPC would fall in the category of heinous and serious offences and therefore, are 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 of IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge u/s.307 of 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 such circumstances, the court would not rest its decision merely because there is a mention of such serious offence in the FIR or in the charge sheet filed by the Police. It would be open to the High Court to go by the nature of allegations made whether such an allegations on the face of record, can be taken as true or false, whether there are any other circumstances which shows that those allegations may be due to misconception. Under such circumstances also, the court can exercise power to quash the proceedings.

14. In the above said background, as per the guidelines of the Hon'ble Apex Court, if the same are applied to the facts and circumstances of this case, it is a doubtful circumstance, whether such things have



happened actually in view of the doctors report as noted above. On perusal of the charge sheet, it is the document which is issued by the NIMHANS doctor, who is having authentication with regard to the factual aspects of this case. The respondent No.2 has also not denied the aspect of taking the children to the NIMHANS hospital for examination of the children by the said doctor.

Under the above said facts and circumstances of the case, it is clear that there may be due to some strong dispute between the husband and wife, may be due to mis-conception the allegations have been made, but this is not a conclusive observation made, but based on the above said facts and circumstances of the case, I am of the opinion that the compromise between the parties is beneficial not only to themselves, but also to the small children, then such compromise can be accepted, even though the allegations made against the petitioner is serious and heinous and it will have some impact on the society.

Now, let me go through the affidavits filed by the parties i.e., both petitioner and respondent No.2. The affidavits filed by them giving undertaking for the benefit and welfare of the minor two children. The husband has categorically admitted that he is paying an amount of Rs.60,00,000/- by way of Demand Drafts to respondent No.2 as full and final settlement. Out of that, an amount of Rs.20 lakhs each to the daughters which shall be deposited in any of the Nationalised Bank by way of Fixed Deposit, till the children attain majority. The petitioner has also accepted that respondent No.2 shall have the right to utilize the interest accrued on the Fixed Deposit. However, an amount of Rs.40 lakhs shall continue till the children attain the age of majority. The petitioner state that his mother owned a Flat No.306, Block-B, 3rd Floor of the apartment complex known as DSR Greenfields Nadagondanahalli K.R. Puram Hobli, Bengaluru. The petitioner further states that he and his brother are the only legal heirs of their mother who expired on 22.11.2016. He has stated that he will execute the gift deed of the said property in the name of his wife after getting the release deed from his brother who has agreed to execute the same and further he has agreed to handover all the original



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documents of the said property at the time of execution of the gift deed. Today before this court, the petitioner has made payment of Rs.60 lakhs by way of 3 demand draft Nos. (1) 549473; (2) 549472; and (3) 549470 dated 6.6.2018 of Federal Bank of Bangalore Vignana N (1629) for Rs.20 lakhs each. Also, the petitioner has handed over the keys of the house noted above. The respondent No.2 who is present before the court acknowledges the receipt of three Demand Drafts as well as keys of the house. Further, the petitioner undertakes that within a short span of time, he would execute a registered gift deed. Further, the petitioner has agreed that the second respondent shall continue as guardian of the children and that he has no visitation rights so far as the children are concerned. Apart from the above, the affidavit filed by the parties clearly discloses that the parties have resolved the entire conflict between themselves and dispute also therein in order to provide a new life to the petitioner as well as the second respondent and to the children and to facilitate them to have their future life to live happily, I am of the considered opinion that as this is a very rarest of rare case, the court has to record the compromise between the parties."

(Emphasis supplied)

7. The learned High Court Government Pleader notwithstanding the aforesaid judgments rendered by the Co-ordinate Benches of this Court, would put up vehement opposition for closure of the proceedings holding that mere marriage of the victim with the accused or even bearing children thereon should not enure to their benefit and prosecution should be permitted to continue. To buttress his submission that the Court should not quash the proceedings on



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account of marriage of the accused with the victim and the trial against accused should be taken to its logical end, he would place reliance upon the following judgments:

- (i) **DINESH SHARMA V. STATE** - CrI.M.C.1002/2021 DD 24-03-2021;
- (ii) **HAIDER V. STATE** - CrI.M.C.564/2022 DD 07-02-2022
- (iii) **ANIL V. STATE OF KARNATAKA** - CrI.P.No.201199/2021 DD 28-10-2021
- (iv) **STATE OF MADHYA PRADESH V LAXMINARAYAN** - (2019)5 SCC 688

The said judgments would become distinguishable, on the facts obtaining in the case at hand without much *ado*, as they were all cases where the compromise was entered into between the parties not out of marriage or bearing children with the accused, except in the judgment rendered by the Kerala High Court in CrI.M.C.No.5866/2020 disposed on 28-04-2021, which the learned High Court Government Pleader stated that later it was withdrawn. Be that as it may.

8. Since there are plethora of judgments of the Co-ordinate Benches of this Court which have quashed the proceedings on account of marriage between the victim and the



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accused, I deem it appropriate to follow those judgments and quash the proceedings against the petitioner.

9. Therefore, in the light of the marriage between the prosecutrix and the accused; the marriage being registered; a certificate being issued in accordance with law depicting the couple to be a legally wedded husband and wife; a girl child being born from the wedlock to which a birth certificate issued by the Competent Authority being placed on record, in such cases, the prosecution can hardly prove the guilt against the petitioner. If the victim is going to turn hostile in a trial at a later point in time and the petitioner gets acquitted of all the offences, the sword of crime would have torn the soul of the accused. It is not the end result that is painful or otherwise, but the process in the criminal justice system that generates such pain. In the teeth of these facts, glaring enough they are, if the Court would shut its doors to the couple who are married and bringing up the child, the entire proceeding would result in miscarriage of justice. It is therefore, I deem it appropriate, to accept the settlement between the parties and terminate the proceedings qua the petitioner.



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10. For the afore-said reasons, the following:

ORDER

- (i) Criminal Petition is disposed.
- (ii) Impugned proceedings in Spl.C.No.193/2019 pending before the Additional District and Sessions Judge (FTSC-II), Bengaluru Rural District, Bengaluru stand quashed.

Consequently, I.A.No.1/2022 also stands disposed.

**Sd/-
JUDGE**

bkp