1. Sec. 125

Nagendrappa Natikar v. Neelamma. AIR 2013 SC 1541

K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.

ISSUE

Is tentative does not foreclose remedy available under 1956 Act- Compromise to receive permanent alimony and give up right to claim maintenance reached.

THE CASE

Sec. 125, Cr.P.C. is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children. Sec 125 is not intended to provide for a full and final determination of the status and personal rights of parties, which is in the nature of a civil proceeding, though are governed by the provisions of the Cr.P.C. is tentative and is subject to final determination of the rights in a civil court.

Sec. 25 of the Contract Act provides that any agreement which is opposed to public policy is not enforceable in a Court of Law and such an agreement is void, since the object is unlawful. Proceeding under Sec. 125, Cr.P.C. is summary in nature and intended to provide a speedy remedy to the wife and any order passed under Sec. 125, Cr. P.C. by compromise or otherwise cannot foreclose the remedy available to a wife under Sec. 18(2) of the Act.

The above being the legal position. We find no error in the view taken by the Family Court, which has been affirmed by the High Court. The petition is, therefore, dismissed in limine.

Petition dismissed.

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2. Sec. 154

Lal Bahadur & Ors. V. State (NCT of Delhi) 2013 (2) Crimes 209(SC)

P. SATHASIVAM AND M.Y.EQBAL, JJ.

Issue

Delay in lodgement – Delay of 2 days – in the aftermath of assassination of late Prime Minister when entire city was in turmoil – Accused persons being local and known to the complainant no prejudice caused to them by the delay – Not fatal.

THE CASE

The High Court on the first issue regarding delay in filing of FIR held that the circumstances of the present case are extraordinary as the country was engulfed in communal riots, curfew was imposed, Sikh families were being targeted by mobs of unruly and fanatic men who did not fear finishing human life, leave alone destroying/burning property. As regards recording of the statements of witnesses by the police on 30th November, 1984 after a delay of 27 days, the High Court observed that the city was in turmoil and persons having

witnessed crimes would naturally be apprehensive and afraid in coming forward to depose against the perpetrators, till things settled down; that the State machinery was overworked; and in such circumstances, delay in recording the statements of witnesses cannot be a ground to reduce its evidentiary value or to completely ignore it. The High Court further found that the witnesses prior to the incident were the residents of the same area and knew the assailants and it was not the case of the appellants that the delay could have resulted in wrong identification of the accused.

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3.(A) Sec 154

Amitbhai Anilchandra Shah v. The Central Bureau of Investigation & Anr. 2013 (2) Crimes 171 (SC)

P. SATHASIVAM AND DR. B.S. CHAUHAN,JJ

Issue

Second FIR and fresh charge sheet – Violates Article 21 of the Constitution – Not permissible.

THE CASE-

In Narmada Bai case Supreme Court, taking note of the fact that the charge sheet has been filed by the State of Gujarat after a gap of $3^1/2$ years and also considering the nature and gravity of the crime, rejected the investigation conducted/concluded by the State Police and directed the State police authorities to handover the case to the CBI.

After investigation, the CBI filed a fresh FIR dated 29.04.2011 against various police officials of the States of Gujarat and Rajasthan and others for acting in furtherance of a criminal conspiracy to screen themselves from legal consequences of their crime by causing the disappearance of human witness, i.e., Tulsiram Prajapati, by murdering him on 28.12.2006 and showing it off as a fake encounter. Though the said FIR did not specifically name any person, in the charge sheet dated 04.09.2012 filed in the said FIR, the petitioner herein was arrayed as A-1. Further, due to lack of jurisdiction, the charge sheet was presented before the 2nd Additional Chief Judicial Magistrate, (First Class), (CBI Court No. 1), Ahmedabad, Gujarat.

Being aggrieved by the fresh FIR dated 29.04.2011 and charge sheet 04.09.2012, the petitioner herein has filed this Criminal writ petition u/Art. 32.

Finding of the Court:

Killings of Sohrabudding, Kauserbi and Tulsiram are one series of acts and part of same conspiracy.

Writ petition allowed.

Apart from the above specific stand, it is also relevant to point out that the CBI filed supplementary charge sheet dated 22.10.2010 in the first FIR which made the following charges:-

"Investigation has also revealed that after the Gujarat Police Officers had eliminated Shri Tulsiram Prajapati on 28.12.2006 in a fake encounter, Smt. Geeta Johri, the then IGP prepared a note sheet on 05.01.2006 mentioning therein inter alia the permission to go to Udaipur to interrogate the aforesaid two associates of Sohrabuddin viz., Sylvester and Tulsiram Prajapati, of whom, she mentioned that Tulsiram Prajapati was encountered by the Police....'

The above extracts culled out from the charge sheet and supplementary charge sheet filed in the first FIR by the CBI would clearly show that killing of Tulsiram Prajapati was a fake encounter and was part of the same series of acts so connected together that they form part of the same conspiracy as alleged in the first FIR. In view of the same, there cannot be a second FIR dated 29.04.2011 and fresh charge sheet dated 04.09.2012 for killing of Tulsiram Prajapati.

This Court has consistently laid down the law on the issue interpreting the Code, that a second FIR in respect of an offence or different offences committed in the course of the same transaction is not only impermissible but it violates Article 21 of the Constitution. In T.T. Anthony (supra), this Court has categorically held that registration of second FIR (which is not a cross case) is violative of Article 21 of the Constitution. The following conclusion in paragraph Nos. 19,20 and 27 of that judgment are relevant which read as under:

The scheme of CrPC is that an officer in charge of a police station has to commence investigation as provided in Section 156 or 157 CrPC on the basis of entry of the first information report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of the evidence collected, he has to form an opinion under Section 169 or 170 CrPC, as the case may be, and forward his report to the Magistrate concerned under Section 173(2) CrPC. However, even after filing such a report, if he comes into possession of further information or material, he need not register a fresh FIR, he is empowered to make further investigation, normally with the leave of the court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of sub-section (8) of Section 173 CrPC.

From the above discussion if follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 CrPC only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 CrPC. Thus there can be no second FIR and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On

receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in charge of a police station has to investigate nor merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 CrPC.

(B) Sec. 220

ISSUE

Series of acts part of same conspiracy and intricately connected-Have to be tried in one trial.

(C) Sec. 220

ISSUE

Two complaints filed in same series of acts – Could be clubbed together and one charge sheet could be filed – Bar in section 234(1) not applicable.

The findings rendered by us in Narmada Bai (supra) clearly show the acceptance of the contentions raised by the CBI that killing of two individuals and killing of third person viz., Tulsiram Prajapati were part of the very same conspiracy and in the same series of acts so connected together that they will have to be tried in one trial under Section 220 of the Code.

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4. Sec. 173.

Central Bureau of Investigation vrs. Dilip Kumar Lahiri and Ors., 2013 (2) Crimes 434 (Calcutta)

ASIM KUMAR RAY, J.

ISSUE:

Two charge-sheets submitted in two different Courts on basis of a solitary FIR – Result of trial will be confusing-Impugned order by Trial Court refusing to take congnizance and directing Superintendent of Police to cause further investigation by comp0tent Officer and submit report afresh suffered on illegality.

THE CASE

Held: It is an admit4ed fact that charge-sheet Nos. 15 and 16 of 2004 were submitted on the basis of a solitary FIR, RC Case No. 4 of 2003 was recorded on the basis of the said FIR. The case was investigation was submissions of two separate charge sheets. If the Court is to accept two separate charge-sheets on the result of investigation of a particular case ten the witness of both the cases would be same and similar. Documents

connected in both the cases were collected on the basis of the same investigation. Therefore, if both the charge-sheet were accepted then the result of the trial will be confusing. In the case of P.V. Narasimha Rao (supra) on the basis of a complaint CBI registered four cases and after completion of the investigation three charge-sheets were submitted. Second and third charge-sheet was described as supplementary charge sheet. But in the instant case the charge sheet was independent charge sheet and one charge-sheet was not the supplementary charge sheet. In the case of Dr. Jagannath Mishra v. CBI the subject matter was a transfer petition wherein Dr. Mishra applied for transfer of five cases to one Court for that matter separate cases were registered and investigated into separately. The factual background of that case and the issue for consideration before the Court was different. In the case of T.T. Antony v. State of Kerala the subject matter of discussion was for investigation of a case, submissions of charge-sheet and for further investigation. In view of the provisions laid down in sub-section 8 of Section 173 Cr.P.C. the learned Court has quoted relevant portion of this citation in the body of the order impugned.

In the instant case Mr. Dey has argued on different footing.

The order impugned is a speaking order. I do not find any odd in it. It does not call for any interference. (Para 9 to 11).

Petition Dismissed

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5. Sec. 190

Mideast Integrated Steels Ltd. & others v. State of Orissa & another (2013) 55 OCR- 246

M.M. DAS,J.

Issue

Magistrate has no power to recall its own order of cognizance.

Sec. 402, 482

Maintainability of petition under Section 482 Cr.P.C. after disposal of revision petition under Sec. 401 Cr.P.C – Order of cognizance challenged-Hon'ble Court exercising revisional jurisdiction did not interfere with the matter – Matter was again agitated under Section 482 Cr.P.C. – Earlier Hon'ble Court did not consider all the materials independently to examine whether prima facie case is made out-or not – The order passed in the revision petition cannot stand as a bar in exercising power under Sec. 482 Cr.P.C.

The gist of the entire allegations made in the complaint case is that the accused persons offered some shares as security for the loan advanced by the complainant which were earlier pledged to IDBI. This Court, taking into

consideration all the undisputed documents and facts, finds that the entire claim of the complainant is with regard to depriving the complaint from recovering the money advanced. The complainant thus has made an attempt to couch the case in such manner so as to make out a case of commission of the offence of criminal breach of trust and cheating.

On careful consideration of the nature of allegations made in the complaint petition, the subsequent developments in the case and the undisputed documents, it is found that the entire allegations made in the complaint case is of civil nature and no offences, as alleged have been, prima facie, made out as the basis of all the allegations made in the complaint petition are with regard to double pledging of certain shares, which were admitted by the accused persons before such complaint was made to them by the complainant and the said shares were replaced by the accused persons inasmuch as, subsequent to the decree passed, a substantial amount has been paid by the accused persons to the complainant.

On considering the above in the light of the decision in the case of Central Bureau of Investigation, SPE, SIU (X), New Delhi v. Duncans Agro Industries Ltd. Calcutta, AIR 1996 SC 2452, it would be seen that there is enough justification to hold that the case in basically a matter of civil dispute and no criminality can be attributed to the accused persons.

Now with regard to the question as to whether in such circumstances, the complaint proceeding should be allowed to continue or not, as this Court has come to the conclusion that the nature of the dispute is basically civil and there is no prima facie material to find out that the offences for which cognizance has been taken, have been committed in the instant case, further continuance of the criminal proceeding will be nothing but an abuse of the process of law and it is highly essential that to secure the ends of justice, the order of cognizance should be quashed along with the entire complaint case.

In the result, therefore, the order dated 26.8.2000 passed by the learned S.D.J.M. Bhubaneswar in I.C.C. NO. 248 of 2000 taking cognizance of the offences under Section 406/468/420/422/34 IPC against the petitioners-accused persons stands quashed and as a consequence, the complaint case, i.e. I.C.C. Case No. 248 of 2000 also stands quashed in its entirely.

The CRLMC is accordingly allowed.

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6. Ss. 190,482

Gambhirsinh R. Dekare v. Falgunbhai Chimanbhai Patel and Anr. AIR 2013 SC 1890

CHANDRAMAULI Kr. PRASAD AND V. GOPALA GOWDA, JJ.

ISSUE

Quashing of complaint – Complaint of publication of defamatory news – Complainant alleging that news was published as per instruction of accused – And publication was within their knowledge – Allegations made are to be taken as true – Truthfulness or otherwise cannot be gone into at stage of cognizance – Quashing of complaint by holding that their is nothings to suggest that accused was aware of offending news item being published or that he had any role to play in the selection of news – Unjustified – Moreover editor is responsible for contents of news paper in view of Press and Registration of Books Act, 1867, Ss. 1,5,7.

THE CASE

We have bestowed our consideration to the rival submission and we do not find any substance in the submission of Mr. Dave. Complainant has specifically averred in the complaint that the news item was printed in the newspaper as per the instructions and directions of the accused persons. The complainant had specifically alleged the accused Nos. 1 and 2 have deliberately published the offending news and it was within their knowledge. At this stage, it is impermissible to go into the truthfulness or otherwise of the allegation and one has to proceed on a footing that the allegation made is true. Hence, the conclusion reached by the High Court that "there is nothing in the complaint to suggest that the petitioner herein was aware of the offending news item being published or that he had any role to play in the selection of such item for publication" is palpably wrong. Hence, in our opinion, the High Court has quashed the prosecution on an erroneous assumption of fact which renders its order illegal.

Therefore, from the scheme of the Act, it is evident that it is the Editor who controls the selection of the matter that is published in a newspaper. Further, every copy of the newspaper is required to contain the names of the owner and the Editor and once the name of the Editor is shown, he shall be held responsible in any civil and criminal proceeding. Further, in view of the interpretation clause, the presumption would be that he was the person who controlled the selection of the matter that was published in the newspaper. However, we hasten to add that this presumption under Section 7 of the Act is a rebuttable presumption and it would be deemed sufficient evidence unless the contrary is proved. The view which we have taken finds support from the judgment of this Court in the case of K.M. Mathew v. K.A. Abraham, (2002) 6 SSC 670 : (AIR 2002 SC 2989 : 2002 AIR SCW 3500), in which it has been held as follows.

The provisions contained in the Act clearly go to show that there could be a presumption against the Editor whose name is printed in the newspaper to the effect that he is the Editor of such publication and that he is responsible for selecting the matter for publication. Though, a similar presumption cannot be drawn against the Chief Editor, Resident Editor or Managing Editor, nevertheless, the complainant can still allege and prove that they had knowledge and they were responsible for the publication of the defamatory news item. Even the presumption under Section 7 us a rebuttable presumption and the same could be provide otherwise. That by itself indicates that somebody other than editor can also be held responsible for selecting the matter for publication in a newspaper.

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7. Sec. 202

M/s. GHCL Employees Stock Option Trust v. Nilesh Shivji Vikamsey. AIR 2013 SC1433

P. SATHASIVAM AND M. Y. EQBAL, JJ.

ISSUE

Summoning order – Must show application of mind by Magistrate – And his satisfaction as to existence of prima facie case.

THE CASE

Summoning of accused in a criminal case is a serious matter. Hence, criminal law cannot be set into motion as a matter of course. The order of Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The Magistrate has to record his satisfaction with regard to the existence of a prima facie case on the basis of specific allegation made in the complaint supported by satisfactory evidence and other material on record.

Complaint of cheating and criminal breach of trust was filed against company dealing in securities and its officers. In the complaint it was alleged that accused officers were looking after the day-to-day affairs of the Company. With whom the complainant or it authorized representative interacted was not specified. Although in complaint it was alleged that the complainant on numerous occasions met accused officers and requested to refund the amount, but again the complainant had not made specific allegation about the date of meeting and whether it was an individual meeting or collective meeting. There was no allegation that a particular Director or managing Director fabricated debit note. The allegations made against officers of company were thus bald and vague. The issuance of summons against officers

without recording satisfaction about prima facie case against officers and the role played by them was therefore unjustified.

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8. Sec. 203

G. Pal Vijay Kumar v. State of A.P. 2013(2) Crimes 361 (A.P.)

B. SASHASAYANA REDDY, J.

ISSUE

Magistrate could apply Section 203 Cr.P.C. only if after examining complainant and witnesses found no sufficient ground for proceeding- Dismissal of complaint under Sec. 203 CrPC without adopting procedure under Sec. 203 Cr.P.C. is not valid- impugned order dismissing complaint at threshold for lack of sufficient ground was liable to be set aside.

THE CASE

The Magistrate could apply Sec 203 Cr.P.C. only if after examining the complainant and the witnesses who are present in Court. He finds no sufficient ground for proceeding with the case. Dismissal of a complaint under Sec. 203 Cr.P.C. without adopting the procedure under Sec. 200 is not valid.

So far as the present case is concerned, prejudice in fact had been caused to the complainant because he had been deprived of an opportunity to explain his case to the Magistrate, which he could have got had the Magistrate examined him on oath. The Magistrate could apply Sec. 203 Cr.P.C. only if after examining the complainant and the witnesses who are present in Court, he finds no sufficient ground for proceeding with the case. Dismissal of a complaint under Sec. 203 Cr.P.C. without adopting the procedure under Sec. 200 is not valid in that view of the matter; I hold that the order impugned in the revision case is liable to be set aside.

Accordingly, the Criminal Revision Case is allowed setting aside the order, dated 21.01.2013 passed in CFR. No. 15 of 2013 on the file of the Junior Civil, Judge, Kalwakurthy, Mahaboobnagar District and directing the learned Junior Civil Judge a further enquiry should be made according to law in the light of the observations made above.

Petition allowed.

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9. Sec. 202,203 245,& 482

M/s. IRIS Computers Ltd. V. M/s. Askari Infotech Pvt. Ltd & Ors. (2013) 55 OCR (SC) – 192

H.L. DATTU AND RANJAN GOGOI, JJ.

ISSUE

Recall of order issuing summons to accused under Section 204, Cr.P.C. – Subsequent to issuance of process, question of accused approaching the Court by making an application for dismissal of the complaint is impermissible – Appellant filed a private complaint under Section 200 of the Code against respondents for offence under Section 138, Negotiable Instruments Act- Magistrate took cognizance of the offence and the complaint was registered – Magistrate issued summons to the respondents- After services of summons, the respondents filed an application under Section 202, 203 and 245 of the Code questioning the maintainability of the complaint due to lack of territorial jurisdiction of the Court- Magistrate allowed the said application and recalled his previous order issuing summons to respondents and returned the complaint to appellant-Appellant filed petition under Section 482, Cr.P.C. which was rejected by the High Court – Whether the Magistrate was justified in recalling the order issuing summons- Held, No.

Therefore, the crux of the matter rests into the existence of two different scenarios; the former involving only complainant's role and the latter introducing the accused. The former constitutes cognizance of the offence or complaint, satisfaction reached by the Magistrate that a prima-facie case is made out and thereafter, issuance of process to the accused. It is only after the aforesaid stages are completed; the next stage is triggered enabling the accused to actively participate in the proceedings. The dismissal of complaint by the Magistrate under Section 203 evidently falls into the former stages of proceedings when the Magistrate has to base his opinion as to the existence of sufficient ground for proceeding towards the second stage on the statements of the complainant and the witnesses along with the result of the inquiry conducted under Section 202. It is for obvious reasons that none of the former stages in the Code provide for hearing the summoned accused, the said being only preliminary stages and the stage of hearing of the accused arising at subsequent stages provided for in the latter provisions in the Code.

The aforesaid law laid down in Adalat Prasad case (supra) has been followed and reiterated by this Court in its subsequent decision in Bholu Ram case (supra), Subramanium Sethuraman v. State of Maharashtra, (2004) 13 SSC 324; N. K. Sharma v. Abhimanyu, (2005) 13 SSC 213 and Everest Advertising (P) Ltd. V. State Govt. Of NCT of Delhi, (2007) 5 SSC 54, in our view, the issue that we have raised for our consideration and decision is no more a debatable issue in view of what has been stated by a three judge bench of this Court in the case

of Adalat prasad (supra) and therefore, we are of the considered opinion that the High Court is not justified in rejecting the petition filed by the appellant under Section 482 of the Code.

In view of the above, while setting aside the impugned judgment and order passed by the High Court and the orders passed by the learned Magistrate, we now direct the learned Magistrate to restore the complaint to its Board and proceed with the matter in accordance with law. However, we grant liberty to the respondents herein if they so desire, to question the jurisdiction of the learned Magistrate, while issuing summons to them, before an appropriate Court, including the High Court by filing a petition under Section 482 of the Code. We clarify that all the other contentions of both the parties are left open. **Order accordingly.**

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10. Sec. 340.

Santosh Malhotra vrs. Ved Prakash Malhotra, 2013 (2) Crimes 414 (Delhi),

P.K. BHASIN, J.

ISSUE

Petitioner wife's prayer in her petition under Domestic Violence Act to let out a house property belonging to respondent so as to share the rental with respondent – Respondent opposed the prayer and same was dismissed – respondent let out the premises soon thereafter – Whether respondent was liable for prosecution under Section 340 Cr.P.C.? No.

THE CASE

Held: The applicant, who has been fighting her battle in person, had submitted that her husband had misled this Court into believing that there was no justification for letting out the second floor in his house to generate rental income by claiming that his children, who were settled outside Delhi, require that portion as and when they come to stay with him while it was not so and that was evident from the fact that immediately after the dismissal for her petition on 4th January, 2012 he had let out the second floor. She further contended that this conducted of the respondent-husband very well attracts the provisions of Section 340 Cr.P.C.

After having given my thoughtful consideration to the entire aspect of the matter, I have come to the conclusion that there is no merit in this application and the same is liable to be dismissed. The respondent-husband was challenging the order of the trial Court whereby second floor of his house was directed to be let out and he succeeded in the revisional Court and then before this Court also. There was no order of any Court prohibiting him from

letting out any part of his property an if at all he had let out the second floor of his property all that the applicant could claim from him was a share in the rental income, which this Court had noticed in the order dated 18th May, 2012, noticed already, also that her husband had offered him to pay her half of the rent of Rs. 10,000/- at which rate he had let out the second floor but she had refused to accept the same and was insisting upon payment of the entire amount of rent to her and observing that conduct of hers this Court had rejected her petition.

This application is, therefore, devoid of any merit and is dismissed. (Para 5,6,&7).

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11. Sec. 482

Jitendra Raghuvanshi & Ors. V. Babita Raghuvanshi & Anr. (2013) 55 OCR (SC)-178

P.SATHASIVAM, JAGDISH SINGH KHEHAR AND KURIAN JOSEPH,JJ

ISSUE

Quashing of criminal proceedings in non-compoundable genuine settlement of matrimonial disputes-Section 320, Cr.P.C. would not be a bar to the exercise of power of quashing of FIR under Section 482, Cr.P.C.

THE CASE

The case Marriage of appellant-husband and respondent-wife was solemnized on 22.02.2002 – After the marriage, parties were residing together as husband and wife – On 5.3.2003, an FIR was registered for offences under Section 498, 406 read with 34, IPC by respondent-wife alleging harassment and torture meted out to her in the matrimonial home by her husband and his relatives- A criminal case was registered for offence under Section 498 A and 406, IPC and Section 3 and 4 of Dowry Prohibition Act- During pendency of criminal proceedings, in year 2012, the parties amicably settled their differences by way of mutual settlement – A compromise/settlement application was filed for dropping of the criminal proceedings – Trial Court rejected the said application-Petition filed under Section 482, Cr.P.C. for quashing the criminal proceedings – High Court dismissed that petition stated that the Court has no power to quash the criminal proceedings in respect of offences under Section 498-A and 406, IPC since both are non-compoundable-Whether the High Court can quash such criminal proceedings or FIR or complaint in appropriate cases in order to meet ends of justice-Held,Yes.

There has been an outburst of matrimonial disputes in recent times. The institution of marriage occupies an important place and it has an important role

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

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

Appeal is allowed.

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12. Sec. 482

Nirupama Swain and three others v. State of Orissa and another (2013) 55 OCR-254

M.M.DAS,J.

ISSUE

Cognizance taken on receipt of police report – No prima facie case made out against the accused persons – No whisper in the order of the Magistrate as to how he came to a finding that prima facie case is made out – Cognizance order was passed in a mechanical manner- Non-application of judicial mind-Held, order of taking cognizance stands quashed.

THE CASE

On perusal of the statements of the witnesses recorded during investigation under Section 161 Cr.P.C., which have been produced before me, I find that there is absolutely no prima facie case made out against the petitioners with regard to commission of the alleged offences and the learned S.D.J.M., Kendrapara in the impugned order has not whispered a word as to why he came to the finding that a prima facie case has been made out against the petitioners with regard to commission of the alleged offences. It appears from the impugned order that the learned S.D.J.M., Kendrapara has in a mechanical manner, after receiving the charge-sheet mentioned that there is a prima facie case made out against the accused persons, which clearly reveals that the learned S.D.J.M., Kendrapara has not applied his judicial mind before taking cognizance of the alleged offences.

I, therefore, finding that there is absolutely no prima facie case made out against the petitioners with regard to commission of the alleged offences, quash the order dated 19.3.2010 passed in G.R. Case No.446 of 2009 and as a consequence, the entire proceeding in G.R. Case No.446 of 2009 pending before the learned S.D.J.M., Kendrapara stands quashed.

The CRLMC is accordingly allowed.

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13. Sec. 482

Saroj Kumbhar @ Mani Kumbhar, S/o Arun Kumbhar, Resident of Narayan Market, Fertiliser Township, PS: Tangarpali Vrs. State of Odisha and another (2013) 55 OCR- 272

B.N. MAHAPATRA,J.

ISSUE

Allegation of kidnapping of minor daughter of the informant-Victim married to the petitioner-Victim sworn affidavit indicating that she was major and leading happy marital life with the petitioner and blessed with a daughter-informant filed affidavit accepting the marriage between the petitioner and victim and that his daughter was major – Held, continuance of criminal proceeding would be an abuse of process-Proceeding stands quashed.

THE CASE

Admittedly, in the present case, opposite party No. 2 is informant in the present case and on the basis of the FIR filed by him with allegation of kidnapping of his daughter, the above P.S. Case corresponding to the G.R. Case has been registered. Now the said opp. Party no. 2 in his affidavit dated 30.01.2013 has stated that he accepted the marriage of his daughter with the

petitioner and further admitted that at the time of occurrence his daughter was major for the reasons stated in the affidavit. The daughter also in her affidavit dated 01.02.2013 has stated that she was major on the day of occurrence and she is leading a happy conjugal life with the petitioner and they have been blessed with a daughter on 29.09.2012

In view of the facts and circumstances and judicial pronouncements stated above, this Court is of the view that continuance of further prosecution of the present case would be nothing but an abuse of process of law and no purpose will be served in permitting the proceeding to continue any further. Therefore, in the interest of justice, I quash the Tangarpali PS Case No. 08/2011 dated 19.02.2011 corresponding to G.R. Case No. 215/2011 pending before the Court of learned S.D.J.M., Panposh.

In the result, the writ petition is allowed.

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