

THE HIGH COURT OF SIKKIM : GANGTOK

Criminal Misc. Petition No.1 of 2005

AND

Criminal Misc. Petition No.2 of 2005

In the matter of a petition under section 482 of the Code of Criminal Procedure and under section 498-A of the Indian Penal Code

and

in the matter of

Sanjoy Menon Rajan,
S/o Dr. Ayyarani Rajan,
R/o 15 Templar Road,
Oxford, OX2 8LR,
United Kingdom.

At present - Cabin Bed No.2,
Charing Cross Nursing Home (P) Ltd.,
2c Motilal Basak Lane,
Kolkata - 700 054,
West Bengal.

..... **Petitioner**

versus

1. State of Sikkim
2. The Superintendent of Police,
East District,
Gangtok, Sikkim.
3. The Officer-in-Charge,
Police Station Sadar,
Gangtok, Sikkim.
4. Mrs. Pema Choden,
W/o Late Sh. Phurba Wangdi Bhutia,
R/o Mazong House,
Kazi Road, Gangtok.
5. Ms. Peggyla Wangdi Bhutia,
D/o Mrs. Pema Choden,
R/o Mazong House,
Kazi Road, Gangtok.

..... **Respondents**



For the Petitioner : Mr. Anmol Prasad, Advocate assisted by Mr. K. T. Bhutia and Ms. Bandana Pradhan, Advocates.

For the respondent nos.1 to 3: Mr. S. P. Wangdi, Advocate General assisted by Mr. J. B. Pradhan, Public Prosecutor.

For the respondent nos.4 & 5 : Mr. T. B. Thapa, Advocate assisted by Mr. Jay Kishor Prasad Jaiswal, Mr. Naresh Raj Shrestha and Ms. Yangchen D. Gyatso, Advocates.

PRESENT: THE HON'BLE MR. JUSTICE A. P. SUBBA, JUDGE.

Last date of hearing : 12th July, 2005.

DATE OF ORDER : 20TH JULY, 2005.

ORDER

A. P. Subba, J.

This is a petition filed by one Sanjoy Menon Rajan, a British citizen of Indian origin under section 482 of the Code of Criminal Procedure for quashing the First Information Report (FIR) bearing no.52(3)05 registered at Sadar Police Station, Gangtok, Sikkim under section 498-A of the Indian Penal Code and all related criminal proceedings arising therefrom.

2. The facts leading to the filing of the present petition, briefly stated, are as follows:-

The petitioner after having completed his studies joined British Petroleum, a multinational concern, in the year 1993 and since the year 2004 he has been posted at




Hong Kong as a Compliance Advisor, British Petroleum, Asia. During the course of his professional trip to Calcutta in the year 2003, he met Ms. Peggyla Wangdi Bhutia alias Sonam (respondent no.5). After few meetings, they became friends and their friendship ultimately culminated into a marriage. The marriage was solemnized at Gangtok on 18th October, 2004 as per the Buddhist custom. The marriage was duly registered in the Office of Marriage Officer at Gangtok. After their marriage, the petitioner and respondent no.5 left for Kerala on a honeymoon trip on 20th October, 2004. Enroute, they spent one night in Chennai and reached Kerala where they spent four nights before they returned back to Calcutta on 25th October, 2004. On 26th October, 2004, i.e., the next day of their arrival, the petitioner left for Hong Kong in connection with his professional work while respondent no.5 stayed back. The respondent no.5 thereafter made necessary applications to the concerned authorities for her visa for travelling to Hong Kong to join the petitioner. From the application so made by the respondent no.5, it then transpired for the first time that she was previously married to one Karma Hishey sometime in the year 1997 and her marriage to the said Karma Hishey had still been subsisting. The queries made thereafter by the petitioner



about the former marriage of the respondent no.5, sparked off bitter resentment and differences between them. With a view to resolve the issue, the petitioner arranged meetings with respondent no.5 and other members of her family at Calcutta on 27th and 29th of March, 2005. During these meetings, the respondent no.5 and her family members misbehaved with the petitioner and his family members and uttered threats to them. Being apprehensive about his security, the petitioner filed a complaint on 2nd April, 2005 with the Salt Lake Police Station, Calcutta by way of abundant caution. On the other hand, Mrs. Pema Choden, respondent no.4, the mother of respondent no.5, lodged an FIR on 31st March, 2005 with the Sadar Police Station at Gangtok making a false allegation that the petitioner had been treating her daughter with cruelty and has also been demanding dowry. The other allegations made in the FIR are that when the petitioner left for Hong Kong on 26th October, 2004 he had promised respondent no.5 that he would take her to Hong Kong after procuring the necessary visa and other travel documents for her in the month of March, 2005. That the petitioner had made demand of Rs.10 lakhs as dowry from respondent no.5 when they were on their honeymoon trip in Kerala and thereafter, when the






respondent no.5 and her brother met the petitioner in Calcutta on 26th March, 2005, the petitioner asked the respondent no.5 whether the amount of Rs.10 lakhs had been arranged and when the respondent no.5 replied in negative the petitioner misbehaved using foul language. That when they again met on 27th March, 2005 the petitioner told respondent no.5 that he would not accept her until his demand of dowry was met and that the petitioner also told the respondent no.5 on 30th March, 2005 that he had only entered into engagement to marry the respondent no.5 and had never married her. That having thus been cruelly treated and deserted by the petitioner the respondent no.5 was suffering from severe depression and "she might do anything including committing suicide".



Pursuant to the investigation that was initiated after the FIR was lodged the petitioner was arrested from the Calcutta Airport at the time when he was about to leave India for Hong Kong and after his arrest he was produced before the concerned Executive Magistrate, Barrackpore, North 24 Parganas, where he was admitted to transit bail and directed to appear before the Court of Chief Judicial Magistrate, Gangtok on or before 12th April, 2005 and to report compliance on 19th April, 2005.




3. It is contended that the FIR lodged by the respondent no.4 and the consequent action taken up by the Police are illegal, untenable and absolutely unjustified in so far as the FIR was motivated and the same even if taken at face value does not constitute any offence against the petitioner. It is also contended that the alleged marriage between the petitioner and the respondent no.5 is a nullity in the eye of law and as such, no complaint under section 498-A of the Indian Penal Code would be maintainable. It is then further contended that the alleged incident admittedly took place outside Gangtok and the State of Sikkim and as a consequence the registration of the FIR by Sadar Police Station and the consequent investigation initiated by the Police at Gangtok are without jurisdiction and illegal in law. It was, therefore, prayed that the FIR in question and all the consequent actions and proceedings may be quashed in exercise of the inherent power of this Court under section 482 of the Code of Criminal Procedure.



4. On the first date fixed for appearance of the respondents on 10th May, 2005 it was submitted by the parties that some negotiation for amicable settlement of the matter had already been initiated and prayed for four weeks' time so that they would finalise the settlement and

submit the report. Time was accordingly granted in terms of the prayer made. On the next date, i.e., 9th June, 2005 the parties prayed for further one month's time for the same purpose which was allowed. On the next date, i.e., 7th July, 2005 the parties submitted that they had amicably settled the matter and the petitioner and respondent nos.4 and 5 jointly filed three miscellaneous applications accompanied by a copy of the agreement of settlement praying for different reliefs. The first application is in continuation of the earlier petition filed under section 482 of the Code of Criminal Procedure (registered as Criminal Misc. Petition no.1 of 2005) for quashing the FIR dated 31st March, 2005 and all the criminal proceedings arising therefrom in terms of the agreement of settlement. This application was registered as Criminal Misc. Application no.5 of 2005 in Crl. Misc. Petition no.1 of 2005. The second application has been filed under Rule 13 of "Rules to provide for registration and solemnization of a form of marriage in Sikkim" for a decree of dissolution of marriage between the petitioner and the respondent no.5 in terms of the settlement arrived at by the parties duly waiving and dispensing with the period prescribed by the Rules for filing such application. This application was registered as Criminal Misc.





Application no.6 of 2005 in the above CrI. Misc. Petition no.1 of 2005. The third application is for the return of the passport and other documents seized by the Police from the petitioner in connection with the ongoing criminal proceedings. This application was registered as Criminal Misc. Application no.7 of 2005 in CrI. Misc. Petition no. 2 of 2005.


All the above applications were taken up for hearing together on 12th July, 2005 and are being disposed of by this common order.

5. Mr. Anmol Prasad assisted by Mr. K. T. Bhutia and Ms. Bandana Pradhan, learned counsel for the petitioner. Mr. S. P. Wangdi, learned Advocate General assisted by Mr. J. B. Pradhan, learned Public Prosecutor for the State-respondent nos.1, 2 and 3 and Mr. T. B. Thapa, learned senior counsel assisted by Mr. Jay Kishor Prasad Jaiswal, Mr. Naresh Raj Shrestha and Ms. Yangchen D. Gyatso, counsel for the respondent nos.4 and 5 were heard.

**6. Criminal Misc. Application no.5 of 2005
(*arising out of Criminal Misc. Petition no.1 of 2005*)**

This application as noted above, relates to quashing of the FIR and the related proceedings.





It was submitted by the parties that with the intervention of relations of the respondent nos.4 and 5 as well as the respective counsel for the petitioner and the respondent nos.4 and 5, the disputes between the parties have been comprehensively, conclusively and amicably conciliated and the terms and conditions of the settlement have been reduced into writing in a memorandum of settlement. It was accordingly prayed that this Court may quash the FIR filed by the respondent no.4 on 31st March, 2005 and all related proceedings arising therefrom in terms of the settlement arrived at by the parties.

In support of the above submission, the parties appended a copy of the memorandum of settlement executed between the parties which is marked as Annexure A. The relevant clause of the agreement may be reproduced as follows:-



2. The parties hereby agree that they shall take all such steps as may be necessary for the complete and final withdrawal of all legal proceedings as detailed above initiated by them against each other on the terms herein contained.
3. More specifically, the parties hereby agree that the following applications shall be jointly filed by them before the Hon'ble High Court of Sikkim in Cr. Misc. Petition No.1 of 2005 with a joint prayer for the following, inter alia, relief(s):
 - a. An application praying for an order passed in exercise of the inherent



powers of the Hon'ble Court and for the ends of justice quashing the FIR filed by the third party on 31st March 2005, the consequent investigation under Sadar P.S. case no.52(3) of 2005 of Gangtok and all related criminal proceedings arising therefrom in view of the settlement arrived at herein.

- b.
c.”

As per the settlement, the petitioner agreed to pay a fixed sum of Rs.23 lakhs in full and final settlement of all present and future claims including any claims for maintenance and/or alimony in two instalments as follows:-

- “10. The first tranche of the aforesaid financial provision being a sum of IRs.20,00,000.00 (twenty lakh Indian rupees) shall be paid by the first party to the second party immediately upon the passing of and receipt by counsel for the first party of the certified copy of the order quashing and/or otherwise conclusively disposing of the FIR filed by the third party on 31st March 2005, the investigation of the case under Sadar P.S. case no.52(3) of 2005 of Gangtok and all related criminal proceedings arising therefrom in terms of the present settlement, and upon the passing of and receipt by counsel for the first party of the certified copy of the order that the passports of the first party as well as the other documents and articles seized from the first party by the Sikkim police are restored to the first party intact.
11. The second and final tranche of the aforesaid financial provision being the sum of IRs 3,00,000.00 (three lakh Indian





rupees) shall be paid by the first party to the second party immediately upon the passing of and receipt by counsel for the first party of the certified copy of the order of dissolution of the marriage between the first party and second party by the High Court of Sikkim or such other Court or authority competent to do so, whichever is earlier."


It was further agreed as follows:-

"14. The second and third parties covenant with the first party that in consideration of the payment of the aforesaid sum of IRs. 23,000,00.00 by way of full and final settlement of all present and future claims including the claim for maintenance and/or alimony, no claim hereafter shall be made upon the first party by the second or third party for payments of any kind either by way of alimony, maintenance, damages, compensation or on any other account whatsoever."

7. In support of the submission that the FIR may be quashed on the basis of the above amicable settlement arrived at by the parties, reference was made to the decision of the Hon'ble Supreme Court in B. S. Joshi vs. State of Haryana and another reported in 2003 CRI. L. J. 2028 in which the scope and ambit of inherent power under section 482 of the Code of Criminal Procedure was examined in relation to matrimonial disputes. It was observed in para 14 of the judgment as follows:-

"14. There is no doubt that the object of introducing Chapter XX-A containing Section 498A in the Indian Penal Code was to prevent the torture to a woman by her husband or by






relatives of her husband. Section 498A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hyper-technical view would be counter productive and would act against interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of chapter XXA of Indian Penal Code.”

It was accordingly held that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, section 320 of the Code of Criminal Procedure would not be a bar in the exercise of power under section 482 of the Code of Criminal Procedure.

8. The next decision relied on by the parties, is the decision of the Rajasthan High Court in Haricharan and others vs. State of Rajasthan 2004 CRI. L. J. 2224. In this case the Rajasthan High Court relying on the above decision of Hon'ble Supreme Court and on being satisfied that the parties had genuinely settled their matrimonial dispute, allowed the petition and quashed the criminal proceedings under sections 498-A and 406 IPC in exercise of inherent power under section 482 of the Code of Criminal Procedure.

The above decisions thus make it clear that the High Court in exercise of its inherent powers can quash criminal






proceedings, or FIR or complaint on the basis of mutual settlement and section 320 of the Code does not limit or affect such powers.

9. In the present case, the FIR relates to commission of offence under section 498-A of the Indian Penal Code. The memorandum of settlement goes to show that the parties have amicably settled the matter between themselves with their free will and consent. They have in the last clause of the agreement specifically declared that the settlement had been arrived at in a fair and conducive manner and that no coercion or undue influence has been exercised in obtaining the same.

10. Thus, on going through the memorandum of settlement, relevant portion of which have been extracted above and on hearing the learned counsel for the parties, I have no doubt in my mind that the agreement is not vitiated by force, fraud or undue influence. There is no doubt that the parties have come to amicable settlement out of their own free will and volition with the main object of putting an end to all the disputes pending between them.

Hence, keeping in view the ambit and scope of the inherent powers of this Court under section 482 of the Code of Criminal Procedure read with Articles 226 and 227





of the Constitution of India as spelt out by the Hon'ble Supreme Court in the case of B. S. Joshi (supra) cited above and the decision of the Rajasthan High Court in Haricharan's case (supra) I have no hesitation to agree with the learned counsel for the parties and to hold that the FIR in the present case and all the related criminal proceedings arising therefrom may be quashed in terms of the prayer made.

11. Criminal Misc. Application no.6 of 2005
(arising out of Criminal Misc. Petition no.1 of 2005)

This application has been filed under Rule 13 of the "Rules to provide for registration and solemnization of a form of marriage in Sikkim" for a decree for dissolution of the marriage. The facts stated in the application are by and large same as already narrated in the Crl. Misc. Application no.5 of 2005. The situation in which the petitioner and respondent no.5 met, how they got married and how the marital discord between the two originated leading to the filing of FIR from both sides, the consequent arrest of the present petitioner, the amicable settlement arrived at between the parties and the filing of the petition for quashing the FIR and all proceedings arising therefrom following the amicable settlement have been narrated in the foregoing paragraphs while dealing with the facts of



the above application. Further facts relevant in the present application are that the petitioner and the respondent no.5 in the agreement of settlement had agreed to present a joint application under Rule 13 of the "Rules to provide for registration and solemnization of a form of marriage in Sikkim" and accordingly they have filed the present application. It is specifically stated that the petitioner having been languishing in and out of hospital for the two and half months now for his medical treatment needs to leave the country as soon as possible so as to consult and take medical treatment from his regular medical advisor in the United Kingdom and similarly the respondent no.5 who is also suffering from severe depression caused by the traumatic events is also anxious to clear up the whole matter once and for all at the earliest so that the same may facilitate her early recovery from her ailment. Accordingly, the parties have prayed for the following reliefs:-

- a. Admit this application;
- b. grant leave to present this application before the expiry of three years of the entry of the certificate of marriage pertaining to the petitioner and the respondent no.5;





- c. dispense with the period prescribed by the Rules as a ground for bringing the present application under Rule 13 of the rules;
- d. dissolve the marriage between the petitioner and the respondent no.5 by a decree of divorce in terms of the settlement
- e. and to pass any other or further order(s) and/or direction(s) of a like nature as may be requisite for giving the fullest and earliest possible effect to the terms of the settlement herein arrived at."

The submission of the learned counsel for the parties is that the marriage between the parties having been irretrievably broken down and the parties having arrived at amicable settlement to break all marital ties by dissolving the marriage, a decree may be passed dissolving the marriage in terms of the agreement arrived at in exercise of the powers of this Court under section 151 of the Code of Civil Procedure. In support of the application, a copy of the memorandum of settlement executed between the parties has been appended along with the petition.

12. A perusal of the copy of the memorandum of settlement shows that the settlement is a common settlement in respect of all the disputes between the parties. Relevant clauses in respect of the reliefs claimed



have already been extracted in the above CrI. Misc. Application no.5 of 2005. Clause 3.b. of the same memorandum of settlement which is the relevant clause for the present purpose is as follows:-

"3. More specifically, the parties hereby agree that the following applications shall be jointly filed by them before the Hon'ble High Court of Sikkim in Cr. Misc. Petition No.1 of 2005 with a joint prayer for the following, inter alia, relief(s):

- a.
- b. An application praying for an order passed in exercise of the inherent powers of the Hon'ble Court and for the ends of justice, dissolving the marriage solemnized between the first and second parties on consent, along with an order dispensing with the limitations prescribed by statute for the presentation, motion and disposal of such a petition in view of the terms herein contained and without any order as to costs or alimony."

Clauses 6 and 7 of the agreement which is also relevant is as follows:-

"6. The first party shall forthwith withdraw Matrimonial Suit no.649 of 2005 filed by him against the second party before the Court of the District Judge, 24 Parganas (North) at Barasat and in view of the present settlement the first party hereby undertakes liability for any and all adverse action(s) and/or order(s) should the same emanate as a consequence of the said proceedings initiated by him. In such eventuality, the first party shall save and indemnify the second and third parties for



all, such costs, and consequences or otherwise arising therefrom.

7. The parties covenant with each other that if required, each of them shall take such steps and measures for the full and complete withdrawal of all other complaints, suits, proceedings and litigation that have or may have been instituted by any of them against the other(s) including those mentioned above."

13. The financial provisions made in full and final settlement of the matter has already been taken note of in the foregoing paragraphs. The learned counsel for the parties in support of their submission that a petition filed under section 13 of the relevant Rules may be accepted and a decree for dissolution of marriage may be passed in terms of the prayer made relied on the decision of the Hon'ble Supreme Court in Smt. Swati Verma vs. Rajan Verma reported in AIR 2004 SC 161 in which the Apex Court in exercise of the powers under Article 142 of the Constitution of India allowed a petition for dissolution of marriage filed under section 13B of the Hindu Marriage Act on mutual consent. Para 7 of the judgment which contains the relevant observation is as follows:-

"7. Having perused the records placed before us we are satisfied that the marriage between the parties has broken down irretrievably and with a view to restore good relationship and to put a quietus to all litigations between the parties and not to leave any room for future litigation, so that they may



live peacefully hereafter, and on the request of the parties, in exercise of the power vested in this Court under Art. 142 of the Constitution of India, we allow the application for divorce by mutual consent filed before us under S. 13(B) of Hindu Marriage Act and declare that the marriage solemnized between the consenting parties on 13th June, 2001 at Delhi is hereby dissolved, and they are granted a decree of divorce by mutual consent."

It may however be noticed that the power exercised by the Hon'ble Supreme Court in the above case falls under Article 142 of the Constitution of India and such power is conferred upon the Supreme Court alone and on no one else. It has been held by the Hon'ble Supreme Court in the decision rendered in Delhi Development Authority vs. Skipper Construction Company (P) Ltd. and another reported in AIR 1996 SC 2005 that "the very fact that this power is conferred only upon this Court, and on no one else, is itself an assurance that it will be used with due restraint and circumspection, keeping in view the ultimate object of doing complete justice between the parties".

Explaining the scope and ambit of the power, it has further been observed in para 16 as follows:-

"16. In other words, the power under Article 142 is meant to supplement the existing legal framework - to do complete justice between the parties - and not to supplant it. It is conceived to meet situations which cannot be effectively and



appropriately tackled by the existing provisions law."

14. The above makes it clear that the High Courts do not enjoy similar powers in absence of analogous provisions of law. However, relying on the Single Bench decision of Punjab and Haryana High Court in *Tejinder Singh and others vs. Smt. Kuljit Kaur* reported in 1994 CRI. L. J. NOC 279 (Punjab & Haryana), the learned counsel for the parties contended that it is open for the High Court to grant dissolution of marriage on consent in exercise of powers under section 151 of the Code of Civil Procedure. Since the NOC did not contain detailed facts of the case, the parties also produced a photocopy of the full text of the above decision. A perusal of the facts of the case shows that the wife who was one of the petitioners had filed criminal complaint against her husband under the Indian Penal Code and also the Dowry Prohibition Act and the husband moved the Hon'ble High Court for quashing of the complaint and the summoning order. In course of the proceedings of this petition, the parties filed a joint petition of compromise along with a petition under section 13B of the Hindu Marriage Act, 1955 praying for a grant of a consent divorce in terms of the compromise deed filed with the petition. The High Court in



exercise of its inherent power under section 482 of the Code of Criminal Procedure quashed the complaint and also granted a decree of divorce in exercise of inherent powers under section 151 of the Code of Civil Procedure. The Hon'ble Court made the following observation with regard to the grant of decree of dissolution of marriage:-

"After hearing the parties and their counsel, I hold that there is no chance of reconciliation between the parties. I, therefore, see no reason why I should not accede to the request of the parties to the marriage and render them free and provide much-needed balm to their wounds. I can see no violation of the spirit of the statute when marital discord has otherwise been brought to surface in Court, though in criminal proceedings, leaving out any chance of collusion between the parties, so as to play a fraud on the statute. Collusion being out of picture and litigation between the parties having remained rife for a time more than six months tends me to invoke the inherent jurisdiction of the High Court and grant divorce to the parties to the marriage under the spirit of section 13-B of the Hindu Marriage Act, though not in accordance with its letter. I cannot shut my eyes to the reality of the situation that I have placed before me two human beings who have wrecked their lives in mutual acrimony, but now standing at their respective launch pads look forward to start their lives a-new. I see no reason why I should refuse their prayer for granting them the relief now and let them wait for six months and make it prone to many a slip between the cup and the lip. And, even otherwise, the spirit of section 13-B of the Hindu Marriage Act in providing for a period of six months to lapse between the prayer and the ultimate grant of divorce is as it seems to me, based on the good legislative sense that there may be a chance for reconciliation between the parties. I have




satisfied myself that there is none whatsoever in the instant case and rather the parties want to break their matrimonial bond right now at this moment."

15. No doubt, the above decision, goes to show that the Single Bench of Punjab & Haryana High Court, in exercise of inherent power under section 151 of the Code of Civil Procedure, has granted a decree of divorce on consent on being satisfied that the marriage between the parties has irretrievably broken down and there were no chances of reconciliation between them. It is, however, a settled position that the above decision being of a coordinate authority has only a persuasive value as far as this Court is concerned. Therefore, before expressing my agreement or otherwise with the view taken in the above decision and the law laid down therein, I find it appropriate to refer to the principles enunciated in relation to the exercise of the inherent power of the High Court in some of the related decisions.

In *Raja Soap Factory and others vs. S. P. Shantharaj and others* reported in AIR 1965 SC 1449 the Apex Court has held that the power under section 151 of the Code of Civil Procedure may be exercised where there is proceeding lawfully before the High Court and it does not authorise the High Court to invest itself with






jurisdiction where it is not conferred by law. In *M/s. Ram Chand and Sons Sugar Mills Private Ltd. vs. Kanhayalal Bhargava and others* reported in AIR 1966 SC 1899, the Apex Court has similarly laid down that inherent power will not be exercised if its exercise is inconsistent with, or comes into conflict with, any of the powers expressly or by necessary implication conferred by the other provisions of the Code. Thus if there are express provisions exhaustively covering a particular topic, that gives rise to a necessary implication that no power shall be exercised in respect of the said topic otherwise than in the manner prescribed by the said provision.

It is thus a well-established legal principle that any inherent power vested in any authority cannot be exercised contrary to the express provisions of the Act. It, therefore, follows that the inherent power under section 151 of the Code of Civil Procedure can be exercised only where no other remedy is available according to the existing provisions of law.

Having thus noticed the well-established legal principle governing exercise of inherent power by a Court, we may now examine as to whether the issue at hand is covered by any existing provision of law or not so as to find out if exercise of inherent power is called for.





16. It is to be noted that the matter at hand is an application for dissolution of marriage on consent and thus a matter falling within the jurisdiction of a matrimonial court. On and after the enactment of Family Courts Act, 1984 and the establishment of Family Court under its provisions, the appropriate forum for adjudication of matrimonial dispute is the Family Court. Section 7 of the Family Courts Act confers exclusive jurisdiction in such matters to the Family Court established under section 3 of the Act. The Family Courts Act which is a special Act lays down the detailed procedure to be followed in the adjudication of matrimonial dispute by the concerned Court. It is thus difficult to conceive as to how the existing provisions of law as indicated above are inadequate to meet the situation in the present case.

17. In view of the above position, I am unable to persuade myself to agree with the view that an application filed under section 13B of the Hindu Marriage Act, 1955 for a decree of dissolution of marriage in the High Court can be allowed in exercise of inherent power under section 151 of the Code of Civil Procedure. Accordingly, I take the liberty to respectfully differ with the view taken by the Single Bench of the Punjab and Haryana High court in the above case.



It thus follows that it would be more appropriate and in conformity with the existing provisions of law to approach the Family Court for the relief regarding the dissolution of marriage between the parties albeit on consent. It appears that such a course besides being in conformity with the relevant provision of law would not also fall outside the scope of the terms of agreement arrived at by the parties. It is obvious that the parties being aware of the legal position have taken care of the situation in clause 8 of the agreement which is reproduced below:-

"8. Should the parties for any reason be unsuccessful in obtaining the aforesaid order of dissolution of the marriage aforesaid from the Hon'ble High Court of Sikkim, they hereby covenant that they shall forthwith file a joint application before the appropriate Court or authority under the appropriate statute seeking a dissolution of the marriage on consent and/or on such grounds as may be requisite for speedily dissolving the marriage between the first and second parties."

Therefore, the proper course to be followed as per the provisions of law as well as the terms of the mutual agreement of the parties is to file the joint application before the Family Court which has already been established in the State under section 3 of the Family Courts Act, 1984 and is functional.



18. The learned counsel for the parties have mentioned that the parties would be facing exceptional hardship if they are required to follow the normal procedure in the concerned Court. It was stated that the petitioner who is a citizen of United Kingdom is employed and domiciled in Hong Kong, his work as well as his precarious state of health prevents him from travelling frequently to prosecute his divorce proceeding in India if he is to institute such a proceeding in the Family Court at Gangtok. It was also pointed out that a petition for divorce on mutual consent cannot be moved before the expiry of three years after the solemnization of marriage under the provisions of the relevant Rules and thus such a provision comes in the way of early settlement of the dispute between the parties despite the amicable settlement already arrived at by them. It appears that Rule 14 of the concerned Rules contains provision for relaxation in cases of exceptional hardship if faced by the parties. Thus, it is needless to say that the parties will be at liberty to place before the Court the genuine difficulties and hardship faced by them, if any, and seek permission of the concerned Court for presenting application for dissolution of marriage before the expiry of the prescribed period and the Court shall consider the matter in the light



of the relevant provision of law keeping in view the fact that the marriage has irretrievably broken down and the parties have agreed for dissolution of their marriage.


**19. Criminal Misc. Application no.7 of 2005
(arising out of Criminal Misc. Petition no.2 of 2005)**

In this application jointly filed by the parties, they have prayed for release of two British passports bearing nos.093096373 and 740099905 seized by the Police on 2nd April, 2005 in connection with the investigation and for return of the same to the petitioner. Clause 4 of the agreement of settlement which relates to the matter is as follows:-

"4. The parties further agree that simultaneously, another joint application shall be filed by them before the Hon'ble High Court of Sikkim in Cr. Misc. Petition No.2 of 2005 with a joint prayer for the allowing the relief(s) contained therein so that the passports of the first party as well as the other documents and/or articles seized from him by the police are restored to him intact."

In view of the above settlement and also in view of the order that is being passed for quashing the FIR and the related criminal proceedings, it is felt that no further purpose will be served by allowing the seized passports to be retained in the custody of the police. Accordingly, necessary orders for return of the said passports and document and/or articles seized from the petitioner by the





Police shall be made in the composite orders that is being passed hereinbelow.

20. In the result, the following orders are made in terms of the agreement of settlement which has been marked as Annexure A and forms part of the record.

- (i) The FIR bearing no.52(3)05 lodged by the respondent no.4 against the petitioner and registered at the Sadar Police Station at Gangtok under section 498-A of the Indian Penal Code and all the proceedings arising therefrom stand quashed.
- (ii) The two passports bearing nos. 093096373 and 740099905 and other document and/or articles seized from the petitioner by the Police shall be released and returned to the petitioner or to his counsel on production of necessary written authorisation letter by him.
- (iii) The parties shall have liberty to present the appropriate application before the Family Court, Sikkim for dissolution of their marriage with prayer to waive the prescribed period for presenting such application, if so advised, and as and when such applications are made the concerned Family Court shall consider the applications in the light of the relevant provisions of law.





Accordingly, the Criminal Misc. Petition nos.1 and 2 of 2005 and all the Criminal Misc. Application nos.5, 6 and 7 of 2005 stand disposed of.



Sd/-
(A. P. Subba)
Judge
20-07-2005

RECEIVED TO BE TRIED

[Handwritten Signature]
Assistant Registrar (Judl) 20/7/05
High Court of Sikkim
Gangtok