

IN THE HIGH COURT OF DELHI AT NEW DELHI

Crl. M.C. No. 4057/2006

Judgment delivered on: October 08, 2009

Smt. Santosh Appellants.
Through: Ms. Shilpa Chohan, Adv.

versus

Shri Durga Prasad Respondents
Through: Mr. S.S. Panwar, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J. Oral:

1. By way of the present petition filed under Section 482 Cr.P.C., the petitioner seeks to challenge the order dated

19.10.2005 passed by Sessions Court in Revision Petition No. 04/2005, whereby the petition filed under Section 125 Cr.P.C. was dismissed.

2. The brief facts of case relevant for deciding the present petition are as under:-

Petitioner Smt. Santosh got wedded as per Hindu Rights and Ceremonies with respondent on 13.5.1994 in Delhi. Due to constant dowry demands and on non-fulfillment of the demands, the petitioner had to leave her matrimonial home. No child was born out of the wedlock.

3. A complaint was lodged on 6.11.2000 by the petitioner on account of the acts and conducts of the respondent and his family members before the concerned CAW Cell. A formal compromise has been arrived between the parties wherein it was decided that petitioner will seek divorce by way of mutual consent and respondent would pay an amount of Rs. 1 lac towards all materials claims of petitioner inclusive of Stridhan. That the said compromise arrived between the parties on 12.2.2001 and out of the agreed amount of Rs. 1 lakh an amount of Rs. 50,000/- was paid by the respondent on the same date i.e. 12.2.2001 before the Crime Against Women Cell. Based on the compromise both the

parties approached the concerned Court to seek divorce by mutual consent and first motion was allowed on 1.5.2001. The said compromise was arrived between the parties during the pendency of the petition filed by the petitioner under Section 125 Cr.P.C. and the said petition was dismissed in default on 18.12.2002 on account of the non-appearance of the petitioner and her counsel. To seek restoration of the said petition the petitioner moved necessary application on 23.5.2003 but the said application of the petitioner was dismissed by the learned Magistrate vide order dated 13th October, 2004.

4. Aggrieved by the said order a criminal revision was preferred by the petitioner before the Ld. Session Judge. The Hon'ble Sessions Court vide order dated 19.10.2005 dismissed the revision petition of petitioner upholding the order dated 13.10.2004 passed by Ld. Metropolitan Magistrate as correct. The present petition has been preferred by the petitioner to assail the above said orders.

5. Counsel for the petitioner submits that due to the reasons explained by the petitioner in the revision petition the learned Metropolitan Magistrate should have restored the application of the petitioner filed under Section 125 Cr.P.C., but

instead of doing so the learned M.M. gave much weightage to the compromise deed dated 17.1.2001 entered into between the parties before the Crime Against Women Cell (CAW).

6. The contention of the counsel for the petitioner is that the said compromise entered into before the CAW Cell had no binding effect and in any case the learned M.M. ought to have tried the application of the petitioner filed under Section 125 Cr.P.C. on its merits. Counsel further submits that even the revisional court fell in grave error by not appreciating the contentions raised by the petitioner and without considering the bona fides of the petitioner, the learned Sessions Court dismissed the revision petition filed by the petitioner. Counsel for the petitioner further submits that the petitioner did not fulfill the terms of the compromise on account of certain circumstances created by the respondent and no wrong was committed on the part of the petitioner in resiling from the said compromise. Counsel also submits that the right of the petitioner to seek maintenance was an independent right and the same could not have been defeated by the learned courts below simply because of the fact that the petitioner did not honour the terms of the compromise.

7. The present petition is strongly opposed by Mr. S.S. Panwar, counsel for the respondent who states that this court should not exercise the inherent powers as envisaged under Section 482 Cr.P.C., in favour of the present petitioner who has abused the process of this court as well as of the courts below. Counsel submits that both the parties had agreed to settle all their disputes and in terms of the settlement the respondent husband had agreed to pay an amount of Rs. 1 lac towards all the material claims of the petitioner inclusive of her stridhan. Counsel also states that during the compromise it was agreed that the petitioner will seek divorce by way of mutual consent and for that, the pending petition was to be converted into a petition seeking divorce by mutual consent. Counsel further submits that amount of Rs. 50,000/- was paid by the respondent on 12.2.2001 at the time of the compromise and balance amount of Rs. 50,000/- was to be paid by the respondent at the time of the second motion of the divorce petition. Counsel for the respondent further submits that the petitioner deliberately did not appear before the concerned court of learned M.M. despite court notice being sent to her. Counsel further submits that even before the concerned court of learned M.M., the respondent had given an offer to pay balance amount of Rs. 50,000/- and infact an offer to pay additional

amount of Rs. 10,000/- was made by the respondent, but still the petitioner did not come forward to honour the said compromise. Counsel also submits that before the court of learned M.M., the petitioner had stated that in case she does not agree to settle the matter then amount of Rs. 50,000/- which was already received by her would be returned back to the respondent, but that amount was never returned by the petitioner to the respondent. Counsel submits that due to the said conduct of the petitioner, and also on account of non-appearance of the petitioner the learned M.M. dismissed the said application of the petitioner and the order of the learned M.M. was upheld by the revisional court, taking into account the contumacious conduct of the petitioner. Counsel further submits that since the petitioner had resiled from the said compromise, then there was no option left with the respondent but to continue with his divorce petition and ultimately decree of divorce was granted in favour of the respondent vide decree and judgment dated 17.4.2007 by the court of Ms. Anju Bajaj Chandana, Additional District Judge, Delhi. Counsel also states that application under Section 24 of the HMA was filed by the petitioner and the Matrimonial court had passed an order on the said application granting interim maintenance @ Rs. 1,000/- in favour of the petitioner. Counsel states that the said order

passed by the Matrimonial court on the application filed by the petitioner under Section 24 of the HM Act was fully complied with by the respondent and therefore, already maintenance amount stood paid to the petitioner.

8. Counsel for the petitioner pleads ignorance not only with regard to the factum of maintenance received by the petitioner but even with regard to the decree of divorce granted by the court dissolving the marriage between the petitioner and respondent.

9. I have heard learned counsel for the parties at considerable length and gone through the record.

10. It is a settled legal position that power under Section 482 Cr.P.C. is to be exercised with great circumspection and care. It is to be exercised ex debito justitiae to do real and substantial justice between the parties. In any case, such a power cannot be exercised in favour of unscrupulous litigants, who abuse and misuse the powers of the Court through their devious and mischievous acts. In this regard the following observations in **Zandu Pharmaceutical Works Ltd. vs. Mohd. Sharaful Haque, (2005) 1 SCC 122** are worth noting:-

"Para 8" : Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest" (when the law gives a person anything, it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to deal real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

11. Thus, considering the aforesaid legal position and also considering the fact that the petitioner has not approached this court with clean hands, there can be no justification warranting exercise of inherent powers under Section 482 Cr.P.C of this court in favour of the petitioner.

12. The parties had entered into compromise before the CAWC as long back as on 17.1.2001. Both the parties had duly signed the said compromise agreement which was also witnessed by three witnesses Mr. Mani Ram, Mr. Prem Chand who are brothers of the petitioner and Smt. Shakuntala Devi, who is the sister of the petitioner. The petitioner had agreed to settle all her claims for an amount of Rs. 1 lac which was to be paid by the respondent in two equal instalments. It is not disputed that the petitioner had received an amount of Rs. 50,000/- on 12.2.2001 and at the time of the receipt of the said amount, writing was executed and the same was also witnessed by Mr. Mani Ram, Mr. Prem Chand, Smt. Shakuntala Devi and Smt. Bimla Kumari. It is also not in dispute that the said compromise was brought to the notice of the learned M.M. who was dealing with the maintenance petition of the petitioner as would be evident from the order dated 16.10.2003, on which date the respondent had undertaken that he will pay an amount of Rs.60,000/- to the petitioner at the time of filing the

second motion petition, despite the fact that in terms of the compromise the respondent was required to pay amount of Rs.50,000/-. The said order was passed by the learned M.M. when the restoration application of the petitioner was pending. On 3.6.2004 before the court of learned M.M. the petitioner sought time to get advice from her brother with regard to the said compromise and at that juncture she also stated that if the said compromise is not materialized then she would return back the amount of Rs.50,000/- received by her from the respondent. The learned M.M. thus found that in such circumstances when the petitioner herself did not comply with her own undertaking and also on account of the fact that the petitioner did not appear before the court despite service of the court notice, dismissed the restoration application of the petitioner. The learned trial court also gave directions to the respondent to take appropriate action for the recovery of the said amount of Rs.50,000/-. As per counsel for the respondent steps were taken by the respondent to recover the said amount by filing recovery suit but the said suit was dismissed on some technical grounds. Looking into the conduct of the petitioner, the revisional court also dismissed the revision petition of the petitioner.

13. A compromise is arrived at into by the parties when both the parties consent to settle their disputes on certain terms and conditions. In the instant case, the petitioner willingly and voluntarily entered into a compromise and nothing has come on record that the said compromise was entered into by her under some force, coercion or by practising fraud upon her or the terms of said compromise were illegal or unconscionable etc. Unless one of these grounds existed, a compromise entered into should not have been flouted as the same has legal sanctity and the terms of the same should have been adhered to. The consent for the compromise was given by the petitioner and the respondent voluntarily. The compromise was genuine and lawful and the petitioner in all fairness should have acted upon. The consent having been given cannot be repudiated unless the same was obtained by fraud or coercion or is contrary to law. In this regard, reliance can be placed on the case of Ram Swaroop V/s. Mahindru (2003) 12 SCC 436.

"It was held by the Court that the Respondents were estopped from filing any suit as the consent for the compromise was genuine. Consent for compromise cannot be repudiated unless it suffers from fraud or is illegal."

14. I do not find any illegality or perversity in the order passed by the revisional court as the revisional court clearly observed that

when the court notice was issued to the petitioner, she had refused to accept the same. The revisional court also found that there was no reason for the petitioner to have not honored the said compromise. The contention of the counsel for the petitioner that the petitioner was well within her rights to resile from the said compromise does not find favour with me. Reliance can be placed on the judgment of High Court Reported in WP (Crl.) No. 848/2007 (17/01/2008) Rajesh V/s. State

“Wife declined in cooperating in quashing F.I.R. The Court held she cannot be allowed to make mockery of court proceedings, nor the statement made by her in court be considered trash, she cannot be allowed to back out from compromise or wriggle out of statement made before court.”

15. The petitioner has already taken advantage of the said compromise by accepting an amount of Rs.50,000/- and no reasons have been given by the petitioner to resile from the said compromise and also if she was to resile from the said compromise then why amount of Rs. 50,000/- was not returned by her. The compromise was to be honoured by both the parties in its true letter and spirit. The conduct of the petitioner appears to be mala fide and no indulgence can be shown to the petitioner while exercising powers under Section 482 Cr.P.C.

16. In view of the above, the petition is dismissed with costs of Rs.5,000/- to be paid by the petitioner to the Delhi High Court Legal Services Committee within a period of four weeks from the date of this order. Copy of deposit receipt shall be filed by the petitioner with the Registrar General of this court within one week thereafter.

October 08, 2009
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KAILASH GAMBHIR,J