

Court No. - 90

Case :- APPLICATION U/S 482 No. - 2751 of 2022

Applicant :- Harish Kumar And 2 Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Rajeev Kumar Rai

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Pathak,J.

1. Heard learned counsel for the applicants as well as learned AGA and perused the record on board.

2. No one has put in appearance on behalf of opposite party No.2.

3. As per the office report dated 22.3.2023 notice is personally served upon opposite party No.2 which has been acknowledged by this Court in its order dated 3.4.2023. Till date no one has put in appearance on behalf of opposite party No.2, despite service of notice.

4. In view of the peculiar facts and circumstances of the present case and the order proposed to be passed hereunder this Court proceeds to decide the instant application in absence of opposite party No.2 granting her liberty to move a recall application, in case, any facts or details as mentioned in the instant application are found incorrect.

5. The applicants have invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C. for quashing the entire criminal proceeding of Case No.322 of 2010 (State Vs. Harish Kumar and others) arising out of Case Crime No. 1018 of 2010, under Sections 498A, 323, 504, 506 I.P.C., Police Station Shahibabad, District Ghaziabad, pending in the court of Additional Chief Judicial Magistrate Court No.5, Ghaziabad.

6. Facts culled out from the record are that marriage of applicant No.1 and respondent No.2 was solemnized according to the Hindu rituals on 28.6.1999. However, both the parties are living separately since 2010. In the meantime, having been aggrieved with the harassment and torture for demand of dowry, opposite party No.2 has lodged an FIR being Case Crime no.1018 of 2010 dated 13.5.2010. Thereafter, several cases were filed by the

opposite party No.2 against the present applicants. Out of which one complaint case No.2443 of 2010 (New Complaint Case No. 442 of 2019) has been filed on behalf of opposite party No.2 under Section 12 of The Protection of Women from Domestic Violence Act, 2005 (in brevity D.V. Act). In the aforesaid proceeding under Section 12 of D.V. Act both the parties were inked compromise dated 9.5.2019. Having considered the compromise application dated 9.5.2019 learned trial court has passed the final order dated 10.5.2019. Certified copy of the compromise dated 9.5.2019 and certified copy of order dated 10.5.2019 have been filed as Annexure No.4 and Annexure No.5 respectively to the affidavit filed in support of the instant application. For ready reference order dated 10.5.2019 is quoted herein below :-

10.05.2019

"आज यह पत्रावली प्रस्तुत हुई। दोनों पक्ष उपस्थित हैं। पक्षकारों ने लिखित में समझौतानामा दाखिल किया। समझौतानामा बिना किसी दबाव व प्रभाव के लिखित में तहरीर व हस्ताक्षरित पक्षकारों के द्वारा हुआ है।

पक्षकार 2010 से अलग-अलग रह रहे हैं। पक्षकारों के सन्सर्ग से दो पुत्रियाँ उत्पन्न हुयी। प्रियांशु व प्रिशा अपनी माता के साथ ही रह रही है। वही अपनी माता के साथ ही भविष्य में रहती रहेगी। वही (माता) ही बच्चियों का पालन पोषण करेगी। दोनों पक्षों के मध्य 12 वाद विभिन्न-विभिन्न न्यायालयों में चल रहे हैं जिन्हें दोनों पक्ष आपसी सहमति व बयान देकर वाद समाप्त करा लेगे। सभी वाद समाप्त करा लिये जावेगे। प्रथम पक्ष व द्वितीय पक्ष 21.05.19 तक प्रथम पक्ष उक्त ... समाप्त की रजिस्ट्री द्वितीय पक्ष के नाम से करा देगी। प्रथम पक्ष द्वितीय पक्ष को तीन लाख रुपया का भुगतान इस प्रकार से करेगा कि आज दिनांक 1 लाख रुपया प्रथम पक्ष द्वितीय पक्ष को मध्यस्थ के सामने अदा करेगा जो आज नकद मेरे सामने प्रथम पक्ष ने द्वितीय पक्ष को अदा करेगा तथा शेष दो लाख रुपया का बैंक ड्राफ्ट न्यायालय के सम्मुख वाद 13 बी हिन्दू विवाह अधिनियम के अन्तर्गत प्रथम पक्ष द्वितीय पक्ष को अदा करेगा तथा पक्षकार आपसी सहमति से विवाद विच्छेद करा लेगे।

दोनों पक्ष भविष्य में एक दूसरे के विरुद्ध कोई कार्यवाही नहीं करेंगे। समझौतानामा दोनों पक्षों को पढ़कर सुना व समझा दिया गया है। समझौतानामा संलग्न है। पत्रावली वापिस की जाती है।

ह०अपठनीय

10.05.19"

//सत्यप्रतिलिपि//

7. It is submitted that in pursuance of the compromise took place between the parties, matrimonial case under Section 13B of Hindu Marriage Act has been filed before the Family Court, Ghaziabad being joint Divorce Petition No.1269 of 2019 and present applicant has executed a registered sale deed of the house (New No.C-285) measuring area 19 square yard situated in Shaheed Nagar, Village Pasouda, Pargana Loni Tehsil, District Ghaziabad in favour of respondent No.2. Apart from that bank draft of Rs.2 lakhs has also been deposited before the Family Court, through D.D. No.850730 dated 3.1.2022. Learned Family Court has acknowledged the deposit of demand draft in its order dated 24.2.2020. Copy of the order sheet dated 24.2.2020 is filed as Annexure No.8 to the affidavit filed in support of the instant application. It is further submitted that present applicants has fulfilled all the terms and conditions as arrived at between the parties in the compromise dated 9.5.2019, therefore, instant application may be allowed and criminal proceeding initiated against the present applicants, which is under challenge before this Court, may be quashed. It is further submitted that both the parties have amicably settled their dispute on their own volition and there is no grudges between them against each other.

8. To quash the cognizance/summoning order as well as criminal proceeding, learned counsel for the applicants has relied upon the following judgments of the Hon'ble Apex Court :-

(i) B.S.Joshi & Others Vs. State of Haryana & Others; (2003) 4 SCC 675.

(ii) Nikhil Merchant Vs. Central Bureau of Investigation; (2008) 9 SCC 667.

(iii) Manoj Sharma Vs. State & Others; (2008) 16 SCC 1.

(iv) *Gyan Singh Vs. State of Punjab (2012) 10 SCC 303.*

(v) *Narindra Singh & Others Vs. State of Punjab (2014) 6 SCC 466.*

9. In a judgment passed by a Three Judges' Bench of the Apex Court in the Case of ***Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and others Vs. State of Gujarat and another, reported in AIR 2017 SC 4843***, Hon'ble Supreme Court has summarized the ratio of all the cases decided earlier with respect to quashing of F.I.R./ charge-sheet/ criminal proceeding on the ground of settlement between the parties and expounded the ten categories in which application under Section 482 could be entertained for quashing the F.I.R./ charge-sheet/ criminal proceeding on the basis of compromise. Para no. 15 of the said judgement summarizing the proposition in this respect is reproduced below:-

"15. (i) Section 482 preserves the inherent power of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

(ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(vi) In exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot approximately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in

such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned;

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(x) There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

10. Learned AGA has contended that he has no objection in deciding the matter on the basis of compromise which has been duly verified by the court concerned.

11. Having considered the compromise application dated 9.5.2019 (Annexure No.4) and order dated 10.5.2019 passed by learned trial court in proceeding under Section 12 of D.V. Act (Annexure No.5), divorce petitioner under Section 13B of Hindu Marriage Act (Annexure No.7) and with the assistance of the aforesaid guidelines, keeping in view the nature of gravity and severity of the offence, which are more particular in private dispute, it is deemed proper that in order to meet the ends of justice, the present proceeding should be quashed. In result, dispute between the parties will put to an end, peace will be resorted and relationship between them will be smooth. No useful purpose would be served to keep the present matter pending inasmuch as both the parties have buried the hatchet and as the time passes, it will be difficult to prove the guilt of the accused. The continuation of criminal proceeding would cause oppression and prejudice.

12. In view of the aforesaid pronouncements of the Hon'ble Apex Court and in the light of the compromise arrived at between the

parties, on which basis proceeding u/s 12 of D.V. Act has been decided vide order dated 10.5.2019 and divorce petition u/s 13B of Hindu Marriage Act has been filed, the present application under Section 482 Cr.P.C. is hereby **allowed**. The entire criminal proceeding of Case No.322 of 2010 (State Vs. Harish Kumar and others) arising out of Case Crime No. 1018 of 2010, under Sections 498A, 323, 504, 506 I.P.C., Police Station Shahibabad, District Ghaziabad, pending in the court of Additional Chief Judicial Magistrate Court No.5, Ghaziabad is hereby **quashed**.

13. Let a copy of the order be transmitted to the concerned lower Court for necessary action.

Order Date :- 31.10.2023

Md Faisal