

Court No. - 90

Case :- APPLICATION U/S 482 No. - 2674 of 2020

Applicant :- Dushyant Singh Chuahan And 2 Others

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

Counsel for Applicant :- Manoj Kumar Shukla

Counsel for Opposite Party :- G.A.,Arvind Kumar Goswami

Hon'ble Dinesh Pathak,J.

In Re: Criminal Misc. Impleadment Application No. 2 of 2022

1. Instant impleadment application has been moved on behalf of Smt. Deepshikha wife of applicant No. 1 seeking her impleadment in the present application under Section 482 CrPC as Opposite Party No. 3.
2. Heard learned counsel for the applicant, learned AGA and perused the record.
3. The present impleadment applicant (wife) is the beneficiary of the settlement agreement dated 7.5.2022, therefore, her presence is essential in the instant matter.
4. Learned AGA has no objection to the impleadment application.
5. As such, the impleadment application is allowed and Smt. Deepshikha is permitted to be impleaded in the cause title of the instant application under Section 482 CrPC as Opposite Party No. 3.
6. Learned counsel for the applicant is permitted to carry out the amendment in the cause title of the instant application during the course of the day.

Order on Application

7. Heard learned counsel for the applicants, learned counsel for Opposite Party Nos. 2 and 3, learned AGA and perused the record.
8. The present applicants have invoked the inherent power of this Court under Section 482 CrPC beseeching the quashing of cognizance/summoning order dated 4.7.2019, bailable warrant dated 2.12.2019 as well as entire criminal proceeding of

Complaint Case No. 2003 of 2018 (Smt. Urmila Devi Vs. Dushayant Singh Chauhan and others), under Sections 498A, 323 & 506 IPC, Police Station Kalyanpur, District Sant Kabir Nagar, pending before Metropolitan Magistrate-10, District Kanpur Nagar.

9. Instant matter is arising out of matrimonial discord. Having considered the possibility of amicable settlement through process of mediation, this Court, vide order dated 21.1.2020, has referred the matter before the Mediation and Conciliation Centre of this Court to get the matter settled between the parties. For ready reference, the order dated 21.1.2020 is quoted hereinbelow:-

“Heard learned counsel for the applicants and learned A.G.A. for the State.

By means of the present application, the prayer sought by the applicants is to quash the entire proceeding of Complaint Case No.2003 of 2018(Smt. Urmila Devi Vs. Dushayant Singh Chauhan and others) under sections 498A, 323, 506 IPC, Police Station-Kalyanpur, District-Kanpur Nagar pending in the court of Metropolitan Magistrate-10, District-Kanpur Nagar and to quash the summoning order dated 04.07.2019 as well as bailable warrant dated 02.12.2019 by which the applicant were summoned by the court concerned in the aforesaid case.

It is submitted by learned counsel for the applicants that the present matter relates to matrimonial dispute and the said matter can be well settled at Mediation Centre of this Court.

It is directed that applicants shall deposit a sum of Rs.20,000/- latest by 10.02.2020 with the Mediation Centre of this Court of which 80% amount shall be paid to the opposite party no.2 for appearance before the Mediation Centre.

The matter is remitted to the Mediation Centre with the direction that the Mediation Centre shall conclude the mediation and conciliation proceedings expeditiously, preferably within a period of three months after giving notices to both the parties. It is made clear that High Court Mediation & Conciliation Centre, Allahabad is required to submit its report within a period of three months.

Thereafter, the case shall be listed in the first week of May, 2020 along with the report of High Court Mediation and Conciliation Centre, Allahabad.

Till the next date of listing, no coercive action shall be taken against the applicants in pursuance of Complaint Case No.2003 of 2018(Smt. Urmila Devi Vs. Dushayant Singh Chauhan and others) under sections 498A, 323, 506 IPC, Police Station-Kalyanpur, District-Kanpur Nagar pending in the court of Metropolitan Magistrate-10, District-Kanpur Nagar.

Only after the aforesaid amount is deposited, notice shall be issued to the parties and in the case the aforesaid amount is not deposited within the aforesaid period, this interim order shall automatically stand vacated.”

10. In pursuance of the order dated 21.1.2020, both the parties appeared before the Mediation and Conciliation Centre of this Court and got their dispute settled by settlement agreement dated 7.5.2022. Accordingly, report of successful mediation has been sent by the mediation centre on 10.5.2022. As per the conditions of the settlement agreement, the applicant (husband) and Opposite Party No. 3 (wife) have agreed for judicial separation through proceeding under Section 13B of the Hindu Marriage Act on the condition of final alimony including Stridhan to the tune of Rs. 20,00,000/-. As per statement made by the learned counsel for the applicant and learned counsel for Opposite Party Nos. 2 and 3, divorce petition under Section 13B has finally been allowed and final alimony has already been received by the wife and, now, the parties are judicial separated. For ready reference, the settlement agreement dated 7.5.2022 is quoted hereinbelow:

“The SETTLEMENT AGREEMENT entered into on 07.05 2022, between Sri Dushyant Singh Chauhan (Applicant No 1-Husband) and Smt. Deepshikha (Wife) (D/O-OP. No. 2).

WHEREAS

1. Disputes and differences had arisen between the Parties hereto Application U/S 482 No. 2674 of 2028 as filed before the Hon'ble High Court.

2. The matter was referred to mediation/conciliation vide order dated 21.01.2020 passed by bench of Hon'ble Rahul Chaturvedi.J.

2. The parties agreed that Mr. D.C. Tripathi and Mr. R.Y. Pandey, Advocates would act as their Conciliator/Mediator, in the Mediation Case No. 0422/2021.

3. Several joint and separate meetings were held during the process of Conciliation/Mediation on 09-03-2021, 03-04-2021, 18-09-2021, 25-09-2021, 30-10-2021, 20-11-2021, 04-12-2021, 18-12-2021, 26-03- 2022, 16-04-2022 and 07-05-2022 the parties have with the assistance of the Mediator Conciliator voluntarily arrived at an amicable solution resolving the above-mentioned disputes and differences.

5. The marriage of Sri Dushyant Singh Chauhan (Applicant No, 1-Husband) and Smt. Deepshikha (Wife) (D/O-O.P. No. 2) was solemnized on 06.02.2017. Out of aforesaid wedlock, parties have no issue. The parties have been living separately since April, 2018.

6 The parties hereto confirm and declare that they have voluntarily and of their own free will arrived at this Settlement Agreement in the presence of the Mediators/Conciliators.

7. In view of the Interim Settlement Agreement dated 16.04.2022. The following settlement has been arrived at between the Parties hereto:-

1. That the parties have mutually decided to take divorce and in this regard they have filed a divorce petition u/s 13-B of the Hindu Marriage Act before the Principal Judge, Family Court, Kanpur Nagar which is registered as Case Suit No. 1174 of 2022. The certified copy of aforesaid divorce petition is being annexed to this settlement-agreement for kind perusal of the Hon'ble Court.

2. That it has been agreed between the parties that the applicant-husband shall pay a permanent alimony including Stridhan of Rs. 20,00,000/- (Rupees Twenty Lakh only) to the wife by way of demand draft.

3. That on 16.04.2022 the applicant-husband has produced two demand drafts bearing no. 007218 & 007217 both dated 24.03.2022 for Rs. 5,00,000/- (Rupees Five Lakh only) & Rs. 4,00,000/- (Rupees Four Lakh only) both drawn on Central Bank of India in favour of wife namely Deepshikha and the same has been handed over today i.e. 07.05.2022 to the wife and she has acknowledged the receipt of the same.

4. That it has been agreed between the parties that the remaining amount i.e. Rs. 11,00,000/- (Rupees Eleven Lakh only) shall be paid by Sri Dushyant Singh Chuahan (Applicant No. 1-Husband) to Smt. Deepshikha (Wife) (D/O-O.P. No. 2) at the time of final judgment in Case No. 1174 of 2022 pending in Family Court, Kanpur Nagar by way of demand draft.

5. That it has also been agreed between the parties that all civil and criminal cases filed by them against each other regarding present matrimonial dispute shall be withdrawn by the parties concerned by taking appropriate steps before the Court/authority concerned.

6. That it has been agreed between the parties that they shall not violate the terms and conditions of this settlement otherwise the aggrieved party will be free to take legal recourse.

8. -By signing this Agreement the Parties hereto state that the Application U/S 482 No. 2674 of 2020 and all disputes and differences in this regard have been amicably settled by the Parties hereto through the process of Conciliation/Mediation.”

11. It has been submitted that both the parties have settled their dispute and entered into compromise on their own volition without any duress or coercion. They are living separately and leading their peaceful life. Learned counsel for the applicants further submits that, in the above eventuality of the settlement agreement took place between the parties, the instant

application may be allowed and the criminal proceeding initiated against the present applicants may be quashed. It is further submitted that both the parties have buried the hatchet and there is no grudges between them against each other. To quash the cognizance order as well as criminal proceeding, learned counsel for the applicant 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.

12. In a recent 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."

13. Learned AGA has no objection, in case, the instant application is decided by this Court on the basis of settlement agreement took place between the parties.

14. Learned counsel for the opposite party No. 2 has nodded the

factum of the settlement agreement entered into between the parties and he has no objection, if the instant application is decided finally on the basis of the said settlement agreement. He also submits that Opposite Party Nos. 2 and 3 do not want to prosecute the present case against the applicant any more as no dispute remains between the parties.

15. Having considered the settlement agreement 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.

16. In view of the aforesaid pronouncements of the Hon'ble Apex Court and in the light of the settlement agreement took place between the parties before the Mediation and Conciliation Centre of this Court, the present application under Section 482 Cr.P.C. is hereby allowed. The entire criminal proceeding of the aforementioned case is hereby quashed.

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

Order Date :- 24.11.2023

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