

Court No. - 90

Case :- APPLICATION U/S 482 No. - 14931 of 2018

Applicant :- Muneer And 6 Others

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

Counsel for Applicant :- Sharib Salaman Ahmad Ansari, Amir Khan, Ashutosh Kumar Mishra, Mohd. Afzal

Counsel for Opposite Party :- G.A., Fasiha Fatma

Hon'ble Dinesh Pathak, J.

Order on Recall Application No. 4 of 2020 :-

1. Heard learned counsel for the applicants and learned counsel for opposite party no. 2.
2. Instant recall application has been moved on 12.02.2020 against the order dated 10.02.2020 by which application under Section 482 Cr.P.C. has been dismissed for want of prosecution.
3. Learned counsel for opposite party no. 2 has no objection if the instant application is allowed.
4. Cause shown for non appearance of counsel for the applicants on the date of hearing has been explained to the satisfaction of the Court.
5. Instant application no. 4 of 2020 is allowed and the original application filed under Section 482 Cr.P.C. is restored to its original number.

Order on Application under Section 482 Cr.P.C. :-

1. Supplementary affidavit filed by learned counsel for the applicant is taken on record.
2. Heard learned counsel for the applicant and learned counsel for opposite party no. 2 as well as the learned A.G.A. for State.
3. The applicant has invoked inherent jurisdiction of this Court beseeching the quashing of charge-sheet dated 28.12.2017 bearing no. 01 of 2017 arising out of Case Crime No. 129 of 2017 under Section 498-A, 307, 377, 354 I.P.C. read with section 3/4 D.P. Act,

P.S. Dibai, District Bulandshahr and the entire proceeding of Case No. 6769 of 2018 (State vs. Muneer & Others) arising out of Case Crime No. 129 of 2017 under Section 498-A, 307, 377, 354 I.P.C. read with section 3/4 D.P. Act, P.S. Dibai, District Bulandshahr.

4. Respondent no. 2 has lodged an F.I.R. against her in-laws and husband levelling allegations of cruelty and torcher for demand of dowry. Initially, the matter was referred to the Mediation Centre, however, same could not be successful. In the meantime, instant applicant was dismissed for want of prosecution. Thereafter the present applicants have moved anticipatory bail application before this Court being Criminal Misc. Anticipatory Bail Application under Section 438 Cr.P.C. No. 1569 of 2022. In the said anticipatory bail application the matter was referred to the Mediation Centre for exploring the possibility of amicable settlement between the parties. Ultimate, parties have arrived at compromise and settled their dispute according to settlement agreement signed by the parties and the concerned officer of the Mediation Centre. Copy of the final settlement agreement dated 16.11.2022 has been annexed as S/A-1 to the supplementary affidavit filed today. For ready reference settlement agreement dated 16.11.2022 is quoted herein below:-

"The SETTLEMENT AGREEMENT entered into on 16.11.2022, between Sri Muneer Alumad, husband. (A Applicant) and Sms Shadma Parveen, wife (O.P. No. 2). WHEREAS -

1. Disputes and differences had arisen between the Parties hereto and CRIMINAL MISC. ANTICIPATORY BAIL APPLICATION U/S 438 CR.FC No. 1569 of 2022 was filed in the High Coun

2. The matter was referred to mediation/conciliation vide order date 10.03.2022 by Hon'ble Ajay Bhanot, J.

3. The parties agreed that Ms. Shobha Srivastava and Mr. Afzal Ahmad, Advocates would act as their Conciliator/Mediator, in the Mediation Case No. 1131/2022.

4. Several joint and separate meetings were held during the process of Conciliation/Mediation on 18.05.2022, 22.06.2022, 13.07.2022, 27.07.2022, 28.09.2022, 11.10.2022 and 16.11.2022 the parties have with the assistance of the Mediators/Conciliators voluntarily arrived at an amicable solution resolving the above-mentioned disputes and differences.

5. 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 Mediator/Conciliator.

6. That in view of the Interim Settlement dated 27.07.2022 and 07.09.2022 the

following settlement has been arrived at between the Parties hereto:-

a) That the marriage (Nikah) of Sri Muneer Ahmad, husband, (M/o Applicant) and Smt. Shadma Parveen, wife (O.P. No. 2) was solemnized 03.04.2016. Due to strained relationship parties have been living separately since after 02 months of their marriage. Out of aforesaid wedlock parties have no issue.

b) That as per Interim Settlements, Sri Muneer Ahmad, husband, (M/o Applicant) and Smt. Shadma Parveen, wife (O.P. No. 2) have decided to take mutual divorce (Talaq) according to Muslim Law on the condition of a permanent alimony of Rs. 8.25 Lacs (Rs, eight lakhs twenty five thousand only), which consists amount of Mehar, maintenance of wife and Iddat Period which shall be given by the husband to the wife in 02 installments.

c) That the husband has produced demand drafts of its 8.25 Lakhs (Rs eight lakhs twenty five thousand only) bearing No. 000450 dated 01.09.2022 for Rs. 7.50 Lakhs and bearing No. 000456 dated 23.09.2022 for Rs. 75,000/- both the demand drafts are issued by HDFC Bank and drawn in favour of wife, which have been handed over to her today and she has acknowledged the receipt of the same.

d) That parties have produced a Talaqnama prepared on a Rs. 100/- stamp paper duly notarized signed by the parties which is being annexed to this Settlement Agreement.

e) That hereafter parties have no further claim against each other of any nature with regard to the present case and will not litigate in future against each other with regard to the present case.

f) That it has been agreed between the parties that they shall comply with the terms and conditions of this settlement.

g) That it has been agreed between the parties that the all Criminal and Civil cases filed by them or their family members against each other shall be set aside/withdrawn/quashed by them by taking appropriate steps before the Court/Authorities concerned within one month from this Settlement Agreement.

7. By signing this Agreement the Parties hereto state that they have no further claim against each other with respect to CRIMINAL MISC. ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C No. 1569 of 2022 and all disputes and differences in this regard have been amicably settled by the Parties hereto through the process of Conciliation/ Mediation."

5. It is stated that all the terms and conditions of the settlement agreement dated 16.11.2022 has been complied with in its true spirit and parties have buried their hatchet. There is no grievance against each other and they are living separately. Final alimony has already been received by wife in terms of settlement. It is further submitted that, in light of the settlement agreement dated

16.11.2022, instant application may be allowed and the criminal proceeding may be quashed. To quash the cognizance 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.

6. 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 misdemeanor. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

7. Learned A.G.A. has no objection, in case, the instant application is decided by this Court on the basis of compromise took place between the parties, which is duly verified by the court concerned.

8. Learned counsel for the opposite party No. 2 has nodded the factum of the compromise entered into between the parties and he has no objection, if the instant application is decided finally on the basis of the said compromise. He also submits that compromise was verified in presence of both the parties, who have voluntarily entered into compromise and opposite party no. 2 does not wants to prosecute the present case against the applicant any more as no dispute remains between the parties.

9. Having considered the compromise verification report, compromise verification order 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.

10. In view of the aforesaid pronouncements of the Hon'ble Apex

Court and in the light of the settlement agreement dated 16.11.2022 inked between the parties, before the Mediation and Conciliation Centre of this Hon'ble Court, the present application under Section 482 Cr.P.C. is hereby allowed. The entire criminal proceeding of the aforementioned case is hereby quashed.

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

Order Date :- 30.10.2023

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