

Court No. - 90

1. Case :- APPLICATION U/S 482 No. - 20711 of 2022

Applicant :- Ramsurat And 3 Others

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

Counsel for Applicant :- Santosh Kumar Tiwari,Shiwendra Pratap Shahi

Counsel for Opposite Party :- G.A.,Girish Vishwakarma

WITH

2. Case :- APPLICATION U/S 482 No. - 25160 of 2022

Applicant :- Manju And 4 Others

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

Counsel for Applicant :- Santosh Yadav

Counsel for Opposite Party :- G.A.

3. Case :- APPLICATION U/S 482 No. - 13909 of 2022

Applicant :- Jitendra Kumar Yadav And 3 Others

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Santosh Kumar Tiwari,Shiwendra Pratap Shahi

Counsel for Opposite Party :- G.A.

4. Case :- APPLICATION U/S 482 No. - 15838 of 2023

Applicant :- Jitendra Kumar Yadav

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

Counsel for Applicant :- Santosh Kumar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Pathak,J.

1. All the aforesaid matters are arising out of matrimonial discord between the parties for the following reliefs :

On Application No.20711 of 2022

"Therefore, is most respectfully prayed that this Hon'ble Court may very kindly be pleased to allow this application and quash the Summoning order dated 18.04.2022 (Kanhaiya Lal Yadav Vs. Ramsurat and others) Complaint Case No. 2092/2022 Under Sections 323, 504, 506, 379 and 406 of Indian Penal Code, 1860 passed by Addition Chief Judicial Magistrate Kasya, District- Kushinagar and further quash the entire proceeding of Complaint Case No. 2092/2022 Under Sections 323,504, 506, 379 and 406 of Indian Penal Code, 1860 passed by Additional Chief Judicial Magistrate Kasya, District- Kushinagar, otherwise the applicants shall suffer irreparable loss and injury."

On Application No. 25160 of 2022

"Therefore, it is most respectfully prayed that this Hon'ble Court may very kindly be pleased to allow this application and quash the Summoning order

dated 06.05.2022 passed by Additional Chief Judicial Magistrate Kasya, District- Kushinagar in Complaint Case No. 2094/2022 (Kanhaiya Lal Yadav Vs. Ramsurat and others) Under Sections 494 and 120-B of Indian Penal Code, 1860 and further quash the entire proceeding of Complaint Case No. 2094/2022 Under Sections 494 and 120-B of Indian Penal Code, 1860 pending before the Additional Chief Judicial Magistrate Kasya, District-Kushinagar, otherwise the applicants shall suffer irreparable loss and injury."

On Application No. 13909 of 2022

"Therefore, it is most respectfully prayed that this Hon'ble Court may very kindly be pleased to allow this application and quash the Summoning order dated- 16.03.2022 (Kanhaiya Lal Yadav Vs. Jitendra Kumar and others) Complaint Case No. 1055/2022 Under Sections 498-A, 323, 504, 506, and 427 of Indian Penal Code, 1860 Passed by Additional Chief Judicial Magistrate, District- Kushinagar and further quash the entire proceeding of Complaint Case No. 1055/2022 Under Sections 498-A, 323, 504, 506, and 427 of Indian Penal Code, 1860, pending before the court of Additional Chief Judicial Magistrate, District- Kushinagar, otherwise the applicants shall suffer irreparable loss and injury."

On Application No. 15838 of 2023

"It is, therefore, Most Respectfully prayed that this Hon'ble Court may kindly be pleased to allow the present application and quash the entire of Complaint Case No.6104 of 2021 (Kanhaiya Yadav Vs. Ramsurat and others) as well as summoning order dated 12.01.2023, under Section 494 I.P.C., Police Station-Kotwali Hata, District-Kushinagar, pending in the Court of Additional Chief Judicial Magistrate, Kasya, Kushinagar, in the interest of justice."

2. Heard Sri V.M. Tripathi, holding brief of Sri Santosh Yadav, appearing for the applicant in Application No.25160 of 2022 and Sri Santosh Kumar Tiwari appearing for the applicant in remaining three cases, Sri Girish Vishwakarma appearing for the respondent no.2, namely, Kanhaiya Lal Yadav in Application U/S.482 No. 20711 of 2022.

3. For convenience, Application under Section 482 No.20711 of 2022 is being taken as the leading case. It is submitted that the instant matter is arising out of matrimonial discord. The marriage of Jitendera Kumar Yadav (applicant no.4) was solemnized with the sister of respondent no.2. Having been dissatisfied with the alleged behavior of in-laws, many complaints/police cases have been filed against the husband and his immediate relatives. During pendency of the proceedings, both parties have arrived at a compromise and settled their dispute amicably. Having considered the amicable settlement that took place between the parties, this

Court vide order dated 30.05.2023, has referred the matter to the Mediation and Conciliation Center to explore the possibility of reconciliation between the parties through process of mediation. In compliance of order dated 30.05.2023, both the parties have appeared before the Mediation and Conciliation Center. After initial negotiation, an interim settlement agreement took place on 03.08.2023. Thereafter, both the parties have inked the final settlement agreement dated 24.08.2023 with an understanding that both parties will live apart, with the final alimony amounting to Rs.20,00,000/-. Out of that Rs.10,00,000/- has been paid by the husband to the wife and daughter; however, the remaining Rs.10,00,000/- has been promised to be paid at the time of final decision in Divorce Petition being Case No.527 of 2023, under Section 13-B of Hindu Marriage Act, 1955.

4. For ready reference, the final settlement agreement dated 24.08.2023 is quoted hereinbelow:

*"ALLAHABAD HIGH COURT MEDIATION AND CONCILIATION CENTRE
SETTLEMENT AGREEMENT*

This SETTLEMENT AGREEMENT entered into on 24.08.2023, between Jitendra Kumar Yadav (Applicant No. 4-Husband) and Sima Yadav (wife) (Sister of O.P. No. 2).

WHEREAS

1. Disputes and differences had arisen between the Parties hereto Application U/S 482 No. 20711 of 2022 as filed before the Hon'ble High Court.

2. The matter was referred to mediation/conciliation vide order dated 30.05.2023 passed by bench of Hon'ble Shekhar Kumar Yadav,J.

3. The parties agreed that Mr. B.N. Mishra, Advocate would act as their Conciliator/Mediator, in the Mediation Case No. 2367/2023.

4. Several joint and separate meetings were held during the process of Conciliation/ Mediation on 15-06-2023, 13-07-2023, 20-07-2023, 03-08-2023 and 24-08-2023 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 Jitendra Kumar Yadav (Applicant No. 4-Husband) and Sima Yadav (wife) (Sister of O.P. No. 2) was solemnized on 01.07.2009. Out of aforesaid wedlock, parties have a daughter namely Aradhya Yadav (at present aged about 06 years). The parties have been living separately since March, 2022.

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 Agreements dated 03.08.2023, the following settlement has been arrived at between the Parties hereto:-

a) That the parties have filed a petition u/s 13-B of Hindu Marriage Act before the Family Court, Kushinagar which is registered as Case No. 527 of 2023. The certified copy of the aforesaid divorce petition is being annexed to this settlement-agreement for kind perusal of the Hon'ble Court.

b) That it has been agreed between the parties that the applicant no. 4-husband shall pay one time settlement amount of Rs.20,00,000/- (Rupees Twenty Lakh only), in which Rs.10,00,000/- (Rupees Ten Lakh only) towards permanent alimony, Stridhan of the wife and Rs. 10,00,000/- (Rupees Ten Lakh only) towards maintenance of aforesaid daughter namely, Aradhya Yadav by way of demand drafts. After receiving payment of this settled amount, Sima Yadav (wife) (Sister of O.P. No. 2) agrees that she shall not stake of any other claim of any nature whatsoever, claiming any further assistance/maintenance from the Jitendra Kumar Yadav (Applicant No. 4-Husband) She also agrees that she shall not stake any claim in the property of Jitendra Kumar Yadav (Applicant No. 4-Husband) or his family members.

c) That on 03.08.2023, the applicant no.4-husband has produced a demand draft bearing no. 663032 dated 28.07.2023 drawn on State Bank of India for Rs.5,00,000/- (Rupees Five Lakh only) in favour of Sima Yadav (wife) and the same has been handed over to the wife today i.e. 24.08.2023 and she has acknowledged the receipt of the same.

d) That as agreed between the parties in Paragraph No. 6 (c) of the interim settlement dated 03.08.2023 the applicant no. 4-husband has handed over a FDR of Rs.5,00,000/- (Rupees Five Lakh only) in favour of Aradhya Yadav under the guardianship of her mother namely Sima Yadav today i.e. 24.08.2023 and she has acknowledged the receipt of the same.

e) That it has been agreed between the parties that the remaining amount i.e. Rs. 10,00,000/- (Rupees Ten Lakh only) shall be paid by Jitendra Kumar Yadav (Applicant No. 4-Husband) and Sima Yadav (wife) (Sister of O.P. No. 2) at the time of final judgment in Case No. 527 of 2023 pending in Family Court, Kushinagar by way of demand draft.

f) 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.

g) That the parties will not file any fresh case against each other in respect of this matrimonial dispute. They have no claim against each other in future also.

h) 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. 20711 of 2022 and all disputes and differences in this regard have been amicably settled by the Parties hereto through the process of Conciliation/Mediation.

DATE: 24.08.2023"

5. It is submitted that the terms and conditions of the settlement agreement dated 24.08.2023 has been complied with by the parties. However, the remaining alimony in pursuance of the settlement agreement would be paid at the time of the final decision of the divorce petition. In paragraph No.7(f) of the settlement agreement, it has been agreed upon by the parties that they withdraw their cases filed by them against each other.

6. In the light of the settlement agreement that took place between the parties before the Mediation and Conciliation Center, learned counsel for the applicants has prayed to allow the instant application and quash the criminal proceedings against the husband and all his family members. It is further submitted that both the parties have arrived at a compromise on their own volition without any duress and coercion. They have buried the hatchet and no grudges against each other. They are leading their own lives separately without any grievance 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.

7. 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."

8. Learned AGA has no objection, in case, the aforesaid captioned cases are decided by this Court on the basis of compromise took place between the parties before the Mediation Centre.

9. 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 settlement agreement. He also submits that both the parties have voluntarily entered into compromise and opposite party no. 2 does not want to prosecute the present case against the applicants any more as no dispute remains between the parties.

10. Having considered the settlement agreement dated 24.08.2023 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.

11. In view of the aforesaid pronouncements of the Hon'ble Apex Court and in the light of the settlement agreement arrived at between the parties, the aforesaid four captioned Applications under Section 482 Cr.P.C. are hereby allowed. The entire criminal proceeding under challenge in the aforementioned four cases are hereby quashed.

12. Before parting with the matter, learned counsel for the parties have jointly prayed for the expeditious disposal of the Divorce Petition being case No.527 of 2023 Under Section 13-B of Hindu Marriage Act, 1955 which is pending in the Court of Principal Judge, Family Court, Padrauna, Kushi Nagar.

13. Considering the peculiar facts and circumstances of the present case, the learned Principal Judge, Family Court, Padrauna, Kushi Nagar, is hereby directed to decide the Divorce Petition as mentioned above on the next date fixed.

14. It is made clear that the order passed in the aforesaid four captioned cases shall be subject to decision on the divorce petition under Section 13-B of the Hindu Marriage Act, 1955.

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

Order Date :- 15.12.2023/vkg