

Court No. - 90

Case :- APPLICATION U/S 482 No. - 21509 of 2022

Applicant :- Ravi Malhotra

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

Counsel for Applicant :- Pranshu Dwivedi, Ram Prakash Dwivedi

Counsel for Opposite Party :- G.A., Gaurav Sharma

Hon'ble Dinesh Pathak, J.

1. Heard learned counsel for the applicants, learned opposite party No. 2, learned AGA and perused the record.
2. The present applicants have invoked the inherent power of this Court under Section 482 CrPC beseeching the quashing of order dated 7.10.2021 as well as entire criminal proceeding of Criminal Case No. 9378 of 2020 (Smt. Neha Malhotra Vs. Ravi Malhotra and others), under Sections 498A, 377, 323, 504, 506 IPC and 3/4 Dowry Prohibition Act, Police Station Shahganj, District Agra including order dated 8.6.2022 passed by Sessions Judge, Agra in Criminal Revision No. 1 of 2022 (Ravi Malhotra Vs. State of UP and another) pending before court of Special Chief Judicial Magistrate, Agra on the basis of compromise.
3. Arising out of matrimonial discord, the complaint has been lodged on behalf of Opposite Party No. 2. During pendency of criminal proceedings, both the parties have amicably settled their dispute and entered into compromise. On the request made on behalf of the learned counsel for the parties, this Court, vide order dated 4.8.2022, has referred the matter before the Mediation Centre to explore the possibility of conciliation between the parties. For ready reference, the order dated 4.8.2022 is quoted hereinbelow:-

"आवेदक की ओर से धारा 482 दंड प्र 0 सं 0 के अन्तर्गत यह आवेदन पत्र, परिवाद वाद सं 0 9378 सन 2020, अन्तर्गत धारा 498-ए, 377, 323, 504, 506 भा 0 दंड वि 0 एवं 3/4 दहेज प्रतिषेध अधिनियम, थाना शाहगंज, जिला आगरा में स्पेशल सी 0 जे 0 एम 0, आगरा द्वारा पारित आदेश दि 0 7-10-2021 तथा दण्डिक निगरानी सं 0 01 सन 2022 में सेशनस जज द्वारा पारित आदेश दि 0 8-6-2022 के विरुद्ध दायर किया गया है।

आवेदक के विद्वान अधिवक्ता, विपक्षी सं 0 2 के विद्वान अधिवक्ता एवं विद्वान अपर शासकीय अधिवक्ता को सुना तथा पत्रावली का परिशीलन किया।

आवेदक के विद्वान अधिवक्ता का कथन है कि इस मामले में पक्षकारों के मध्य सुलह-

समझौता हो जाने की उम्मीद है, तथा इस प्रकरण को किसी मध्यस्थ के माध्यम से पक्षकार आपसी मतभेद को दूर करके सुलह-समझौता कर लेंगे। इसलिए इसे मीडिएशन एण्ड कान्सीलिएशन सेन्टर को सन्दर्भित कर दिया जाय।

विपक्षी सं० 2 के विद्वान अधिवक्ता का भी कथन है कि विपक्षी सं० 2 सुलह-समझौता करने को तैयार है।

वाद की परिस्थितियों एवं उनके तर्कों के दृष्टिगत आवेदक को निर्देशित किया जाता है कि वह आज से 2 सप्ताह के अन्दर मीडिएशन एण्ड कान्सीलिएशन सेन्टर के समक्ष रु० 30,000/- जमा करें। आवेदक द्वारा उक्त धनराशि जमा करने पर, मीडिएशन सेन्टर द्वारा तिथि नियत करके पक्षकारों को नोटिस भेजी जाएगी तथा नियत तिथि पर विपक्षी सं० 2 के मीडिएशन सेन्टर में उपस्थित होने पर रु० 20,000/- उसे प्रदान कर दिया जाय। शेष रु० 5,000/- **ARMED FORCES BATTLE CASUALTIES WELFARE FUND** के मद में जमा किया जाएगा तथा रु० 5,000/- मीडिएशन एण्ड कान्सीलिएशन सेन्टर के खर्च के मद में जमा किया जाएगा।

इस प्रकरण को मीडिएशन एण्ड कान्सीलिएशन सेन्टर के समक्ष इस आशय से संदर्भित किया जाता है कि पक्षकारों के मध्य नियमानुसार सुलह-समझौता कराने का प्रयास त्वरित गति से यथासंभव 3 माह के अन्दर किया जाय। तत्पश्चात मीडिएशन एण्ड कान्सीलिएशन सेन्टर की आख्या के साथ इस वाद को उपयुक्त न्यायपीठ के समक्ष सूचीबद्ध किया जाय।

यहाँ पर यह स्पष्ट किया जाता है कि यदि आवेदक द्वारा मीडिएशन एण्ड कान्सीलिएशन सेन्टर के समक्ष रु० 30,000/- जमा कर दिया जाता है तो अगली नियत तिथि तक आवेदक के विरुद्ध उपरोक्त लम्बित कार्यवाही सुषुप्तावस्था में रहेगी तथा यदि आवेदक द्वारा मीडिएशन एण्ड कान्सीलिएशन सेन्टर के समक्ष नियत समय के अन्दर रु० 30,000/- नहीं जमा किया जाता है तो इस आदेश द्वारा उसे प्रदत्त अन्तरिम राहत स्वतः निष्प्रभावी माना जाएगा।

दि०: 4-8-2022

के० सी० सिंह "

4. In pursuance of the order passed by this Court, the parties have amicably arrived at settlement through the process of mediation and accordingly Mediation Centre has submitted positive settlement report dated 9.2.2023 acknowledging the settlement took place between the parties.

5. A perusal of the record reveals that initially interim settlement was made on 12.1.2023. Thereafter, final settlement arrived at between the parties on 9.2.2023. For ready reference, final settlement agreement dated 9.2.2023 quoted hereinbelow:

"This SETTLEMENT AGREEMENT entered into on 09.02.2023, between Sri Ravi Malhotra (Applicant No. 1-Husband) and Smt. Neha Bhugra (Malhotra) (O.P. No. 2-Wife),

WHEREAS

1. Disputes and differences had arisen between the Parties hereto Application U/S 482 No. 21509 of 2022 as filed before the Hon'ble High Court.

2. The matter was referred to mediation / conciliation vide order dated 04.08.2022 passed by bench of Hon'ble Dr. Gautam Chowdhary,J.

3. The parties agreed that Ms. Mridul Tripathi and Ms. Sunita Jain, Advocates would act as their Conciliator/Mediator, in the Mediation Case No. 3777/2022.

4. Several joint and separate meetings were held during the process of Conciliation/ Mediation on 01-12-2022, 12-01-2023 and 09-02-2023 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 Sri Ravi Malhotra (Applicant No. 1-Husband) and Smt. Neha Bhugra (Malhotra) (O.P. No. 2-Wife) was solemnized 11.05.2018. Out of aforesaid wedlock, parties have no issue. The parties have been living separately since 12.11.2020.

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

7. In view of the Interim settlement Agreements dated 12.01.2023, 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, Agra which is registered as Case No. 277 of 2023. The parties stated that all the terms and conditions of the settlement has also been mentioned in aforesaid divorce petition, which forms a part of the settlement. 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-husband shall pay one time settlement amount of Rs. 19,00,000/- (Rupees Nineteen Lakhs only) which includes permanent alimony and Stridhan of the wife by way of Demand Draft.

c) That on 12.01.2023, the applicant-husband has produced a demand draft bearing no. 005410 dated 09.01.2023 drawn on Axis Bank for Rs. 9,50,000/- (Rupees Nine Lakhs Fifty Thousand only) in favour of Neha Bhugra (wife) and the same has been handed over to the wife today i.e. 09.02.2023 and she has acknowledged the receipt of the same.

d) That as para 7(d) of the Interim Settlement Agreement dated 12.01.2023 the O.P. No. 2-wife has received the articles/belongings on 31.01.2023 and in this regard she has produced a list of the aforesaid articles/belongings which is being annexed to this settlement-agreement for kind perusal of the Hon'ble Court.

e) That it has been agreed between the parties that the remaining amount i.e. Rs. 9,50,000/- (Rupees Nine Lakhs Fifty Thousand only) shall be paid by Sri Ravi Malhotra (Applicant No. 1-Husband) to Smt. Neha Bhugra (Malhotra) (O.P. No. 2-Wife) at the time of final judgment in Case No. 277 of 2023 pending in Family Court, Agra by way of demand draft.

f) That it has been agreed between the parties that to close ICICI Saving Bank account in the name of both to be closed till 15.02.2023.

g) 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.

h) 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.

i) 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. 21509 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: 09.02.2023"

6. Learned counsel for the applicants submits that, in the above eventuality of the settlement agreement dated 9.2.2023 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 entered into settlement agreement through process of mediation on their own volition and without any duress. 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.

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 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.

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 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.

10. Having considered the settlement agreement dated 9.2.2023 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 compromise arrived at between the parties, which has been duly verified by the concerned court below, the present application under Section 482 Cr.P.C. is hereby allowed. The entire criminal proceeding

of the aforementioned case is hereby quashed.

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

Order Date :- 12.10.2023

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