

Court No. - 90

Case :- APPLICATION U/S 482 No. - 20760 of 2016

Applicant :- Firoz Rahman And 4 Others

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

Counsel for Applicant :- Rajesh Kumar Srivastava

Counsel for Opposite Party :- G.A.,Qazi Vakil Ahmad

Hon'ble Dinesh Pathak,J.

1. Heard Shri Rajesh Kumar Srivastava, learned counsel for the applicant and learned A.G.A for the State. No one has put in appearance on behalf of respondent no.2.

2. The applicants have invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C. for quashing of the charge sheet dated 16.02.2016 filed in Case No.25547 of 2016, arising out of Case Crime No.52 of 2015, under Sections 498-A, 504, 506 and 406 I.P.C. and Section 3/4 of D.P. Act, Police Station Mahila Thana, District Kanpur Nagar.

3. Having been aggrieved with the behaviour of her in-laws, private-respondent no.2 has lodged an FIR levelling allegation of cruelty and harassment for demand of dowry. During pendency of the proceeding both the parties have amicably settled their dispute and inked compromise dated 07.09.2015. Copy of the compromise application dated 07.09.2015 has been filed as Annuexure No.3 to the instant application. As per compromise, husband was under liability to pay Rs.3 lakhs and Rs.17,000/- to the wife (respondent No.2). Having considered the amicable settlement between the parties, this court vide order dated 13.07.2016, issued a direction to the court concerned for verification of the compromise. It is stated at the bar that after separation (talak) both the parties have solemnized their second marriage with different person.

4. For ready reference the order dated 13.07.2016 is quoted herein below :-

"Heard learned counsel for the applicant and learned A.G.A. for the State.

Present application has been filed for quashing of the charge-sheet dated 16.2.2016 in Case No. 25547 of 2016 arising out of Case Crime No. 52/2015 under Section 498A, 323, 504, 506, 406 I.P.C. and 3/4 D.P. Act, Police Station Mahila Thana, District Allahabad.

Submission of learned counsel for the applicants is compromise had already taken place between the parties, copy whereof has been annexed as Annexure-3 to the affidavit filed in support of the present application.

On the basis of compromise deed dated 13.9.2015 it has been prayed before this Court that the proceedings be quashed keeping in mind the law laid down by the Apex Court in the case of **Gian Singh Vs. State of Punjab (2012) 10 SCC 303**.

Whether a compromise has taken place or not can best be ascertained by the court concerned before whom the proceedings are pending after ensuring the presence of the parties before it.

In view of the above, list this case on 28.9.2016. In the meantime, the court below will proceed to fix a date for securing the presence of the parties to the proceedings before it and proceed thereafter to ascertain the veracity of the compromise. If the said compromise is verified, the same shall be made part of the record and report to that effect will be prepared and the parties would be allowed to obtain certified copy thereof.

Till the next date of listing, if within two weeks from today a certified copy of this order is produced before the court below with an application to verify a compromise already placed on record, no coercive steps would be taken against the applicant till verification of the compromise in accordance with the observations made herein above. "

5. In pursuance of the order dated 13.07.2016 passed by this court learned trial court has verified the compromise, vide order dated 16.11.2019. Certified copy of verification order dated 16.11.2019 has been filed by the applicants as Annexure No.SA-1 to the supplementary affidavit dated 08.09.2022. At later stage, present applicant has filed the supplementary affidavit dated 14.02.2023 with an averment that he has given a bank draft bearing No.507819 of ICICI Bank amounting Rs.3 lakhs and Cheque bearing No.83596 dated 29.07.2017 amounting Rs.17,000/- to the respondent no.2 as per the condition of the compromise arrived at between the parties. It is submitted that both parties have filed their joint affidavit dated 31.08.2017 before the court below intending to decide the matter on the basis of compromise Photostat copy of the joint affidavit dated 31.08.2017, photostat copy of the bank draft amounting Rs.3 lakhs have collectively been filed as Annexure No.SA-1 to the supplementary affidavit dated 14.02.2023.

6. Perusal of the compromise verification order dated 16.11.2019 reveals that both the parties have appeared before the court below along with their respective learned counsels and stated that they have entered into compromise without any duress.

7. Learned counsel for the applicant, in the eventuality of compromise took place between the parties and the verification of compromise by the court competent in pursuance of the order passed by this court, has submitted that instant application may be allowed and the criminal proceeding initiated against the present applicant may be quashed. It is further submitted that both the parties have entered into compromise on their own volition and buried the hatchet and living peacefully and they have no grudges between them against each other.

8. 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.

9. 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."

10. Learned A.G.A for the State-respondent has no objection in deciding the instant application in the light of amicable settlement took place between the parties which has been duly verified by court concerned.

11. With the assistance of the aforesaid guidelines and having considered the compromise verification order dated 16.11.2019 and the joint affidavit dated 31.08.2017 filed by the parties before the court below and 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, 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 proceedings and the charge sheet dated 16.02.2016 filed in Case No.25547 of 2016, arising out of Case Crime No.52

of 2015, under Sections 498-A, 504, 506 and 406 I.P.C. and Section 3/4 of D.P. Act, Police Station Mahila Thana, District Kanpur Nagar, are hereby quashed.

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

Order Date :- 17.10.2023/A Gautam