

Court No. - 27**Case :- APPLICATION U/S 482 No. - 1280 of 2022****Applicant :- Azhar Hussain Khan And 2 Others****Opposite Party :- State Of U.P Thru. Prin. Secy. Home And Another****Counsel for Applicant :- Sachin Upadhyay, Mohammad Irfan, Utkarsh Srivastava****Counsel for Opposite Party :- G.A., Mahmood Alam, Rahul Tiwari****Hon'ble Shamim Ahmed, J.**

1. Heard Sri Mohammad Irfan, learned counsel for applicant as well as Sri Mayank Dwivedi, Advocate holding brief of Mahmood Alam, learned counsel for the opposite party no.2 and Sri Ashok Kumar Srivastava, learned A.G.A., for the State as well as perused the record.
2. Instant application under Section 482 CrPC has been filed with the prayer to quash charge-sheet filed dated 10.04.2021 and summoning order dated 17.02.2022 passed by the Court of Chief Judicial Magistrate, Lucknow in Criminal Case No. 7973 of 2022, arising out of Case Crime No. 830/2020: State of U.P. Vs. Azhar Hussain Khan and others.
3. A co-ordinate Bench of this Court on 24.3.2022 has passed the following order in this case:

"Heard learned counsel for the applicants, learned AGA and perused the record with the assistance of learned counsel for the parties.

By means of this application under section 482 of the Code of Criminal Procedure, the applicant has invoked the inherent jurisdiction of this Court for quashing of the charge sheet dated 10.4.2021 as well as summoning order dated 17.2.2022 and entire proceedings of

Criminal Case No. 7973 of 2022 arising out of Case Crime No. 830 of 2020, under Sections 376, 498-A, 323, 504 IPC and Section 3/4 of the Dowry Prohibition Act Police Station -Chinhat, District Lucknow.

It is submitted by learned counsel for the applicants that there is a matrimonial dispute between the parties. Lastly, it is submitted by the counsel for the applicant that the applicants are willing to settle the matter through mediation, therefore, an opportunity be granted to the parties concerned for reconciliation/settlement of their disputes by way of mediation.

This Court owes a duty to the society to strain to the utmost to repair the frayed relations between the parties concerned in matrimonial dispute, so that wounded situation may be healed into healthy rapprochement. The matter in hand also appears to be one of those cases in which reconciliation should be tried between the parties.

*The Apex Court in case of **B.S. Joshi Vs. State of Haryana; 2003 (4) SCC 675** has also observed that courts to encourage settlement of marital disputes between the contesting spouses, so that they do not lose their youthful years in chasing interminable litigation. The Apex Court in the matter of *State of Madhya Pradesh vs Laxmi Narayan and others; AIR 2019 SC 1296* has also held that the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised in cases arising out of matrimonial relationship or family*

disputes and when the parties have resolved the entire dispute amongst themselves.

In view of above, I agree with the submission advanced on behalf of the applicants and feel that the interest of justice would be served, if such request of the applicants are acceded to and the criminal proceedings and other litigations between the parties concerned are brought to an end.

The matter is referred to Mediation & Conciliation Centre of this Court.

It is directed that the applicant shall deposit a sum of Rs. 50,000/- within two weeks from today before the Mediation & Conciliation Centre of this Court, out of which Rs. 40,000/- shall be paid to the opposite party no.2 on her appearance before the Mediation Centre of this Court on a date fixed by the mediation centre and remaining Rs. 10,000/- shall be retained by the mediation centre towards its expenses. The Mediation Centre will submit its report in the matter within two months.

Opposite parties may file counter affidavit, if any, within four weeks. Rejoinder affidavit, if any, may be filed within two weeks thereafter.

List immediately after expiry of two months before the appropriate Bench along with the report of Mediation & Conciliation Centre of this Court.

Till the next date of listing, no coercive action shall be taken against the applicants in the aforesaid case subject to following conditions:-

(i) The applicants after deposit of aforesaid amount within the aforesaid period shall submit a proof of deposit of said amount before the concerned court below.

(ii) In case, the said amount, as directed above, is not deposited by the applicants within the aforesaid period, the interim protection granted by this Court shall automatically come to an end and it will be open for the concerned court below to proceed against the applicants in accordance with law."

4. Learned counsel for the applicants submits that in compliance of the order passed by this Court, the case was referred to the Mediation and Conciliation Centre of this Court. Thereafter, the mediation proceedings completed, and a settlement agreement was entered into between the parties on 29.09.2022. The parties as well the Mediator have put their signatures on the settlement agreement and as per clauses 6A, 6B, 6C, 6D and 6E the following settlement has arrived :-

"6. The following settlement has been arrived at between the parties hereto:

A) That in lieu of dissolution of their marriage the first party has paid a sum of Rs.13,00,000/- (Rupees thirteen lakh only) by demand draft no. 928435 dated 21.09.2022 drawn on State bank of India, Branch Gomtinagar Phase-3 Lucknow payable at Jaunpur, as permanent alimony, after which the wife Sheikh Saman (Second Party) shall not raise any claim of any sort against Mohammad Salman Khan (Husband/First Party) in future in respect of any right arising out of the marriage which is being dissolved through this

settlement. (Photocopy of the demand draft is enclosed as Annexure - 1)

B) The first party has returned some items to the second party, which was given by the parents of second party at the time of marriage. (Photocopy of the list of items is enclosed as Annexure-2)

C) The first party has pronounced first Talaq in writing to the second party today i.e. 29.09.2022, he will pronounce second Talaq on 30.10.2022 and third Talaq on 30.11.2022 under registered post as in accordance of Muslim Law under Talaq-i-Hasan (Photocopy of the first Talaq is enclosed as Annexure - 3).

D) Both the party bind themselves for not creating any nuisance in future in the matter or misbehave with each other; otherwise it will amount to contempt of Court.

E) That both the parties have agreed to withdraw/not press all the cases filed against each other and their family members, the details of which are as under:

I. Case No. 7973/2022, Case Crime No. 830/2020 U/s 376, 498-A, 323, 504, IPC and 3/4 DP Act Thana Chintah, Lucknow pending before ACJM-I, Lucknow

II. Section 12, Domestic Violence Act 6937/2020

Besides the above if any other case is filed between both the parties and their family members, shall be withdrawn by either of the parties."

5. Thus, learned counsel for the applicants as well the learned counsel for the opposite party No.2 submit that they have no objection, if the proceedings referred in Clause 6E of the settlement agreement dated 29.09.2022 are quashed and the application is allowed.

6. Learned A.G.A. for the State as well as learned counsel for the opposite party no.2 have submitted that since the parties have settled their dispute through the process of mediation and they have already dissolve their marriage and the wife has already taken the one time alimony, therefore, no useful purpose would be served if the proceedings of the aforesaid case go on further and

7. Learned counsel for the parties have drawn the attention of this Court and placed reliance on the judgment of the Hon'ble Apex Court in support of their case.

(i) B.S. Joshi Vs. State of Haryana & Others 2003 (4) ACC 675.

(ii) Gian Singh Vs. State of Punjab 2012 (10) SCC 303.

(iii) Dimpey Gujral And Others Vs. Union Territory Through Administrator 2013 (11) SCC 697.

(iv) Narendra Singh And Others Vs. State of Punjab And Others 2014 (6) SCC 466.

(v) Yogendra Yadav And Others Vs. State of Jharkhand 2014 (9) SCC 653.

8. Summarizing the ratio of all the above cases the latest judgment pronounced by Hon'ble Apex Court in the case of **Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur & Ors. Vs. State of Gujarat & Anr.; reported in (2017) 9 SCC 641** and in paragraph no.16, the Hon'ble Apex Court has summarized the broad principles with regard to exercise of powers under Section 482 Cr.P.C. in the case of compromise/settlement between the parties which emerges from precedent of the subjects as follows:-

i. "Section 482 preserves the inherent powers 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 recognizes 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 the 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 appropriately 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 in so far as the exercise of the inherent power to quash is concerned;

viii. Criminal cases involving offences which arises 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."

9. The Apex Court has also laid down the guidelines where the criminal proceedings could be interfered and quashed in exercise of its power by the High Court in the following cases:-(i) **R.P. Kapoor Vs. State of Punjab**, AIR 1960 S.C. 866, (ii) **State of Haryana Vs. Bhajanlal**, 1992 SCC (Cri.)426, (iii) **State of Bihar Vs. P.P. Sharma**, 1992 SCC (Cri.)192 and (iv) **Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another**, (Para-10) 2005 SCC (Cri.) 283.

10. From the aforesaid decisions the Apex Court has settled the legal position for quashing of the proceedings at the initial stage. The test to be applied by the court is to whether uncontroverted allegation as made prima facie establishes the offence and the chances of ultimate conviction is bleak and no useful purpose is likely to be served by allowing criminal proceedings to be continued. In **S.W. Palankattkar & others Vs. State of Bihar**, 2002 (44) ACC 168, it has been held by the Hon'ble Apex Court that quashing of the criminal proceedings is an exception than a rule. The inherent powers of the High Court under Section 482 Cr.P.C itself envisages three circumstances under which the inherent jurisdiction may be exercised:-(i) to give effect an order under the Code, (ii) to prevent abuse of the process of the court ; (iii) to otherwise secure the ends of justice. The power of High Court is very wide but should be exercised very cautiously to do real and substantial justice for which the court alone exists.

11. With the assistance of the aforesaid guidelines, keeping in view the nature and gravity and the severity of the offence which are more particularly is private dispute and differences it is deem proper and

meet to the ends of justice. The proceeding of the aforementioned case be quashed.

12. The present 482 Cr.P.C. application stands **allowed**. Keeping in view the law laid down by the Hon'ble Apex Court in the above referred judgment and in view of the statement/compromise made by the applicants as well as opposite party no.2 and the observation made above, the entire proceedings of Criminal Case No. 7973 of 2022, arising out of Case Crime No. 830/2020: State of U.P. Vs. Azhar Hussain Khan and others as well as charge-sheet filed dated 10.04.2021 and summoning order dated 17.02.2022 passed by the Court of Chief Judicial Magistrate, Lucknow in Criminal Case No. 7973 of 2022, arising out of Case Crime No. 830/2020: State of U.P. Vs. Azhar Hussain Khan and others as well as the cases pending the concerned trial court which have been mentioned in the Clause 6E of the settlement agreement dated 29.09.2022 are hereby quashed so far as it relates to the instant applicants.

Order Date :- 15.5.2024

Arvind