

Court No. - 16

Case :- APPLICATION U/S 482 No. - 3390 of 2024

Applicant :- Mohd. Kareem

Opposite Party :- State Of U.P. Thru. Prin. Secy. Deptt. Of Home Lko. U.P.
And Another

Counsel for Applicant :- Rajeev Kumar Dwivedi

Counsel for Opposite Party :- G.A.,Haider Mehdi

Hon'ble Shamim Ahmed,J.

Case is being taken up in the revised call.

In compliance of the order dated 16.04.2024, the applicant, namely-Mohd. Kareem is present, who has been identified by his counsel, however, the opposite party No.2, namely-Amani and her counsel both are not present today.

Heard Shri Rajeev Kumar Dwivedi, learned counsel for applicant and Shri Anirudh Kumar Singh, learned A.G.A., for the State as well as perused the record.

This application u/s 482 Cr.P.C. has been filed with the prayer to quash the impugned charge sheet dated 02.09.2016 arising out of case crime No.217 of 2015, under Section 323, 504, 506 498-A I.P.C. and Section 3/4 of Dowry Prohibition Act, Police Station-Bazar Khala, District-Lucknow and further seeking quashing of the entire proceeding of Criminal Case No.1890 of 2017; State vs. Mohd. Kareem and Others as well as Non Bailable Warrant order dated 01.03.2024 passed by Additional Chief Judicial Magistrate-IV, Court No.28, Lucknow.

This Court on 16.04.2024 has passed the following order:-

"Vakalatnama filed today in the Court by Sri Haidar Mehdi, Advocate on behalf of opposite party No.2 is taken on record.

Office is directed to print/show the name of Sri Haidar Mehdi, Advocate as learned Counsel for the opposite party No.2 on the next date.

Heard Sri Rajeev Kumar Dwivedi, learned counsel for the applicant, Sri Haidar Mehdi, learned Counsel for the opposite party No.2, Shri Hari Shankar Bajpai, learned A.G.A-I for the State and perused the record.

The applicant, namely- Mohd. Kareem and the opposite party No.2, namely-Amani are present before this Court in person, who have identified by their respective counsels.

The applicant in the present application under Section 482 Cr.P.C is seeking quashing of the impugned charge sheet dated 02.09.2016 arising

out of case crime No.217 of 2015, under Section 323, 504, 506 498-A I.P.C. and Section 3/4 of Dowry Prohibition Act, Police Station-Bazar Khala, District-Lucknow and further seeking quashing of the entire proceeding of Criminal Case No.1890 of 2017; State vs. Mohd. Kareem and Others as well as Non Bailable Warrant order dated 01.03.2024 passed by Additional Chief Judicial Magistrate-IV, Court No.28, Lucknow.

On query made by this Court to both the parties, who are present before this Court in person, they submit that their matrimonial life has lost its relevance as the applicant is ready to live with his wife but the wife is not ready to go with him and she is having an apprehension that the applicant and his family members may harm her and her son, who is aged about 11 years.

Submission of learned counsel for the parties is that the matter relates to matrimonial dispute and the parties have all the intentions to settle the same amicably. Applicant's counsel strenuously urged that this case may be referred to the Mediation Centre of this Court so that the couple may have a chance to settle their dispute on their own terms through mediation.

Learned A.G.A-I for the State-opposite party No.1 also made an agreement with the proposal made by the parties and submit that the matter may be referred to the Mediation and Conciliation Centre of this Court so that both the parties may settle their dispute amicably for their better life ahead.

The Court is also satisfied on the basis of the record and the submissions made before it that the nature of litigation is such that there is a chance to resolve the matter through process of mediation and an attempt ought to be made to explore that possibility.

Accordingly, the matter is being referred to the Mediation and Conciliation Centre, High Court, Lucknow. Learned counsel for the applicant will submit the copy of the present application alongwith affidavit within one week from today at the Mediation and Conciliation Centre and the parties will appear before the Mediation and Conciliation Centre of this Court at Lucknow on 29.04.2024. It is further directed that Mediation and Conciliation Centre of this Court at Lucknow will not issue notices as both the parties are present before this Court and they have agreed to appear before it on the date fixed by this Court. The mediator is allowed two months' time to find out possible solution of the dispute between the parties and send his report to this Court regarding the outcome of mediation.

Put up this case on 08.07.2024 before this Court along with report of the mediator.

Till the next date of listing, further proceedings in pursuance of the impugned charge sheet dated 02.09.2016 arising out of case crime No.217 of 2015, under Section 323, 504, 506 498-A I.P.C. and Section 3/4 of Dowry Prohibition Act, Police Station-Bazar Khala, District-Lucknow and entire proceeding of Criminal Case No.1890 of 2017; State vs. Mohd. Kareem and Others as well as Non Bailable Warrant order dated 01.03.2024 passed by Additional Chief Judicial Magistrate-IV, Court No.28, Lucknow shall be kept in abeyance in respect of the applicant

subject to the deposition of Rs.50,000/- as expenditure within ten days' from today by way of a bank draft to the Mediation Centre. It is further directed that out of Rs.50,000/- deposited by the applicant, Rs.45,000/- shall be handed over to the opposite party no.2 on her first appearance and Rs.5,000/- shall be kept by the Mediation and Conciliation Centre of this Court at Lucknow.

On the next date, both the parties shall again appear before this Court in person."

Learned counsel for the applicant submits that in compliance of the order passed by this Court, the matter was referred to the Mediation and Conciliation Centre of this Court, thereafter, both the parties appeared and the Mediator has sent its report dated 04.07.2024, which is on record wherein it has been mentioned that the mediation is completed and parties have arrived at an amicable settlement, it has also been signed by the both the parties and their counsel and the Mediator. The contents of the report dated 04.07.2024 are reproduced hereinunder:-

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ANNEXURE-D
MEDIATION & CONCILIATION CENTRE
ALLAHABAD HIGH COURT LUCKNOW
SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT entered into on 04.07.2024 between Mohd. Kareem S/O Mohd. Halim R/O Lambhua Bazar In Front Of Bank Of Baroda Police Station Lambhua District Sultanpur [FIRST PARTY/HUSBAND) and Smt. Amani D/O Rais Ahmad R/O 261/10 Saray Aagmeer Police Station-Chowk District Lucknow [SECOND PARTY/WIFE]

WHERE AS

- 1. Disputes and differences had arisen between the Parties hereto and APPLICATION U/s 482 No. 3390 of 2024 (Mohd. Kareem Va. State of U.P. & Another) was filed in the High Court of Judicature at Allahabad, Lucknow.*
- 2. The matter was referred to Mediation/Conciliation vide an order dated 16.04.2024 passed by Hon'ble Mr. Justice Shamim Ahmad.*
- 3. The parties agreed that Mr. Ali Akhtar Zaidi, Advocate and Mr. Sandeep Chandra, Advocate would act as their Mediators/Conciliators.*
- 4. Several meetings were held during the process of Conciliation/Mediation and 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 Mediators/Conciliators.*
- 6. The following settlement has been arrived at between the Parties hereto:*

A. That both the parties have agreed to live separately in future and for the purpose of dissolve their marriage, the First Party has given Talaq to the Second Party three times at different intervals as per their personal Law on due following dates 26.12.2017, 26.01.2018 and 26.02.2018.

B. That the parties have agreed to file a suit for Declaration of the Talaq dated 26.02.2018 before the Competent Court within one month from today.

C. That the First Party has agreed to pay to the Second Party and the Second Party agreed to receive from the First Party a sum of Rs. 1,85,000/- (One Lac Eighty Five Thousand only) towards one time full and final settlement of all the claims against First Party including the claim for mehar and maintenance of the their son namely Mohd. Azlan aged about 11 years.

D. That the First Party has handed over a Demand Draft No.00025 dated 02.07.2024 amounting to Rs 1,85,000/- (One Lac Eighty Five Thousand only) drawn on HDFC BANK to the Second Party today i e. 04.07.2024 towards the aforesaid one time full and final settlement of all the claims against First Party including the claim for mehar and maintenance of the their son namely Mohd. Azlan aged about 11 years The Second Party acknowledges receipt of the said Demand Draft.

E. That the parties have agreed that the their son Mohd. Azlan aged about 11 years shall remain in the custody of Second Party till he attains the age of majority and thereafter y Mohd. Azlan will be free to decided to live with either of the parties.

F. That the parties have exchanged their ornaments with each other and now they have no claim in this regard.

G. That the Second Party has agreed that she shall not have any objection if the Hon'ble Court decides the APPLICATION U/s 482 No.3390 of 2024 (Mohd. Kareem Vs. State of U.P. & Another) against Criminal Case No. 1890 of 2017, State vs. Mohd. Kareem and Others arising out case crime No.217 of 2015, under Section 323, 504, 506 498-A LP.C. and Section 3/4 of Dowry Prohibition Act, Police Station-Bazar Khala, District-Lucknow pending before Additional Chief Judicial Magistrate-IV, Court No.28, Lucknow in terms of this settlement agreement.

H. In addition to above mentioned case, if any other case(s) is pending between the parties, both the parties shall not have any objection if the case(s) is disposed of by the Hon'ble Court in terms of this Settlement Agreement.

L. That it is also agreed between the parties that henceforth no case will be instituted by them against each other or any of their respective family members in future in the form of criminal or civil proceedings in respect of any dispute arising out of their marriage or any matter incidental thereto.

J. That both the parties shall be bound by the terms and conditions of this Settlement in strict sense. In case of any default, the party committing the default shall be liable for playing fraud with the Court hence for contempt of the Court.

7. By Signing this Agreement the Parties hereto state that they have no further claims or demands against each other with respect to the matter involved in APPLICATION U/S 482 No.3390 of 2024 (Mohd. Kareem Vs. State of U.P. & Another) and all disputes and differences in this regard have been amicably settled by the Parties hereto through the process of Conciliation/Mediation.

Lucknow.

Dated 04.07.2024."

Learned A.G.A. for the State submits that since the parties have entered into an amicable settlement through mediation and the Mediator has sent its report dated 04.07.2024, therefore, no useful purpose would be served if the proceedings of the aforesaid case go on further.

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 Ssingh 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.

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."

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.

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.

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.

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 settlement agreement dated 04.07.2024 arrived at by the applicant as well as opposite party no.2 and the observation made above, the entire proceedings of the impugned charge sheet dated 02.09.2016 arising out of case crime No.217 of 2015, under Section 323, 504, 506 498-A I.P.C. and Section 3/4 of Dowry Prohibition Act, Police Station-Bazar Khala, District-Lucknow and entire proceeding of Criminal Case No.1890 of 2017; State vs. Mohd. Kareem and Others as well as Non Bailable Warrant order dated 01.03.2024 passed by Additional Chief Judicial Magistrate-IV, Court No.28, Lucknow are hereby **quashed** so far as it relates to the instant applicant.

Order Date :- 8.7.2024

Piyush/-