

Court No. - 27

Case :- APPLICATION U/S 482 No. - 4327 of 2024

Applicant :- Anuj Pandey

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

Counsel for Applicant :- Devarshi Mishra,Ayush Tandon,Rajiv Misra

Counsel for Opposite Party :- G.A.

Hon'ble Shamim Ahmed,J.

1. Sri Vijay Prakash Tiwari, Advocate has put in appearance on behalf of the opposite party no.2 by filing vakalatnama, which is taken on record.

2. Heard Sri Devarshi Mishra, learned counsel for the applicant, Sri Vijay Prakash Tiwari, learned counsel for the opposite party no.2 and Ms. Ankita Tripathi, learned A.G.A. for the State.

3. The instant application under Section 482 Cr.P.C. has been filed by the applicant with a prayer to quash the charge sheet dated 30.12.2020, cognizance and summoning order dated 27.07.2021 passed by learned Chief Judicial Magistrate, Lucknow in Case No.26775 of 2021 (State of U.P. Vs. Anuj Pandey), arising out of Complaint dated 08.06.2020 filed by Respondent No.2, under Sections 498-A, 323, 504, 506 I.P.C. and Section 3/4 of Dowry Prohibition Act, Police Station Gomti Nagar, District Lucknow pending in the court of learned Chief Judicial Magistrate, Lucknow.

4. Today, the applicant, namely, Anuj Pandey and the opposite party no.2, namely, Ms. Saumya Dwivedi are present before this Court and they have been identified by their respective counsel.

5. Learned counsel for the parties submit that the applicant as well as the opposite party no.2 have entered into an amicable settlement and they are ready to take divorce by mutual consent. The parties have already filed a petition under Section 13-B of the Hindu Marriage Act, which is pending before the learned Principal Judge, Family Court, Lucknow. Copy of the petition has been annexed as annexure no.5 of the affidavit filed alongwith the instant Application under Section 482

Cr.P.C. The terms and conditions have also been laid down in the aforesaid petition. In para 7 of the aforesaid petition, a condition regarding one time alimony has been mentioned. Para 7 of the petition filed under Section 13-B of the Hindu Marriage Act is being quoted hereunder:-

"7. यह कि याची सं०-01 द्वारा माननीय न्यायालय में रु० 70,00,000/- (सत्तर लाख रुपया) जरिये तीन डिमाण्ड ड्राफ्ट नामित प्रिंसिपल जज फैमिली कोर्ट, लखनऊ डिमाण्ड ड्राफ्ट सं०-708388 दिनांक 16.12.23 बैंक आई०डी०एफ०सी० बैंक शाखा-मुंशी पुलिया डिमाण्ड ड्राफ्ट सं०-444624 दिनांक-16.12.23 बैंक यूनियन बैंक शाखा विभूति खण्ड, गोमती नगर डिमाण्ड ड्राफ्ट सं०-708309 दिनांक 16.12.23 बैंक-आई०डी०एफ०सी० बैंक शाखा-मुंशी पुलिया माननीय न्यायालय श्रीमान प्रधान न्यायाधीश जी के कोष में टेन्डर द्वारा जमा किया जा रहा है। उक्त धनराशि याची सं०-2 के भरण-पोषण व जीवनयापन हेतु याची सं०-1 द्वारा जमा की जा रही है जिसे याची सं०-2 याचिका के निस्तारण के बाद याचिका के निर्णय की सत्यापित प्रति देकर न्यायालय श्रीमान प्रधान न्यायाधीश जी के कार्यालय से जरिये चेक प्राप्त कर लेगी। उपरोक्त तीनो डिमाण्ड ड्राफ्ट की छायाप्रति व टेन्डर की कॉपी उपरोक्त याचिका के साथ संलग्नक है।"

6. Further, in para 8 of the aforesaid petition, it has been clearly stated that apart from the above amount, now nothing remains to be paid to the opposite party no.2 and the opposite party no.2 will not demand any further *Stree Dhan* from the applicant. Para 8 of the petition filed under Section 13-B of the Hindu Marriage Act is being quoted hereunder:-

"8. यह कि याची सं०-1 व याची सं०-2 के मध्य किसी भी प्रकार कोई भी लेन-देन शेष नहीं रह गया है और याची सं०-2 भविष्य में याची सं०-1 से किसी भी प्रकार के स्त्रीधन की मांग नहीं करेगी और न ही याची सं०-1 की सम्पत्ति पर किसी भी प्रकार के अधिकार की मांग करेगी। "

7. Learned counsel for the parties further submit that as the parties have already settled their dispute and they do not want to linger on any further, thus, the entire proceeding of the case may be quashed and the learned Principal Judge, Family Court, Lucknow be directed to decide the divorce petition of the parties filed under Section 13(B) of the Hindu Marriage Act in light of the judgment rendered by Hon'ble Supreme Court in the case of **Amardeep Singh Vs. Harveen Kaur: AIR 2017 SC 4417** and further order passed by the Division Bench of this Court in **First Appeal Defective No. 392 of 2019: Shalini Massey Vs. Neeraj Samuel Dass decided on 07.01.2020**. Paragraph Nos. 19 and 20 of **Amardeep Singh (Supra)** are reproduced hereinunder:-

“19. Applying the above to the present situation, we are of the view that where the court dealing with a matter is satisfied that a case is made out to waive the statutory period under Section 13-B(2), it can do so after considering the following:

(i) the statutory period of six months specified in Section 13-B(2), in addition to the statutory period of one year under Section 13-B(1) of separation of parties is already over before the first motion itself;

(ii) all efforts for mediation/conciliation including efforts in terms of Order 32-A Rule 3 CPC/Section 23(2) of the Act/Section 9 of the Family Courts Act to reunite the parties have failed and there is no likelihood of success in that direction by any further efforts;

(iii) the parties have genuinely settled their differences including alimony, custody of child or any other pending issues between the parties;

(iv) the waiting period will only prolong their agony.

The waiver application can be filed one week after the first motion giving reasons for the prayer for waiver. If the above conditions are satisfied, the waiver of the waiting period for the second motion will be in the discretion of the court concerned.

20. Since we are of the view that the period mentioned in Section 13-B(2) is not mandatory but directory, it will be open to the court to exercise its discretion in the facts and circumstances of each case where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation.”

8. Further, this Court has been pleased to observe in paragraph No.12 in the case of **Shalini Massey (Supra)** which is reproduced hereunder:-

"12. The provisions contained in Section 10A of the Divorce Act, 1869, are, in substance, a verbatim reproduction of the provisions contained in Section 13B of the Hindu Marriage Act, 1955 and Section 28 of the Special Marriage Act, 1954. The only substantial difference is that, instead of the period of one year mentioned in Section 13B(1) of the Hindu Marriage Act, 1955 and Section 28(1) of the Special Marriage Act, 1954, a period of two years of separate residence is provided under Section 10A(1) of the Divorce Act, 1869. The beneficiaries under the abovementioned provisions of different statutes are persons who want divorce by mutual consent and who file joint petition for that relief. There can be no discrimination among them on the ground of religion. Divorce by mutual consent is a secular concept. When the Apex Court has declared the law that the "cooling off period" of six months provided under Section 13B(2) of the

Hindu Marriage Act, 1955 is not mandatory but directory and such period can be allowed to be waived by the court on satisfaction of certain conditions, denying that benefit to persons who are governed by the Divorce Act, 1869 would amount to unjust discrimination. Therefore, we are of the considered opinion that the dictum laid down by the Apex Court in Amardeep Singh (supra) is applicable to a petition for divorce filed under Section 10A of the Divorce Act, 1869 and on satisfaction of the conditions laid down in that decision, the Family Court can waive the period of six months stipulated under Section 10A(2) of that Act.

In view of the foregoing discussion, we find that but for the difference in period provided for making the second motion, the provisions of Section 13B (1) of Act of 1955 and 28 (1) of the Act of 1954 and 10A (1) of the Act, the aforesaid provisions are verbatim reproduction of each other. Since the Hon'ble Apex Court while considering the question whether the minimum period of six months stipulated u/s 13B (2) of Act of 1955 in the case of Amardeep Singh v. Harveen Kaur reported in AIR 2017 SC 4417, for a motion for passing decree of divorce on the basis of mutual consent is mandatory or directory and whether such period can be relaxed in exceptional situations or circumstances, held that the period mentioned in Section 13B (2) of Act of 1955 is not mandatory but directory and it will be open to the Court to exercise its discretion in the facts and circumstances of each case where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation.

We have no hesitation in holding that the view taken by the Kerala High Court in the case of TOMY JOSEPH (supra) that the dictum laid down by the Apex Court in Amardeep Singh (supra) is applicable to a petition for divorce filed u/s 10A of the Act and on satisfaction of the conditions laid down in that decision, the Family Court can waive the period of six months stipulated u/s 10A (2) of the Act."

9. Learned A.G.A. for the State has also made an agreement with the proposal made by learned counsel for the respective parties and she further submits that no useful purpose would be served if the proceedings of the instant case go on further before the learned trial court, therefore, the same may be quashed by this Hon'ble Court.

10. 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) Dimpley 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.

11. 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."

12. 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 (Crl.)426, (iii) **State of Bihar Vs. P.P. Sharma**, 1992 SCC (Crl.)192 and (iv) **Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another**, (Para-10) 2005 SCC (Cri.) 283.

13. 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. Palankatkar & 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.

14. 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 and a petition under Section 13(B) of the Hindu Marriage Act has already been filed for mutual divorce, it deems proper and meet to the ends of justice, the proceeding of the instant case be quashed by this Court.

15. 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 parties and the observation made above, the entire proceedings of charge sheet dated 30.12.2020, cognizance and summoning order dated 27.07.2021 passed by learned Chief Judicial Magistrate, Lucknow in Case No.26775 of 2021 (State of U.P. Vs. Anuj Pandey), arising out of Complaint dated 08.06.2020 filed by Respondent No.2, under Sections 498-A, 323, 504, 506 I.P.C. and Section 3/4 of Dowry Prohibition Act, Police Station Gomti Nagar, District Lucknow pending in the court of learned Chief Judicial Magistrate, Lucknow are hereby **quashed** so far as it relates to the instant applicant.

16. Learned Principal Judge, Family Court, Lucknow is also directed to decide the decree of divorce filed by the parties under Section 13(B) of the Hindu Marriage Act within two months from the date of filing of certified copy of this judgment before it by diluting the period of motions in view of the judgment of Hon'ble Supreme Court in the case of **Amardeep Singh (Supra)** and Division Bench of this Court in the case of **Shalini Massey (Supra)**.

17. With the aforesaid directions, the instant application under Section 482 Cr.P.C. stands **allowed**.

Order Date :- 10.05.2024

Saurabh

(Justice Shamim Ahmed)