

Case No :Crl.Petn. 0000012/2015

Party Name : BABUL DEBNATH Vs THE STATE OF TRIPURA

THE HONBLE MR. JUSTICE S.TALAPATRA

These petitions are taken up for disposal by a common judgment.

The petitioner challenging the judgment and order dated 17.12.2012, delivered in CrI.A. No. 13 of 2012, by the Additional Sessions Judge, Khowai, West Tripura, whereby has filed this petition being No. CrI.Rev.P. No. 5/2013. In the said appeal, the judgment and conviction dated 06.10.2012 delivered in G.R. 229 of 2010 Sub-divisional Judicial Magistrate, Khowai was questioned. The petitioner has been convicted and sentenced to suffer simple imprisonment for 1 year and to pay a fine of Rs. 3,000/- in default to suffer SI for 4 months by the judgment and order dated 06.10.2012.

Now the petitioner has filed this petition being No. 12/2013 under Section 482 of the Cr.PC. accompanied with an affidavit by the victim, his wife on whose complaint Khowai P.S. Case No. 61/2010 under Section 498 A of IPC was registered and investigated and on taking cognizance on the final report charge sheeting the petitioner, the trial commenced and the petitioner was convicted as stated.

The affidavit that has been filed by the victim reads as under :

" 1. That I am the married wife of Sri Babul Debnath and our marriage was solemnized on 27.04.2010, as per Hindu rites and customs in my parental residence at Vill:

Mahadebtilla, P/O- Sonatala, P/S - Khowai, Dist: Khowai Tripura.

2. That out of misunderstanding with my husband on 02.09.2010, I lodged Khowai P/S Case No. 61/2010, under Section 498 A I.P.C against my husband namely Babul Debnath, his elder brother namely, Sri Lal Mohan Debnath and his mother, namely, Smt. Durbala Debnath and after Trial vide Judgment dated 06.10.2012, passed by the L.d. S.D.J.M., Khowai in Case No. G.R. 229/2010 my husband was convicted u/S 498 (A) I.P.C. and he was sentenced to suffer S.I for 1(one) year and was also directed to pay a fine of Rs. 3,000/- (three thousand), I.D to suffer S.I for further 4(four) months.

3. That subsequently against the said judgment my husband preferred an appeal and vide judgment dated 17.12.2012 passed by the L.d. Addl. Sessions Judge, Khowai, in CrI. Appl.No. 13/2012 the judgment and order dated 06.10.2012 passed by the L.d. S.D.J.M., Khowai in Case No. G.R. 229/2010 was upheld.

4. That thereafter my husband preferred a Cr.Rev.Pet. before this Hon'ble Court bearing Cr.Rev.Pet. 05/2013 and the judgment and order of conviction is stayed till disposal of the revision petition.

5. That I submit that subsequently the matter has been amicably settled between us after intervention of family members friends and well wishers of both the parties and since January 2014 I am staying with my husband and presently there is no dispute whatsoever between us and myself is passing the days in love, care and affection of my husband.

6. That further I would like to submit that due to my immaturity and being influenced by my parents and out of sudden rush of blood I lodged the instant case against my husband and I don't want my husband to be convicted as it would damage our relationship permanently.

7. That further I am a housewife with no source of income and presently I am pursuing my B.A. Degree course in Khowai college getting full financial and mental support from my husband, and if he sent to jail, my studies and living would be hampered and I don't want my husband to be punished/jailed in the aforesaid case since in that case my self would be worst sufferer".

Both the petitioner and his wife, namely, Smt. Sushmita Das (Debnath) appeared in person in this Court. As Smt. Sushmita Das (Debnath), the victim has categorically stated that the petitioner has tendered his apology to her and they are living peacefully for more than 1 (one) year together without any difficulty and she wants that the petitioner does not suffer the sentence in terms of the impugned order.

The petitioner has obligated by saying that in future he will never repeat such act which has landed him in this situation.

Mr. Kar Bhowmik, learned counsel has submitted that this Court may in exercising its inherent power in this circumstances set aside the impugned judgment. He has placed his reliance on a decision of the Apex Court in K. Srinivas Rao v. D.A. Deepa, reported (2013) 5 SCC 226, where it has been observed as under:

"41. While purely a civil matrimonial dispute can be amicably settled by a Family Court either by itself or by directing the parties to explore the possibility of settlement through mediation, a complaint under Section 498-A of the IPC presents difficulty because the said offence is not compoundable except in the State of Andhra Pradesh where by a State amendment, it has been made compoundable. Though in Ramgopal and Anr. v. State of Madhya Pradesh and Anr. (2010) 13 SCC 540, this Court requested the Law Commission and the Government of India to examine whether offence punishable under Section 498-A of the Indian Penal Code could be made compoundable, it has not been made compoundable as yet. The courts direct parties to approach mediation centres where offences are compoundable. Offence punishable under Section 498-A being a non-compoundable offence, such a course is not followed in respect thereof.

42. This Court has always adopted a positive approach and encouraged settlement of matrimonial disputes and discouraged their escalation. In this connection, we must refer to the relevant paragraph from G.V. Rao v. L.H.V. Prasad and Ors. (2000) 3 SCC 693, where the complaint appeared to be the result of matrimonial dispute, while refusing to interfere with the High Court's order quashing the complaint, this Court made very pertinent observations, which read thus:

There has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counseled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their "cases" in different courts.

43. In B.S. Joshi and Ors. v. State of Haryana and Anr. AIR 2003 SC 1386, after referring to the above observations, this Court stated that the said observations are required to be kept in view by courts while dealing with matrimonial disputes and held that complaint involving offence under Section 498-A of the Indian Penal Code can be quashed by the High Court in exercise of its powers under Section 482 of the Code if the parties settle their dispute. Even in Gian Singh v. State of Punjab and Anr. (2012) 10 SCC 303, this Court expressed that certain offences which overwhelmingly and predominantly bear civil flavour like those arising out of matrimony, particularly relating to dowry, etc. or the family dispute and where the offender and the victim had settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may quash the criminal proceedings if it feels that by not quashing the same, the ends of justice shall be defeated.

45. We, therefore, feel that though offence punishable under Section 498-a of the IPC is not compoundable, in appropriate cases if the parties are willing and if it appears to the criminal court that there exist elements of settlement, it should direct the parties to explore the possibility of settlement through mediation. This is, obviously, not to dilute the rigour, efficacy and purport of Section 498-A of the IPC, but to locate cases where the matrimonial dispute can be nipped in bud in an equitable manner. The judges, with their expertise, must ensure that this exercise does not lead to the erring spouse using mediation process to get out of clutches of the law. During mediation, the parties can either decide to part company on mutually agreed terms or they may decide to patch up and stay together. In either case for the settlement to come through, the complaint will have to be quashed. In that event, they can approach the High Court and get the complaint quashed. If however they chose not to settle, they can proceed with the complaint. In this exercise, there is no loss to anyone. If there is settlement, the parties will be saved from the trials and tribulations of a criminal case and that will reduce the burden on the courts which will be in the larger public interest. Obviously, the High Court will quash the complaint only if after considering all circumstances it finds the settlement to be equitable and genuine. Such a course, in our opinion, will be beneficial to those who genuinely want to accord a quietus to their matrimonial disputes. We would, however, like to clarify that reduction of burden of cases on the courts will, however, be merely an incidental benefit and not the reason for sending the parties for mediation. We recognize @@@@mediation@@@@ as an effective method of alternative dispute resolution in matrimonial matters and that is the reason why we want the parties to explore the possibility of settlement through mediation in matrimonial disputes...."

Having due regard to the decision of the apex court in K. Srinivas Rao v. D.A. Deepa this Court is not inclined to quash the complaint in this case rather the petitioner will be granted the benefit of Section 360 of the Cr.PC in terms of the decision of the Apex Court in Arvind Mohan Sinha v. Amulya Kumar Biswas and others reported in AIR (1974) 4 SC 1818. The modern trend of penology is towards reformation of criminals, especially those who are at the younger age. First time offenders must normally be given a chance to improve themselves. Sending first time offenders to jail in offences where they can get benefit of the Probation of Offenders act or Section 360 of the Cr.PC is against the spirit of these provisions. As held by this Court above, it is not that in every case this benefit must be extended. The Court convicting the accused is best suited to decide this matter. It is the Judge who has seen the accused, seen his behaviour in Court and also knows how the occurrence took place is best positioned to take decision in this regard. If the occurrence shows that the accused is a cruel person and is not likely to improve, the Court would be fully justified in not granting this benefit but if on the other hand, there is material to show that reformation can be carried out if the convict is a first time offender, he must be given benefit of these provisions.

After going through the records and the statement made by the victim and the improved conduct of the petitioner, this Court is of the view that it is a fit case where the petitioner shall be granted the benefit of the Provision of the Offenders Act in terms of Section 360 of the Cr.PC.

Accordingly, the sentence is interfered with. However, there shall be no interference in the judgment of conviction returned under Section 498-A of the IPC. Hence it is directed that the petitioner shall be released on execution of bond of good conduct for 1 year by the trial court if the said bond submitted within a period of 2 months from today on obliging that he would maintain the good conduct. It is clarified that if the Probation Officer makes any adverse report against the petitioner within the period of probation, he shall be immediately booked for undergoing the sentence in terms of the impugned order. In the event of failure, for whatever reason in submitting the bond of good conduct as above within the stipulated time, the petitioner shall have to suffer the sentence in terms of the impugned judgment and order.

With the modification as above, both the petitions are disposed of.

Send down the LCRs forthwith along with a copy of this order.