

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 5 of 2014

1. Smt.Varsha Shah W/O Late Shri Sanjeev Shah, Aged About 37 years D/O Shri Ramesh Bagrodia, R/O Bagrodia House, Lafa Gas Godown Road, Shubam Vihar, Mungeli Road, Bilaspur, Distt. Bilaspur C.G. 495001

---- Petitioner

Versus

1. State Of Chhattisgarh Through Chief Secretary State Of C.G. Raipur C.G.

2. Superintendent Of Police Bilaspur C.G.

3. Station Officer, Mahila Police Station, Bilaspur C.G.

4. Shri Saneev Shah (Now Deceased) S/O Shri Kailash Chand Shah Aged About 44 Years

5. Shri Kailash Chand Shah (Now Deceased) S/O Shri Babulal Shah Aged About 69 Years

6. Smt. Sarda Devi Shah, W/O Shri Kailash Chand Shah Aged About 63 Years

7. Shri Rajeev Shah S/O Kailash Chand Shah Aged About 46 Years

8. Smt. Surekha Shah W/O Rajeev Shah Aged About 41 Years

9. Ku. Maneka Shah D/O Kailash Chand Shah Aged About 41 Years

Respondents No. 4 to 9 are R/O 17/2, Shah House, Nehru Nagar (W), Bhilai, Distt. Durg C.G.

---- Respondent

For Petitioners : Mr. R.R.Singh, Advocate

For Respondent/State : Mr. Adhiraj Surana, Dy. Govt. Advocate

For Respondent No. 4 to 7 : Mr. Ravindra Agrawal, Advocate

The petitioner, her father as well as respondents No. 5 & 6 are also present in person.

Hon'ble Shri Justice Pritinker Diwaker

C A V Order

Passed On 10th July, 2015

The petitioner, widow of late Sanjeev Shah, has filed the present petition before this Court for quashment of FIR lodged by her before Mahila Police Station, Bilaspur bearing Crime No.34/2002. She has also prayed for quashment of Criminal Case No.574/2010 registered against the private respondents pursuant to aforesaid FIR.

02. Brief facts of the case are that marriage of the petitioner was solemnized with one Sanjeev Shah on 8.2.1998 at Bilaspur. As there was some dispute between the petitioner, her husband and the private respondents, a complaint case was filed by the petitioner and her father and pursuant to direction issued by the Magistrate, FIR was registered on 8.7.2002 against her husband and the private respondents for the offence under Section 498A/34 of IPC. Based on the FIR, the investigation was carried out by the police and charge sheet was filed against the husband of the petitioner and the private respondents herein and ultimately, charges were also framed against them under Section 498A of IPC and Section 4 of Dowry Prohibition Act.

03. Counsel for the petitioner submits that some time in the year 2006 father-in-law of the petitioner Kailash Chand Shah expired and thereafter, 26.5.2008 husband of the petitioner Sanjeev Shah has also expired. He submits that on 12.12.2009 the petitioner performed second marriage with one Haridwar Singh of Jalgaon (Maharashtra) and out of their wedlock, she is having a male child, who is presently five years old. It is further submitted that after her second marriage, the petitioner is living happily with her husband and son; as the main accused persons i.e. her husband and father-in-law have already expired; she is presently residing at Maharashtra and as such, finding it difficult to attend the trial, she is not interested to further prosecute the private respondents.

04. Learned counsel while placing strong reliance on the judgments in

the matters of ***Pepsi Foods Ltd. & another Vs. Special Judicial Magistrate and others, (1998) 5 SCC 749; B.S. Joshi and others Vs. State of Haryana and another, AIR 2003 SC 1386*** and ***Gian Singh Vs. State of Punjab and another, (2012) 10 SCC 303***, submits that under Article 226 of the Constitution of India the entire criminal proceedings can be quashed against the accused/respondents.

05. Counsel appearing for the private respondents while supporting contention of the petitioner submits that the entire criminal proceedings may be quashed against the private respondents.

06. Heard counsel for the parties and perused the material on record.

07. In support of her contention made in the writ petition, the petitioner has also filed an affidavit dated 28.4.2014 specifically stating therein that after death of her husband and father-in-law, she does not wish to further prosecute her case. Considering the contents made in the writ petition and the affidavit of the petitioner, on 10.4.2015 this Court had directed for personal appearance of the petitioner. Pursuant thereto, the petitioner has appeared in person before this Court. On being questioned, the petitioner has categorically stated that after death of her first husband Sanjeev Shah and father-in-law Kailash Chand Shah, she is not interested to further prosecute any of the private respondents. She has stated that after her second marriage she has settled at Jalgaon (Maharashtra) and is blessed with a son and is leading a happy peaceful married life. She has further stated that pendency of the criminal case before the trial Court is causing disturbance in her married life, she cannot attend the trial Court at Bilaspur to adduce evidence.

08. Father of the petitioner Mr. Ramesh Bagrodia, who is also present in the Court, states that as the petitioner has contracted second marriage and is now settled, he and the petitioner are not interested to prosecute the private respondents any further.

09. Both the petitioner and her father have been duly identified by Shri R.R. Sinha, counsel for the petitioner.

10. It is settled that the High Court can exercise its power of judicial review in criminal matters. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure. The power conferred on the High Court under Articles 226 and 227 of the Constitution and under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised while invoking these powers.

11. Considering the facts and circumstances of the case in the light of aforesaid principles of law, particularly the fact that the petitioner has performed second marriage, is having son and living happily in the other State and further, that continuation of the trial at Bilaspur may disturb her second marriage, this Court is of the view that it would be a futile exercise to continue the criminal proceedings against the private respondents when the complainant herself does not want to prosecute them any further. Therefore, the petition is allowed and the Criminal Case No.574/10 pending before JMFC, Bilaspur is quashed.

Sd/-

(Pritinker Diwaker)

J U D G E