

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 465 of 2004

1. Shiv Kumar, S/o Shri Mehattar Ganda, aged about 28 years, R/o Village – Lamkeni, Thana – Baghbahara, Tehsil – Mahasamund, District - Mahasamund, (C.G.)

---- Applicant

Versus

1. State of Chhattisgarh through District Magistrate, Mahasamund, (C.G.)

---- Respondent

For Applicant – Shri Manoj Paranjape, Advocate.

For Respondent – Ms. M.Asha, Panel Lawyer.

For Complainant – Mr. Suresh Tandan, Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

21/03/2016

1. With the consent of the parties, heard the matter finally along with I.A.No.1/2016 under Section 320 (6) of the Code of Criminal Procedure, 1973 (in short 'the Code') for permission to compound the offence along with the fact that the applicant and complainant PW-1 Smt. Umabai recorded their statement before the Additional Registrar (Judicial) as per order dated 16-02-2016.

2. Facts in brief required for adjudication of the instant criminal revision are that the Judicial Magistrate First Class Mahasamund in Criminal Case No.319/2001 vide judgment dated 18-03-2004 convicted the present applicant along with other co-accused Mehattar for the offence under Section 498(A) of the Indian Penal Code, 1860 (in short 'the IPC') and sentenced rigorous imprisonment for one year and to pay fine of Rs.1000/-, in default of payment of fine, to further undergo additional rigorous imprisonment for two months. Against the said judgment, the present applicant and convicted co-accused Mehattar preferred Criminal Appeal No.103/2004. The First Additional Sessions Judge, Mahasamund, C.G. vide judgment dated 14-09-2004

acquitted the convicted co-accused Mehattar from the charges under Section 498(A) of the IPC allowing his appeal and the appeal filed by the present applicant was dismissed affirming the judgment of conviction and sentence passed by the trial Court against him. Against the said judgment of the appellate Court, present applicant preferred the instant criminal revision under Section 397 read with Section 401 of the Code to set aside the impugned order passed by the appellate Court and to acquit the applicant from the offence.

3. During pendency of the instant criminal revision, on behalf of the present applicant and complainant Smt. Umabai (PW-1) a joint application under Section 320(6) of the Code has been filed for a prayer to grant permission to compound the offence as both have settled their dispute amicably and further with a prayer to quash the judgment of conviction and sentence passed by the trial Court affirmed by the appellate Court in the above criminal appeal. In order to support contention of the I.A.No.1/2016 the present applicant and complainant Umabai (PW-1) recorded their statement before the Additional Registrar (Judicial) of this High Court wherein the applicant and the complainant/victim aforementioned on oath stated that both are husband and wife and on a report made by the said complainant/victim/wife crime No.80/1998 under Sections 498(A), 323 of the IPC was registered. After investigation, charge sheet was filed before the Chief Judicial Magistrate Mahasamund, C.G. and thereafter, the concerned Judicial Magistrate First Class Mahasamund, C.G. after recording the evidence convicted both the accused including the present applicant under Section 498(A) of the IPC. Thereafter, the present applicant along with other convicted co-accused filed a criminal appeal wherein the criminal appeal filed on behalf of the present applicant was dismissed, and the complainant/victim/wife Smt. Umabai (PW-1) admitted that she entered into a compromise with the applicant; both living

separately and peacefully and she entered into compromise without any fear or pressure and she does not want any proceeding against the applicant.

4. It is submitted on behalf of the present applicant that though this is a criminal revision filed under Section 397/401 of the Code, but inherent jurisdiction of the Court can very well be invoked in any of the relevant criminal proceeding under the authority of Section 482 of the Code and looking to the fact that though Section 498(A) is a non-compoundable penal offence but looking to the pronouncement of Hon'ble Apex Court and this High Court, the proceedings may be quashed and the provision of the Code does not limit or affect the power of this Court.

5. Learned counsel for the applicant relied upon a decision of the Hon'ble Apex Court in **B.S. Joshi and Others vs. State of Haryana and Another** reported in (2003) 4 SCC 675 wherein it is held in paragraphs 14 and 15 as under:

“14. There is no doubt that the object of introducing Chapter XX-A containing Section 498A in the Indian Penal Code was to prevent torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hyper-technical view would be counter productive and would act against interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XXA of Indian Penal Code.

15. In view of the above discussion, we hold that the High Court in exercise of its inherent power can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Code.”

6. Learned counsel further submits that as in **Cr.M.P. No.192 of 2009 Karam Singh and Ors vs. State of Chhattisgarh and Anr**, a Co-ordinate Bench of this Court vide order dated 22.4.2009 held that the above cited decision of the Apex Court is applicable and it is the duty of the Court to encourage genuine settlement of matrimonial disputes and the provisions of Section 320 of the Code do not limit or affect the powers of under Section 482 of the Code and thereby allowed the petition filed under Section 482 of the Code in the interest of justice and quashed the criminal proceedings pending before the trial Court. Learned counsel further submits as in the present case also, Section 498-A is non-compoundable as per provisions of Section 320 of the Code, the parties entered into a compromise voluntarily without any fear or pressure, both the case law cited above are applicable in the present matter. Hence, it is prayed that the present criminal revision may be allowed by invoking inherent jurisdiction of this Court and with the amicable settlement/compromise as aforementioned the present revision may be allowed and the conviction under Section 498(A) of the IPC awarded by the trial Court affirmed by the appellate Court be quashed and held that in the light of above compromise/settlement, the present applicant should be acquitted for the offence.

7. Learned counsel for the respondent/State opposed the petition/application and the instant criminal revision.

8. Learned counsel appearing on behalf of the complainant/victim/wife Umabai (PW-1) duly supported the argument advanced in this behalf and submitted that as per compromise/settlement both have settled the matter amicably without fear or pressure, the same may be accepted and the applicant may be acquitted from the charges.

9. For the purposes of appreciation regarding arguments advanced in this behalf, the instant criminal revision, annexed documents, cited case law are perused.

10. On close scrutiny, it goes to show that the applicant is convicted for offence under Section 498(A) of the IPC. His conviction is also affirmed by the appellate Court. Before this Court, the applicant and the complainant, i.e., husband and the wife, filed the application to permit for compromise. Both of them on oath supported the contents of the interim application and submitted that both have entered into compromise voluntarily without any pressure or fear and pray that the petition may be allowed.

11. On due consideration, looking to the entire facts placed before this Court and also in light of the above cited judgments of Hon'ble Apex Court and also Co-ordinate Bench of this Court, this Court is of the view that since powers under Section 320 of the Code do not limit or affect the powers under Section 482 of the Code, since both the parties entered into compromise and looking to the very nature of this dispute in a matrimonial matter, it would be appropriate to allow the instant criminal revision and quash the judgment of conviction and sentence passed by the concerned Court affirmed by the concerned appellate Court by invoking the inherent jurisdiction of this Court.

12. Consequently, the instant criminal revision as well as the said interim application are hereby allowed and disposed of. Amicable settlement and compromise between the parties are accepted and in light of the said compromise, inherent jurisdiction of this Court, the applicant is acquitted from the offence under Section 498(A) of the IPC as he was held convicted and sentenced by the trial Court and the same was affirmed by the appellate Court. The instant acquittal is given effect to under the relevant provision of Section 320(8) of the Code. The applicant is on bail. He be set at liberty forthwith. His bail bond shall continue for a further period of six months in view of provision of

Section 437-A of the Code. The fine sentence, if deposited, shall be refunded to the applicant without any delay.

13. The applicant may file copy of this order before the Court below for compliance and information.

14. Registrar (Judicial) is also directed to send copy of the order to the concerned Judicial Magistrate First Class, Mahasamund, C.G. for compliance and information.

15. The criminal revision allowed.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE