



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2016

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

Crl.O.P.(MD) No.8527 of 2016

1. Jeyakumar
2. Nagammal
3. Kanagaraj
4. Ayyappan
5. Lakshmi
6. Suresh

... Petitioners/A1 to A6

-vs-

1. State Rep. by
The Inspector of Police,
All Women Police Station,
Bodinayakanur, Theni District. ... 1st Respondent/Complainant
2. Jeevitha ... 2nd Respondent/Defacto Complainant

Prayer: Petition filed under Section 482 of Code of Criminal Procedure to call for the records pertaining to Crime No. 4 of 2016 on the file of the 1st respondent and quash the same in so far as the petitioners are concerned.

For Petitioners	:	Mr.D.Venkatesh
For R1	:	Mr.A.P.Balasubramani
		Govt. Advocate (Crl.Side)
For R2	:	Mr.T.Lenin Kumar

O R D E R

The petitioners, who are accused in Crime No.4 of 2016, pending on the file of the 1st respondent police, seek to quash the said case. The 2nd respondent is the defacto complainant.

2. It is seen that the case in Crime No.4 of 2016 has been registered by the All Women Police, Bodinayakanur, Theni District for the alleged offence under Section 498(A) IPC and Section 4 of Dowry Prohibition Act.

3. Learned counsel for the petitioners/accused would submit that the 1st petitioner herein has filed H.M.O.P.22 of 2015 against the 2nd respondent and obtained an order of divorce by judgment dated 06.06.2016. It is further submitted that as the matter was ~~several points and/or cases~~, both the parties are not willing to proceed with the case.



4. At this juncture, a joint memo of compromise dated 01.06.2016 entered into between the defacto complainant and the accused has been filed by the parties and the petitioners/accused and the second respondent are personally present before this Court; their identifications were also verified by this Court, in addition to the confirmation of the identity of the parties by the learned Government Advocate (Crl.Side) through the respondent Police. The 2nd respondent / defacto complainant has admitted that there is no claim pending whatsoever from her husband; that all her articles were returned and that she has also received Rs.1,50,000/- as maintenance. Therefore, the second respondent has agreed to withdraw the case in Crime No.4 of 2016 pending on the file of the first respondent.

5. Learned counsel for the petitioner has submitted that in the ends of justice and in order to avoid the misuse of the process of law, the prosecution must be quashed.

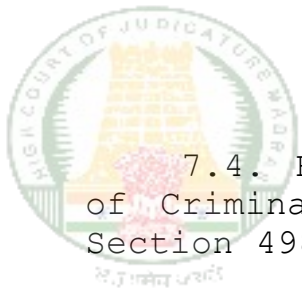
6. Per contra, learned Government Advocate (Crl.Side) would contend that there is an embargo under Section 320 (9) Cr.P.C., under which no offence shall be compounded except as provided by the said Section and therefore, these proceedings cannot be quashed.

7. The moot question that demands attention is that when once the Legislature thought it fit to make the offence under Section 498-A as non-compoundable, whether under Section 482 of the Code of Criminal Procedure, the High Court has got inherent power to permit the parties to compound such offence.

7.1. An argument against compoundability is that the permission to compound would amount to legal recognition of violence against women and that the factum of reconciliation cannot be a justifiable ground to legally condone the violence. The acceptance of such an argument would imply that the priority of law should be to take the criminal proceedings to their logical end and to inflict punishment on the husband irrespective of the mutual desire to patch up the differences.

7.2. A balanced and holistic approach is called for in handling a sensitive issue affecting the family and social relations. The emphasis should not be merely on the punitive aspect of the law. In matters of this nature, the law should not come in the way of genuine reconciliation or revival of harmonious relations between the parties.

7.3. The Law Commission of India in its 154th report (1996) reiterated in the 177th Report (2001) recommended inclusion of Section 498-A as a compoundable offence. It is submitted that the said Section 498-A is not compoundable appended to Section 320(2) so that it can be compounded with the permission of the Court



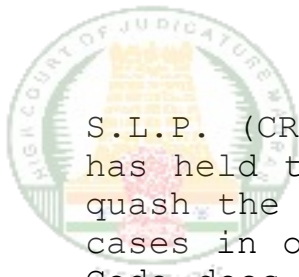
7.4. Further, Justice Malimath Committee's Report on Reforms of Criminal Justice System strongly supported the plea to make Section 498-A IPC, a compoundable offence.

7.5. The Ministry of Home Affairs in its 111th Report on the Criminal Law (Amendment) Bill 2003 (August 2005), observed thus:

"It is desirable to provide a chance to the estranged spouses to come together and therefore it is proposed to make the offence u/s 498A IPC, a compoundable one by inserting this Section in the Table under subsection(2) of Section 320 of CrPC".

7.6. The Apex court, in the case of B.S. Joshi v. State of Haryana, (2003) 4 SCC 675 ("B.S. Joshi"), has firmly laid down the proposition that in order to subserve the ends of justice, the inherent power under Section 482 CrPC can be exercised by the High Court to quash the criminal proceedings at the instance of husband and wife who have amicably settled the matter and are desirous of putting end to the acrimony. The correctness of the aforesaid decision was however doubted by a Division Bench of the Hon'ble Supreme Court of India in the matter of Gian Singh v. State of Punjab & Anr., 2010 (12) SCALE 461. Hence, the matter was referred to a larger bench. The question before the larger bench (comprising of Hon'ble Justice Lodha, Hon'ble Justice Dave and Hon'ble Justice S.J. Mukhopadhyay) concerned the inherent power of the High Court in quashing the criminal proceedings against an offender who has settled his dispute with the victim of the crime but the crime in which he is allegedly involved is not compoundable Under Section 320 of the Cr.P.C. It was held, eventually, in **Gian Singh v. State of Punjab**, (2012) 9 SCALE 257 that, "the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences Under Section 320 of the Code. ...The High Court may quash criminal proceedings pertaining to offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim husband and estranged wife.

<https://hcservices.ecourts.gov.in/hcservices/> Bench of the Hon'ble Supreme Court of India, in the recent judgment of Jitendra Raghuvarshi & Ors. v. Babita Raghuvarshi & Anr. (Criminal Appeal No. 447 of 2013 arising out of



S.L.P. (CRL.) No. 6462 of 2012), has again affirmed B.S. Joshi and has held that, "High Court in exercise of its inherent powers can quash the criminal proceedings or FIR or complaint in appropriate cases in order to meet the ends of justice and Section 320 of the Code does not limit or affect the powers of the High Court under Section 482 of the Code.

8. It is pertinent to mention here that in consequence of the amicable settlement between the parties, there is no possibility of the defacto complainant giving evidence against the accused persons and the witnesses would become hostile and ultimately, this case will not end in any conviction. Therefore, the continuation of criminal case will be an abuse of the process of Court.

9. When such a situation arose in similarly placed matters in Crl.O.P.(MD) Nos.406, 530 and 864 of 2016 (Prabu and others vs. State Rep. By The Inspector of Police and others), decided on 28.01.2016, this Court considered the various decisions rendered by the Hon'ble Supreme Court in this regard in several cases, namely, Gian Singh vs. State of Punjab and another [(2012) 10 SCC 303], B.S.Joshi vs. State of Haryana [(2003) 4 SCC 675], Nikhil Merchant vs. CBI [(2008) 9 SCC 677], Narinder Singh and others vs. State of Punjab and another [(2014) 6 SCC 466] and State of Madhya Pradesh vs. Manish and others [(2015) 8 SCC 307] and observed as under:

"11..... As held by the Apex Court, insofar the offences arising out of matrimonial dispute, relating to dowry or the family disputes where the wrong is basically private or personal in nature, are concerned, the possibility of conviction is remote and bleak, in case the parties resolve their entire disputes amicably among themselves.....".

10. Hence, considering the nature of allegations made; that in view of the joint memo of compromise dated 01.06.2016, it can safely be concluded that no useful purpose would be served in keeping the matter pending.

In the result, this Criminal Original Petition is allowed in consequence of the compromise between the parties and the entire proceedings in Crime No.4 of 2016 on the file of the 1st respondent police are hereby quashed against the petitioners/accused.

Sd/-

Assistant Registrar(P&A)

/True copy/

Encl:Xerox copy of Compromise Memo



To:

1. The Inspector of Police,
All Women Police Station,
Bodinayakanur, Theni District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court
Madurai.

+1cc to Mr.D.Venkatesh, Advocate SR.No.30364

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Cr1.O.P.(MD) No.8527 of 2016