

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 142/2016**

Date of Decision : March 21st, 2016

KUNAL GIROTRA & ORS

..... Petitioner

Through Mr.Rohit K. Naagpal & Ms.Deepika,
Adv.

versus

STATE (GOVT OF NCT OF DELHI) & ANR Respondent

Through Mr.Kamal Kumar Ghai, APP with
ASI Dharmvir Singh, PS CWC,
Nanak Pura.

Mr.Efi Solanki, Adv. for R-2 with
respondent no.2 in person.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present petition under Section 482 Cr.P.C. has been filed by the petitioners, namely, Sh. Kunal Girotra, Sh. K.L. Girotra, Smt. Veena Girotra and Smt. Pooja Wadhwa for quashing of FIR No.97/2013 dated 21.06.2013, under Sections 498-A/406/34 IPC registered at Police Station C.A.W. Nanak Pura on the basis of the settlement agreement arrived at between the petitioner no.1 and respondent No.2, namely, Ms. Shilpa Goel on 07.04.2015.

2. Learned Additional Public Prosecutor for respondent-State submitted that the respondent No.2, present in the Court has been identified to be the complainant/first-informant of the FIR in question

by her counsel.

3. The factual matrix of the present case is that the marriage was solemnized between petitioner no.1 and the respondent no.2. After the marriage, the in-laws of the complainant took all the jewellery given to her at the time of the marriage. The mother-in-law of the complainant used to torture her and force her to join a job. The complainant was even made to do all the house chores and was also taunted about the same by her mother-in-law. The husband of the complainant always used to refused to indulge into any physical relationship with the complainant and she was treated with mental and physical cruelty by her in-laws. The husband of the complainant used to click nude pictures of her and used to keep them in his laptop. The husband of the complainant even blackmailed her by threatening her that he would upload the said pictures. The accused persons had jointly been planning to get rid of the complainant. The in-laws of the complainant used to constantly demand more dowry from her.

Thereafter, the complainant got registered the FIR in question against the petitioners. The charge sheet in the case has already been filed. On 07.04.2015, both the parties to the petition mutually settled all their matrimonial disputes amicably.

4. Respondent No.2, present in the Court, submitted that the dispute between the parties has been amicably resolved. As per the settlement agreement, the petitioner no.1 and respondent no.2 have agreed to take divorce by way of mutual consent under Section 13B (1) and (2) of H.M.A. and that the parties shall file the requisite petition under Section 13B(1) of H.M.A. simultaneously with the

execution/signing of the present settlement agreement. It is also agreed that the second motion petition shall be filed by the parties within 6 months from filing of the first motion. It is also agreed that the parties shall not withdraw their consent for filing of the petition for divorce by mutual consent and quashing of the FIR after executing the present settlement deed. It is also agreed that the petitioner no.1 shall pay a sum of Rs. 22 Lakhs (“settlement amount”) to the respondent no.2 as full and final one time settlement of all claims (past, present and future). The schedule of payment shall be as enunciated in the terms of the agreement. It is also agreed that the quashing petition shall be filed within 15 days from recording of the statement of the second motion. It is also agreed that the parties shall not file any case against each other or their properties of any nature at any appoint of time in future. It is also agreed that pursuant to the payment of the settlement amount, all claims of respondent no.2 qua the petitioner no.1 shall stand satisfied. It is also agreed that the parties shall withdraw all cases except the FIR/charge sheet within 15 days against each other after recording of the statement of first motion divorce petition or any other cases filed by the relatives of the parties against each other. It is also agreed that in case the petitioner no.1 does not come forward for the second motion of divorce or does not comply with the terms and conditions of the present settlement then in that eventuality, the respondent no.2 shall be at liberty to revive all her cases and claim the balance amount and her maintenance in accordance with law, and along with interest accrued upon the same. It is also agreed that the parties shall cooperate with each other and shall sign all requisite

documents for divorce by mutual consent and shall render all assistance for the expeditious disposal of the same and shall appear before the Family Court, Saket, New Delhi for recording of their statements for the divorce by mutual consent. It Is also agreed that the first motion petition under Section 13 B(1) shall be filed not later than 10.04.2015 and the second motion shall be filed not later than six months and five days after the presentation for the first motion of divorce. It is also agreed that in case the petitioner no.1 fails to pay the amount of Rs. 22 Lakhs to respondent no.2 and fails to comply with the terms of the agreement, then the respondent no.2 shall be at liberty to file for appropriate proceedings in accordance with law to recover the said amount according to the process of law. It is also agreed that if the entire amount is paid, the respondent no.1 shall not file any criminal complaint or claim for maintenance before the Women cell, New Delhi or before any Court, tribunal or authority. It is also agreed that pursuant to this agreement, the parties shall not make any further allegations against each other or their respective families. It is also agreed that respondent no.2 shall not claim any further amount towards past, present and future alimony or expenditure from the petitioner no.1. It is also agreed that the respondent no.2 shall not claim any compensation from the petitioner no.1's relatives. It is also agreed that after receiving the settlement amount, respondent no.2 shall not have any claim towards istridhan and personal belongings and undertakes not to raise any claim in respect of the same against the petitioner no.1 or his parents and relatives.it is also agreed that the parties shall not have any claim/right towards the movable or

immovable property of the other party, other party's family members, whether self-acquired, HUF or ancestral under any circumstances. Respondent No.2 affirmed the contents of the aforesaid settlement and of her affidavit dated 23.12.2015 supporting this petition. As per the affidavit filed by respondent no.2, she has settled all her disputes with the petitioners and has no objection if the FIR in question is quashed. All the disputes and differences have been resolved through mutual consent. Now no dispute with petitioners survives and so, the proceedings arising out of the FIR in question be brought to an end. Statement of the respondent No.2 has been recorded in this regard in which she stated that she has entered into a compromise with the petitioners and has settled all the disputes with them. She further stated that she has no objection if the FIR in question is quashed.

5. In ***Gian Singh v. State of Punjab (2012) 10 SCC 303*** Apex Court has recognized the need of amicable resolution of disputes in cases like the instant one, by observing as under:-

“61. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceedings or continuation of criminal proceedings would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceedings.”

6. The aforesaid dictum stands reiterated by the Apex Court in a recent judgment in ***Narinder Singh v. State of Punjab (2014) 6 SCC 466***. The relevant observations of the Apex Court in ***Narinder Singh***

(Supra) are as under:-

“29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.1 Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.3. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for the offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

7. The inherent powers of the High Court ought to be exercised to prevent the abuse of process of law and to secure the ends of justice. The respondent no.2 agrees to the quashing of the FIR in question without any threat or coercion or undue influence and has stated that the matter has been settled out of her own free will. As the matter has been settled and compromised amicably, so, there would be an extraordinary delay in the process of law if the legal proceedings between the parties are carried on. So, this Court is of the considered opinion that this is a fit case to invoke the jurisdiction under Section 482 Cr.P.C. to prevent the abuse of process of law and to secure the ends of justice.

8. The incorporation of inherent power under Section 482 Cr.P.C. is meant to deal with the situation in the absence of express provision of law to secure the ends of justice such as, where the process is abused or misused; where the ends of justice cannot be secured; where the process of law is used for unjust or unlawful object; to avoid the causing of harassment to any person by using the provision of Cr.P.C. or to avoid the delay of the legal process in the delivery of justice. Whereas, the inherent power is not to be exercised to circumvent the express provisions of law.

9. It is settled law that the inherent power of the High Court under Section 482 Cr.P.C. should be used sparingly. The Hon'ble Apex Court in the case of *State of Maharashtra through CBI v. Vikram Anatrai Doshi and Ors.* MANU/SC/0842/2014 and in the case of *Inder Singh Goswami v. State of Uttaranchal* MANU/SC/0808/2009

has observed that powers under Section 482 Cr.P.C. must be exercised sparingly, carefully and with great caution. Only when the Court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the Court if such power is not exercised, Court would quash the proceedings.

10. It is a well settled law that where the High Court is convinced that the offences are entirely personal in nature and therefore do not affect public peace or tranquillity and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice, it should not hesitate to quash them. In such cases, pursuing prosecution would be waste of time and energy. Non-compoundable offences are basically an obstruction in entering into compromise. In certain cases, the main offence is compoundable but the connected offences are not. In the case of ***B.S. Joshi and others v. State of Haryana and another*** 2003 (4) SCC 675 the Hon'ble Apex Court observed that even though the provisions of Section 320 Cr.P.C. would not apply to such offences which are not compoundable, it did not limit or affect the powers under Section 482 Cr.P.C. The Hon'ble Apex Court laid down that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, section 320 Cr.P.C. would not be a bar to the exercise of power of quashing. In the nutshell, the Hon'ble Apex Court justified the exercise of powers under Section 482 Cr.P.C. to quash the proceedings to secure the ends of justice in view of the special facts and circumstances of the case, even where the offences were non-compoundable.

In the light of the aforesaid, this Court is of the view that notwithstanding the fact the offence under Section 498A IPC is a non-compoundable offence, there should be no impediment in quashing the FIR under this section, if the Court is otherwise satisfied that the facts and circumstances of the case so warrant.

11. *The Courts in India are now normally taking the view that endeavour should be taken to promote conciliation and secure speedy settlement of disputes relating to marriage and family affairs such as, matrimonial disputes between the couple or/and between the wife and her in-laws. India being a vast country naturally has large number of married persons resulting into high numbers of matrimonial disputes due to differences in temperament, life-styles, opinions, thoughts etc. between such couples, due to which majority is coming to the Court to get redressal. In its 59th report, the Law Commission of India had emphasized that while dealing with disputes concerning the family, the Court ought to adopt an approach radically different from that adopted in ordinary civil proceedings and that it should make reasonable efforts at settlement before the commencement of the trial. Further it is also the constitutional mandate for speedy disposal of such disputes and to grant quick justice to the litigants. But, our Courts are already over burdened due to pendency of large number of cases because of which it becomes difficult for speedy disposal of matrimonial disputes alone. As the matrimonial disputes are mainly between the husband and the wife and personal matters are involved in such disputes, so, it requires conciliatory procedure to bring a settlement between them. Nowadays, mediation has played a very*

important role in settling the disputes, especially, matrimonial disputes and has yielded good results. The Court must exercise its inherent power under Section 482 Cr.P.C. to put an end to the matrimonial litigations at the earliest so that the parties can live peacefully.

12. Since the subject matter of this FIR is essentially matrimonial, which now stands mutually and amicably settled between the parties, therefore, continuance of proceedings arising out of the FIR in question would be an exercise in futility and is a fit case for this Court to exercise its inherent jurisdiction.

13. In the facts and circumstances of this case, in view of statement made by the respondent No.2 and the compromise arrived at between the parties, the FIR in question warrants to be put to an end and proceedings emanating thereupon need to be quashed.

14. Accordingly, this petition is allowed and FIR No.97/2013 dated 21.06.2013, under Sections 498-A/406/34 IPC registered at Police Station C.A.W. Nanak Pura and the proceedings emanating therefrom are quashed against the petitioners.

15. This petition is accordingly disposed of.

(P.S.TEJI)
JUDGE

MARCH 21, 2016
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