

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 391/2016**

JITENDER KUMAR & ORS
Through: Mr. Rajendra Kumar Tiwari,
Advocate.
Date of Decision: May 10th, 2016
..... Petitioner
versus

STATE (NCT OF DELHI) & ORS
Through: Mr. M.P. Singh, Additional Public
Prosecutor for the State with Sub-
Inspector Umed Singh, Police Station
Mianwali Nagar, Delhi and Sub-
Inspector Raman Pratap, Police
Station CWS, Nanakpura.
..... Respondent

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 petitioner, namely, Smt. Jitender Kumar, Sh. Mahavir Singh, Smt. Laxmi, Sh. Narender Kumar and Ms. Pooja for quashing of FIR No.88/2008 dated 19.11.2008, under Sections 498A/406/34 IPC registered at Police Station C.W.C. Nanak Puri on the basis of mediation report in Delhi Mediation Centre, Tis Hazari Courts in view of the settlement arrived at between petitioner no.1 and respondent no.2, Smt. Poornima @ Sonia on 24.03.2014.
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 in the FIR in question by SI Umedh Singh.
3. The factual matrix of the present case is that the marriage

between petitioner no.1 and the respondent no.2 was solemnized on 23.04.2008. The family of the husband of the complainant was not satisfied with the dowry. All of the complainant's jewellery was taken away by her mother-in-law including Rs. 24,000/- cash. The husband of the complainant along with his other family members used to beat and abuse the complainant on several occasions. They also used to humiliate the complainant and her father on the demand of Rs.15 Lakhs at various instances.

The respondent no.2/complainant lodged a complaint which resulted into the registration of the FIR in question against the petitioners. Subsequently, on 24.03.2014, during the pendency of the proceedings of Section 12 of D.V. Act instituted by the petitioner against the respondent no.2, the matter was amicably settled between the petitioner no.1 and respondent no.2.

4. Respondent No.2, present in the Court, submitted that the dispute between the parties has been amicably resolved. As per the mediation report, it is agreed that the parties shall take divorce by way of mutual consent. It is agreed that the petitioner no.1 shall pay the total settlement amount of Rs. 6 Lacs towards as her past, present and future maintenance and permanent alimony and any other legal claims. It is also agreed petitioner no.1 shall pay Rs. 2 Lacs at the time of quashing of the FIR in question. It is agreed that petitioner no.1 has already handed over a DD bearing no. 000614 drawn on PMC Bank for a sum of Rs. 1 Lac to respondent no.2. It is also agreed that the first motion petition shall be filed on or before 21.04.2014 and the second motion petition for divorce by mutual consent shall be filed

after six months of the allowing of the first motion petition and within two months thereafter. It is also agreed that petitioner no.1 shall withdraw his petition for divorce on the ground of cruelty which is pending before concerned Family Court, west, THC, Delhi on the 05.04.2014. It is also agreed that respondent no.2 shall withdraw the petition under Section 12 of D.V. Act and her petition under Section 125 Cr.P.C. pending before concerned Family Court, West, THC, Delhi on 05.04.2014. It is also agreed that respondent no.2 shall withdraw the executions filed by her before concerned Family Court, West, THC, Delhi on their next dates of hearing i.e. 02.04.2014 and 16.04.2014 respectively. It is also agreed that both parties shall approach this Court for quashing of the FIR in question within the one month from the date of grant of decree of divorce and that respondent no.2 shall cooperate with petitioner no.1 and his family members. It is also agreed that after the decree of annulment is passed, respondent no.2 shall not have any right, title or interest in the property of petitioner no.1 or his ancestors. It is also agreed that the parties shall not retract from their respective statements failing which they shall make themselves liable for legal action as per law. It is also agreed that the parties shall not use, circulate or publicize any evidence or marriage photographs, CDs etc. against the others, which is in their possession which is to the detriment to the other and shall destroy them. It is also agreed that the parties shall not contact each other's relatives, friends and colleagues of the other side in any manner whatsoever. It is also agreed that the parties shall not create any encumbrances which shall be detrimental to the other. It is also agreed

that the parties shall not give any effect to the complaint, if any already filed and shall not file any complaint against the other in future in respect of the marriage between them subject to the conditions of the settlement being fulfilled. It is also agreed that the parties shall not interfere in the future in each other's lives and that they shall not visit the workplace or residence of each other. It is also agreed that the parties shall not try to contact each other except through their lawyers and As per the convenience of the lawyers they can have a meeting in the chamber of lawyers in order to give effect to this settlement and bring the litigation to an end. It is also agreed that the parties shall not use the evidence, if any in their possession against the other party before any authority. It is also agreed that the parties shall appear before the Court to abide by the terms of and conditions set out in the agreement and not to dispute the same herein after in future. It is also agreed that the parties shall not make any claim of any nature against each other in respect of the present dispute. It is agreed that the parties shall appear before the Court of Ld. MM (Mahila Court)-02, West, THC, Delhi on 02.04.2014 and on subsequent dates As well as before the Court of Ms. Reena Singh Nag, Ld. Judge, Family Courts, West THC, Delhi on 05.04.2014 and on subsequent dates as well as this Court for quashing of the FIR in question to abide by the terms set out in this settlement. Respondent No.2 affirmed the contents of the aforesaid settlement and of her affidavit dated 07.12.2015 supporting this petition. In the affidavit, the respondent no.2 has stated that she 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 agreed 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 tranquility 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 overburdened 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.88/2008 dated 19.11.2008, under Sections 498A/406/34 IPC registered at Police Station C.W.C. Nanak Puri and the proceedings emanating therefrom are quashed against the petitioners.

15. This petition is accordingly disposed of.

(P.S.TEJI)
JUDGE

MAY 10, 2016
dd