

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

+ **CRL.M.C. 3481/2015**

Date of Decision : March 11th, 2016

SALMA BEGUM & ORS

..... Petitioner

Through Mr.Mobin Akhtar, Adv.

versus

THE STATE (GOVT OF NCT OF DELHI) & ORS Respondent

Through Mr.Amit Chadha, APP with SI Pankaj Gupta, PS Jamia Nagar.
Mr.M. Hasibuddin, Adv. for R-2 with respondent no.2 & 3 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, Smt. Salma Begum, Sh.Mohd. Hasim and Sh.Mohd. Rizwan for quashing of FIR No.308/2009 dated 14.10.2009, under Sections 307/323/498-A/506/34 IPC registered at Police Station Jamia Nagar on the basis of the Memorandum of Understanding (MOU) arrived at between petitioners along with Mohd. Ilyas and respondent no.2 & respondent no.3, namely, Sh. Mohd. Yahya and Smt. Reshma Begum, respectively, on 23.08.2015 at New Delhi.
2. Learned Additional Public Prosecutor for respondent-State submitted that the respondent No.3, present in the Court has been

identified to be the complainant/first-informant in the FIR in question by SI Jagsharan.

3. The factual matrix of the present case is that the marriage between respondent no.2 and respondent no.3 was solemnized on 14.05.2006 according to Muslim rites and ceremonies. With the passage of time, the mother-in-law and the brother-in-law of the complainant started to pressurize the respondent no.2 to divorce the respondent no.3 for not bringing Rs. 1 lacs cash from her parents. The mother-in-law of the complainant made a demand of Rs. 1 lacs and a Santro car from her otherwise she told her that she would not be allowed in the matrimonial home. The complainant asked her in-laws not to interfere with her married life, on which she was beaten up by her mother-in-law. Mohd. Hashim also threatened the respondent no.2 to leave the house with his wife. He gave beatings to the respondent no.2 and the mother-in-law of the complainant caught hold of her hair and gave her a kick in the abdomen. On 07.09.2009, the brother-in-law of the complainant dragged her in a room and told her that today he will kill her. The complainant tried to run away but her mother-in-law gave a mug of kerosene oil to the Jamil and Jamil poured the oil on the complainant and threw a match stick on her body. Then, Mohd. Hashim set her on fire due to which the complainant suffered from burn injuries.

Thereafter, the complainant/respondent no.3 lodged a complaint under Section 156 (3) Cr.P.C. On the direction of the Ld. MM, the FIR in question was registered. The petitioners were granted anticipatory bail by this Court. After the completion of the investigation, a final

report under Section 173 Cr.P.C. was filed. The charges under Section 498-A/307/323/506/34 IPC were framed against the petitioners. Later on, with the intervention of family, neighbours and friends etc. the parties arrived at an amicable settlement and resolved their issues.

4. Respondent No.3, present in the Court, submitted that the dispute between the parties has been amicably resolved with the intervention of family, neighbours and friends. As per the MOU, Sh. Mohd. Ilyas, agreed to withdraw his public notice dated 11.09.2009 regarding disowning the respondent nos.2 & 3 from all his movable and immovable properties vide public notice dated 14.08.2015 in Rashtriya Sahara Hindi Newspaper. It is also agreed that Mohd. Ilyas and petitioner no. 2, as decided, have given a separate flat bearing no. C-161, measuring 80 sq. yards situated at 4th Floor, Abul Fazal Enclave Part-II, Shaheen Bagh, Jamia Nagar, New Delhi-110025 to the respondent nos. 2 & 3, so that respondent nos. 2 & 3 can live peacefully along with their children. It is also agreed that respondent nos. 2 & 3 are residing in the said flat and that the documents of the said flat were executed by the petitioner no.1 in favour of respondent nos. 2 & 3 jointly. It is further agreed that Sh. Mohd. Ilyas has transferred the complete share of property which is lying in Delhi and here onwards the respondent nos. 2 & 3 individually and jointly shall not claim any right or title over the property lying in Delhi in the name of Sh. Mohd. Ilyas and the petitioners. It is also agreed that Sh. Mohd. Ilyas and the petitioners have also given another plot admeasuring 100 sq. yards from 200 sq. yards of plot which is part of Khasra No. 961/840 situated at village Madanpur Khadar, New Delhi-110076 to

respondent nos. 2 & 3 and that the documents in that regard were also executed in favour of respondent nos. 2 & 3 jointly. It is also agreed that the Sh. Mohd. Ilyas has also given his undertaking that respondent no.2 shall also get a right in his ancestral property as per law. It is further agreed that the respondent no.3 being the complainant in the FIR in question shall give her consent to get the FIR in question quashed along with the proceedings emanating therefrom to bring peace and harmony in her matrimonial life. It is further agreed that respondent nos. 2 & 3 shall stand by with Mohd. Ilyas and the petitioners in all aspects of their respective lives and that both parties shall forget about their past and live peacefully in the future. Respondent Nos.2 & 3 affirmed the contents of the aforesaid settlement and of their affidavits dated 24.08.2015 supporting this petition. In the affidavits, respondent nos. 2 & 3 have stated that they have 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 respondent No.3 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 nos.2 & 3 agreed to the quashing of the FIR in question without any threat or coercion or undue influence and have stated that the matter has been settled out of their 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 offences under Section 498-A/307 IPC are non-compoundable offences, there should be no impediment in quashing the FIR under these sections, 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. In the present case, Section 307 IPC was added in the FIR and the charge sheet dated 27.12.2011 as it was alleged that the mother-in-law and the brother-in-law of the complainant tried to kill the complainant by pouring kerosene oil on her and putting her on fire. Perusal of the charge sheet shows that the nature of injuries have been opined to be 'simple' in nature. Thus, Section 307 IPC was added not due to the nature of injuries but due to circumstances endangering the life of the complainant.

13. 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.

14. In the facts and circumstances of this case, in view of statement made by the respondent No.3 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.

15. Accordingly, this petition is allowed and FIR No.308/2009 dated 14.10.2009, under Sections 307/323/498-A/506/34 IPC registered at Police Station Jamia Nagar and the proceedings emanating therefrom are quashed against the petitioners.

16. This petition is accordingly disposed of.

**(P.S.TEJI)
JUDGE**

**MARCH 11, 2016
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