

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

+ CRL.M.C. 4457/2015

Date of Decision : February 12th, 2016

NAVIN GUPTA & ORS Petitioners
Through Mr. Anand Maheshwari, Adv.

versus

STATE & ANR Respondents
Through Mr. Satya Narayan Vashishth, APP
for State

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. Navin Gupta, Sh. Narendra Gupta and Smt. Mithlesh Gupta for quashing of FIR No.115/2009 dated 19.08.2009, under Sections 406/498A/34 IPC registered at Police Station Crime Women Cell on the basis of the mediation report of the Delhi High Court Mediation & Conciliation Centre, Delhi High Court, New Delhi arrived at between the petitioner no.1 and respondent No.2, namely, Ms. Richa Gupta on 06.10.2015.

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 ATO Vijay Kumar, PS Vasant Vihar.

3. The factual matrix of the present case is that the marriage between the complainant/respondent no.2 and the petitioner no.1 was solemnized on 11.05.2013 as per the Hindu rites and ceremonies. After the marriage, the in-laws and the husband of the complainant started demanding more money. Whenever there used to be some delay in fulfilling their demands, the complainant used to be beaten up by her husband on the instigation of her in-laws. At one time, the complainant managed to fill the registration form for seeking enrollment as an Advocate, on which she was beaten up very badly by her husband and father-in-law. After an unfortunate incident, when the brothers and other relatives of the complainant were beaten up by some people, the complainant expressed her desire to visit them, on which she was again beaten up by her husband on 02.05.2008. On 20.05.2008, the husband and the mother-in-law of the complainant started pressurizing her for bringing more money from her parents. One day, the complainant told her husband that she would give all her income to her parents, on which he started abusing her and called

parents. When the parents of the complainant visited her, the husband of the complainant abused her parents too. The complainant thereafter left with her parents. Later on, the complainant went to her matrimonial home for two days i.e. 01.06.2008 and 02.06.2008. On 02.06.2008, the husband of the complainant left the complainant again at her parental home. Since then, the complainant has been residing at her father's place. On 30.09.2008, the complainant along with her father and brothers, went to her matrimonial home to meet her son but she was manhandled by her in-laws and her husband.

Thereafter, the petitioner no.1 filed a petition under Section 13(1)(ia) HMA for divorce and the respondent no.2 lodged a complaint against the petitioners before the CAW Cell, New Delhi which resulted into the FIR in question. The petitioner no.1 too lodged a complaint against the respondent no.2 which resulted in the FIR No. 81/2010. The respondent no.2 filed a W.P.(Crl.) No. 603/2011 for quashing of the said FIR before this Court and during the pendency of the same, the parties were referred to mediation cell, where they resolved all their disputes.

4. Respondent No.2, present in the Court, submitted that the

dispute between the parties has been amicably resolved. As per the mediation report, the parties have settled all their disputes and matrimonial claims against each other which includes all the claims of respondent no.2 i.e. claims of the present, past and future maintenance, permanent alimony, dowry articles, stridhan, jewellery and all the other articles for the respondent no.2 and for her minor child baby Charu Gupta pursuant to the said mediation settlement. It is also agreed between the parties that petitioner no.1 shall pay an amount of Rs. 35,00,000/- to respondent no.2 which is inclusive claims of the present, past and future maintenance, permanent alimony, dowry articles, stridhan, jewellery and all the other articles presented to her by her own parents and her relatives and also by the parents and relatives of petitioner no.1, permanent alimony for herself and also for the minor child baby Charu Gupta as full and final settlement of all settlement of all accounts between the parties touching their matrimonial life. It is further agreed that respondent no.2 shall not be left with any right, title or claim in the movable or immovable properties of petitioner no.1 or that of his family after execution of this settlement agreement. It is also agreed that the

petitioner no.1 shall not be left with any right, title or interest or claim in the movable and immovable properties of respondent no.2 and/or of her minor child baby Charu Gupta, including the property which shall be purchased by the amount of Rs. 35,00,000/- given by petitioner no.1, or that of the properties of her family members after execution of this agreement. It is agreed that the settlement amount of Rs.35,00,000/- shall be used by respondent no.2 only for the purchase of on immovable property in the joint names of respondent no.2 and baby Charu Gupta and a copy of the Sale Deed shall be provided to petitioner no.1 on or before the recording of the statements of the parties during the proceedings of second motion of decree of divorce. It is further agreed that the copy of the Sale deed/Title document shall be given to petitioner no.1 only for the purposes of the information and the same shall not be used by petitioner no.1 for any purpose whatsoever. It is agreed between the parties that the schedule of payment of Rs.35 lakhs and the withdrawal of the proceedings and getting the divorce by mutual consent shall be as the one laid down in the terms of the mediation report. It is agreed that respondent no.2 shall co-operate in completing the entire process as per the present

settlement agreement and in case of any default from her side she shall reimburse the amount of Rs.35,00,000/- received by her and in order to secure the said payment, in case of any default as may be decided by the Court of law, the respondent no.2 is hereby giving a post dated security cheque bearing no. 642839 dated 20.05.2016, drawn on Axis Bank, Sector-18. Noida for Rs.35,00,000/- issued in favour of petitioner no.1 to be encashed only after the due notice to respondent no.2 regarding the default, if any. It is also agreed that the aforesaid cheque shall be returned to respondent no.2 at the time of recording of statements in second motion. It was therefore agreed that in case of any default from the petitioner no.1, the amount paid by the petitioner no.1 shall stand forfeited. It is also agreed that the original cheque bearing no. 642839 has been handed over to the petitioner no.1 and the petitioner no.1 acknowledges the receipt of the same. It is further agreed that on the issue of custody of children, the respondent no. 2 and petitioner no.1 undertake to follow the terms of the compromise deed and judgment dated 07.07.2012 passed in G.P. No.321 of 2008 (filed by respondent no.2 for the custody of minor son Aman Gupta) and G.P. No. 16 of 2011 (filed by petitioner no.1 for the

custody of minor daughter Charu Gupta) and that the same shall not be varied and/or changed by respondent no.2 and the petitioner no.1 in future without having further mutual settlement in writing between them which shall be executed by them by keeping in mind the welfare principles of both the children. Therefore, the custody of minor son Aman Gupta is with petitioner no.1 and the custody of the minor daughter is with respondent no.2 as per the above said compromise order dated 07.07.2012. It is also agreed that without any prejudice to the above, all the maintenance and other charges of Charu Gupta shall be borne by respondent no.2 only, from the date of execution of this settlement agreement and similarly all the maintenance and other charges of Aman Gupta shall be borne by petitioner no.1 only from the date of execution of this settlement agreement. It is further agreed that the parties shall not file any complaint/petition/suit or any other proceedings against each other before any Court of law or Police Authority in any manner whatsoever and in case any such complaint/suit/petition shall be found, the same shall be treated as null and void. The parties further agree not to interfere in each others' personal or professional lives failing which the parties shall be at

liberty to take appropriate legal proceedings as per the law on the basis of the future cause of actions, if any. Respondent No.2 affirms the contents of the aforesaid settlement and of her affidavit dated 20.10.2015 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 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 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.115/2009 dated 19.08.2009, under Sections 406/498A/34 IPC registered at Police Station Crime Women Cell the proceedings emanating therefrom are quashed against the petitioners.

15. This petition is accordingly disposed of.

(P.S.TEJI)
JUDGE

FEBRUARY 12, 2016
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