

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

+ **CRL.M.C. 4904/2015**

Date of Decision : May 02nd, 2016

ASHWANI BINDRA & ORS Petitioners
Through Mr.Gagan Chawla, Adv.

versus

THE STATE (GOVT. OF NCT DELHI) & ANR Respondents
Through Mr.Izhar Ahmad, APP for the State.
Ms.Neha Dhir, Adv. 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. Ashwani Bindra, Smt. Sudesh Bindra, Sh. Rajesh Mahajan, Smt. Minakshi Mahajan and Ms. Ruchi Bindra for quashing of FIR No.125/2012 dated 14.04.2012, under Sections 498-A/406/34 IPC registered at Police Station Saket on the basis of the compromise deed arrived at between the petitioner no.1 (along with petitioner nos. 2 & 4 and Mr. Ram Prakash Bindra, hereinafter referred to as 'third party') and respondent no.2, namely, Ms. Kanika Bindra @ Kanika Arora on 20.02.2015.

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 between petitioner no.1 and the respondent no.2 was solemnized on 09.09.2000. At the time of the formal marriage, the accused persons demanded that the parents of the complainant should give heavy gifts including Santro car, jewellery and sweets etc. The accused persons on every festival demanded expensive gifts from the parents of the complainant. The complainant was also not permitted to do her further studies and when she insisted she was abused physically by the accused persons. After some time the complainant was thrown out of her matrimonial home and when the accused persons came to know that the complainant is earning Rs. 22,000/- p.m., they took her back. The husband of the complainant used to plan very expensive trips to foreign countries and made the complainant to spend in lakhs. The life of the complainant was made miserable by the accused persons.

Thereafter, the complainant lodged the FIR in question against the petitioners. The charge sheet in the case has already been filed. Later, the matter was amicably settled between the parties by way of compromise.

4. Respondent No.2, present in the Court, submitted that the dispute between the parties has been amicable resolved. As per the compromise deed, it has been agreed that petitioner no.1 and respondent no.2 shall take divorce by way of mutual consent. It is agreed that petitioner no.1 and third party shall jointly pay an amount of Rs. 40 Lakhs by way of DD/pay order/bankers cheque to

respondent no.2 towards full and final settlement of all the past present and future claims of respondent no.2 including personal articles, jewellery, istridhan, marriage expenses, present, past and future maintenance, permanent alimony inclusive of all the expenses/share/inheritance rights in the present and future and of minor child (Master Shriyansh) consisting of all the expenses of upbringing, education, living, present and future maintenance and of inheritance etc. of said minor child. It is also agreed that the schedule of payment of the settlement amount shall be as enunciated in the terms of the settlement. It is also agreed that the permanent custody of the elder child i.e. Master Rehaan shall exclusively remain with the petitioner no.1 and that the permanent custody of the younger child shall be with respondent no.2. It is agreed that respondent no.2 has voluntarily relinquished and surrendered her visitation and meeting rights in respect of meeting the elder child and that similarly the petitioner no.1 has relinquished and surrendered his visitation and meeting rights in respect of meeting the younger child. It is agreed that none of the parties shall raise any claim or right or even visitation rights over the respective children in custody of the other party before any Court of law or otherwise. It is also agreed that respondent no.2 and petitioner no.1 shall be responsible for all the costs of upbringing, education and living of the child in their respective custody and that they shall not claim any right or amount whatsoever from the other party. It is also agreed that the parties shall cooperate with each other by presenting the petitions, presenting themselves for making their statements under Sections 13(B)(I) & 13(B)(II) HMA. It is also

agreed that the first joint motion for divorce shall be presented before the Court concerned within 15 days of the execution of the present compromise deed. It is also agreed that simultaneous to the first motion, the parties shall jointly pray before the concerned Family Court for disposing of the custody petition in terms of the present settlement. It is also agreed that within 30 days of the first motion being allowed the petitioner shall file an application before this Court in CS(OS) No. 1773/2011 for passing a compromise decree in the said suit based on the present settlement and that thereafter immediately within a week respondent no.2 shall withdraw the complaint case as filed under Section 12 of DV Act from the concerned Court after the first motion of divorce is allowed by the concerned Court. It is also agreed that the second motion of divorce shall be moved after the expiry of the stipulated period of 6 months or as directed by the concerned Court and the respondent no.2 and petitioner no.1 undertake to cooperate with each other by recording their statements in the second motion of divorce before the concerned matrimonial Court. It is also agreed that within 15 days of the grant of decree of divorce by mutual consent, the respondent no.2 shall fully cooperate with the petitioner no.1 and that she shall appear in person with her counsel and make a statement before this Court in support of the quashing petition for quashing of the FIR in question. It is agreed that all the parties shall withdraw all civil/criminal proceedings against each other and undertake not to initiate any further civil/criminal case against each other and/or any of their family members in the future before any forum after the complete discharge of the respective

obligations under the present settlement. It is agreed that respondent no.2 confirms and affirms that she has no right, title or interest in any manner in property bearing no. G-28, Lajpat Nagar, Part-III, New Delhi-110024 and also that she shall not make any claim in any manner what so ever in the said property or any other properties owned at present or acquired hereafter. It is also agreed that respondent no.2 confirms and affirms that property bearing no. G-28, first and second floor with roof rights, Lajpat Nagar, Part-III, New Delhi-110024 belongs to, owned and is in complete, occupation and possession of third party. It is also agreed that petitioner no.1 confirms and affirms that he has no right, title or interest in the properties owned at present or in acquired hereafter by respondent no.2. It is also agreed that the parties shall if any party has filed any case, complaint, FIR, etc. against the other party or any family members in any Court of law, police, or any other authority either in New Delhi or any Part of India, which is not in the knowledge of any of the party, then it shall be deemed to be considered as compromised and withdrawn in terms of the present compromise deed. It is also agreed that the present compromise deed shall not be called in question in future on the grounds that the parties were not competent to enter into this agreement or were under any disability etc. It is also agreed that in case either of the parties withdraw from the terms and conditions of the comprise deed then the other party shall have the right to take appropriate legal action before any Court of law with claim of damages to the tune of Rs. 50,00,000/- in addition to amount already paid if any under the present compromise deed. Respondent No.2

affirmed the contents of the aforesaid settlement and of her affidavit dated 24.11.2015 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.125/2012 dated 14.04.2012, under Sections 498-A/406/34 IPC registered at Police Station Saket and the proceedings emanating therefrom are quashed against the petitioners.

15. This petition is accordingly disposed of.

(P.S.TEJI)
JUDGE

MAY 02, 2016
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