

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

+ **CRL.M.C. 46/2016**

Date of Decision : March 22nd, 2016

SALMAN JAMEEL & ORS

..... Petitioner

Through **Mr.Samar Inam Khan, Adv.**

versus

THE STATE & ANR

..... Respondent

Through **Mr.Rajat Katyal, APP for the State.**
Mr.Hameed S. Shaikh, 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. Salman Jameel, Anees Begum, Sh. Jameel Ahmad, Smt. Tarannum, Sh. Shakeel Ahmad, Sh. Sagheer Ahmad, Sh. Izharuddin, Rukhsana, Sh. Arshad Ahmad, Arshi, Sh. Mohd. Aqeel, Smt. Sultana and Mohd. Yameen for quashing of FIR No. 203/2010 dated 10.10.2010, under Sections 498A/406/34 IPC & Section 4 Dowry Prohibition Act registered at Police Station Seelampur on the basis of a Memorandum of Understanding cum Settlement of Divorce (MOU) arrived at between petitioner no.1 and respondent No.2, namely, Ms. Shahana on 30.09.2015.

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 the petitioner no.1 and the respondent no.2 was solemnized on 16.12.2008 according to Muslim rites and customs. From the second day of the marriage, all the accused persons/petitioners started harassing her and taunting her. All the jewellery given by the parents of the complainant was snatched away by her mother-in-law and other petitioners. After few days of the marriage, the complainant came to know that her husband is interested in males. After a few months of the marriage, the complainant became pregnant by her husband and in-laws still tortured her. The husband of the complainant under the influence of his mother used to beat the complainant. After 6-7 months of the marriage, the husband of the complainant left her at her parental home. After that the petitioners apologized and the complainant went back with them. On 04.12.2009, the complainant gave birth to a female child and then too she was tortured by the petitioners. On 29.01.2010, the complainant was again beaten up by her husband, mother-in-law and sisters-in-law saying that at the time of the birth of the female child, her parents had not given them anything. On 13.05.2010, the husband of the complainant again started fighting and beating the complainant and he along with his mother even poured kerosene on the complainant and tried to burn her alive.

The respondent no.2/complainant lodged a complaint before the Caw Cell, Nand Nagri which resulted into the registration of the FIR

in question against the petitioners. The respondent no.2 filed a case under Section 125 Cr.P.C., Section 12 D.V.Act and a complaint case under Section 156(3)/200 Cr.P.C. and the petitioner no.1 filed a case under Section 156(3)/200 Cr.P.C. and custody case under G & W Act. All the said cases have been withdrawn as settled. The matter was amicable settled with the intervention of the Family Court.

4. Respondent No.2, present in the Court, submitted that the dispute between the parties has been amicably resolved. As per the MOU, it has been agreed that the petitioner no.1 and respondent no.2 are no more together and divorce pronounced on 20.05.2010 is accepted by both. It is also agreed that the minor child namely Baby Anabia shall be in custody of respondent no.2 and that the petitioner no.1 shall have visitation rights to meet with the child every 1st and 3rd Saturday of every month at a mutually decided place, further during and at the time of fixing of marriage, selection of groom, and any other thing as required, and respondent no.2 is also bound to update the petitioner no.1 about the education of Baby Anabia. It is also agreed that the petitioner no.1 shall pay a sum of Rs. 4.3 Lakhs to respondent no.2 as full and final settlement including past, present and future maintenance, alimony of respondent no.2 & gold articles and stridhan of respondent no.2. It is agreed that the schedule for payment shall be as enunciated in the terms of the MOU. It is agreed that both the parties shall inform the other party immediately in writing/through email, in case they change his/her present address. It is also agreed that neither party shall claim for anything against each other in future in any manner and the matter has been settled finally. It is also agreed

that no other issue is pending between the parties and that the parties shall not interfere with the lives of each other in any manner whatsoever. It is also agreed that after the completion of the settlement, the parties shall not harm each other or their family members physically, mentally or in any manner whatsoever in the future. Respondent No.2 affirmed the contents of the aforesaid settlement and of her affidavit dated 30.10.2015 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 & Section 4 Dowry Prohibition Act 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. 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. 203/2010 dated 10.10.2010, under Sections 498A/406/34 IPC & Section 4 Dowry Prohibition Act registered at Police Station Seelampur and the proceedings emanating therefrom are quashed against the petitioners.

15. This petition is accordingly disposed of.

(P.S.TEJI)
JUDGE

MARCH 22, 2016
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