

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

+ **CRL.M.C. 5209/2015 & CrI.M.A. No. 18769/2015**

Date of Decision : March 14<sup>th</sup>, 2016

**SAYANTAN GHOSH**

..... Petitioner

Through Mr.R.S. Dwivedi, Adv.

versus

**STATE & ANR**

..... Respondent

Through Mr.Izhar Ahmad, APP with SI Satish Bhati, PS Kalkaji.

Mr.S.K. Bhaduri, 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 petitioner, namely, Sh. Sayantan Ghosh for quashing of FIR No.313/2013 dated 22.07.2013, under Sections 498A/406/34 IPC registered at Police Station Kalkaji on the basis of the mediation report, Delhi Mediation Centre, Delhi High Court, New Delhi in view of the settlement arrived at between the petitioner along with Mr. S.N.Ghosh (on behalf of himself & Mrs. Mandira Ghosh) and respondent no.2, namely, Smt. Tithi Ghosh on 29.05.2015.

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 and the respondent no.2 was solemnized on 28.01.2012. After the marriage, the father-in-law of the complainant threatened her on petty issues. On 30.01.2012, the mother-in-law of the complainant asked her to vacate the room. On coming back to her room, the complainant found out that her earrings were missing and when she asked her in-laws about the same, they hurled filthiest of abuses on her. After the marriage, the complainant discovered that her husband is an impotent. To avoid any type of physical relation with the complainant, her husband used to quarrel with her and torture her for many days. On 10.09.2012, the husband of the complainant became very violent and started hitting her. The complainant later on, packed her suitcase and came to her grandfather's house with her mother. All the jewellery given by the parents of the complainant are still lying with her in-laws.

The respondent no.2/complainant registered the FIR in question against the petitioner, S.N.Ghosh and Mrs. Mandira Ghosh on the basis of the complaint dated 23.09.2012. The petitioner filed for anticipatory bail which was granted to him. Later on, both the parties compromised their matter with each other.

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 within two months from the date of this report, petitioner and respondent no.2 shall file joint petitions under Sections 13-B(1) & 13-B(2) of the H.M.A. before a competent

Court of law for obtaining divorce by mutual consent. It is also agreed that petitioner and respondent no.2 will appear personally before the Court in respect of both of the above mentioned petitions of H.M.A. and shall give their statements before the concerned Court for getting their marriage dissolved. It is also agreed that petitioner shall pay an amount of Rs. 8 Lacs to respondent no.2 in lieu of stridhan of the respondent no.2 which she admits to having received the same. It is also agreed that petitioner shall pay a sum of Rs. 2 Lacs to respondent no.2 as full and final settlement in respect of past, present and future alimony of the respondent no.2. It is also agreed that out of the aforesaid Rs. 2 Lacs, petitioner shall pay a sum of Rs. 70,000/- each at the time of recording the statements of the parties in respect of the first and second motions respectively in the shape of DD/Pay-order in the name of respondent no.2. It is further agreed that after obtaining the decree of mutual consent, petitioner shall file an appropriate petition before this Court for the quashing of the FIR in question and that the respondent no.2 shall cooperate for the same as well as the criminal miscellaneous petition Main No.4630/2014 titled as 'Sourendra Nath Ghosh & Ors. vs. State & Ors.' It is also agreed that both the parties shall request this Court to quash the FIR in question in view of the settlement as arrived between the parties. It is also agreed that petitioner shall pay the remaining sum of Rs. 60,000/- in the form of pay-order/DD to respondent no.2 at the time of recording of the statement of the respondent no.2 in CrI.M.C. No. 4630/2014. It is also agreed that after the quashing of the FIR in question, the respondent no.2 shall withdraw her petition under the D.V. Act against petitioner

from the concerned Court. It is further agreed that if either party acquires any movable or immovable property(s) then the other party shall have no right, title or interest in respect of the same. It is also agreed that after the receipt of the total amount of Rs. 2 Lacs by respondent no.2, the respondent no.2 shall have no right to claim anything against petitioner except the furniture, which is to be lifted by respondent no.2, as per the order of the Court, and which are lying at 251, Nilgiri Apartments, Alaknanda, New Delhi-110019. It is also agreed that both the parties are withdrawing unequivocally, each and every allegation leveled at each other in view of the settlement. It is also agreed that the original FDR being FD No. KCC/01/30358 in the name of respondent no.2 is misplaced and is now not traceable. The respondent no.2 shall apply for a duplicate of the said FD to the concerned Bank and petitioner and Sh. S.N.Ghosh shall cooperate/assist respondent no.2 in this regard as and when required. It is also agreed that respondent no.2 has already obtained the status of the FDR from the Bank which shows its continuance in her name only. It is also agreed that there is one joint savings Bank account bearing no. 045700101010428 in the name of petitioner and respondent no.2 in the Corporation Bank, Tharpakna branch at Ranchi and Sh. S. N. Ghosh has agreed to withdraw his name from the said Bank account of the Corporation Bank, Tharpakna branch at Ranchi. It is also agreed that whatever is the balance in the saving account shall be returned to Sh. S. N. Ghosh and that thereafter, respondent no.2 shall operate the above said account individually. It is also agreed that after the removal of the name of Sh. S. N. Ghosh from the said

account in the Corporation Bank, Tharpakna branch at Ranchi, respondent no.2 may individually operate the said account. It is also agreed that the respondent no.2 shall withdraw her name from the joint savings bank account bearing no.480102010867824, Union Bank of India her the name, so that the account may be operated by petitioner and Mandira Ghosh (either or survivor) and that a letter to that effect shall be signed by all the holders. It is also agreed that respondent no.2 shall not claim anything from the National Saving Certificates (NSC) purchased out of the money of Sh. S. N. Ghosh bearing no.06 EF 101439 to 101444 (six NSC). It is also agreed that the respondent no.2 shall not show any objection if the said amount with interest is realized by Mandira Ghosh being the second holder from the Postal Authority. It is also agreed that the respondent no.2 shall discharge her obligation on the said NSCs by putting her signature thereon on all the NSCs at the time of payment of first installment and that respondent no.2 shall extend cooperation in getting the matured amount by the second holder. It is also agreed that the petitioner, Sh. S. N. Ghosh and Mandira Ghosh shall not claim any amount in respect of the FDR being FD No.KCC/01/30358 in the name of respondent no.2 which is to be realized by respondent no.2 alone. It is also agreed that the respondent no.2 shall open a Demat account in her own name or in the name of her father, Sh. Chittaranjan Das and a communication to this effect immediately on opening of Demat account to be sent to petitioner no.1 and the shares which were transferred by respondent no.2 to Sh. S. N. Ghosh and are now in his possession, will be transferred in the name of the respondent no.2 on getting the

communication of opening Demat account as early as possible but not later than the period of 6 months from the date of present settlement. The particulars of the shares are as laid out in the mediation report. It is further agreed that the parties and their respective families shall not file any case either civil or criminal against each other after obtaining the aforesaid all the amount by the respondent no.2 and after the present settlement except the case under Section 13B(1) & 13B(2) of the H.M.A. and the quashing proceedings as agreed above. Respondent No.2 affirmed the contents of the foresaid settlement. All the disputes and differences have been resolved through mutual consent. Now no dispute with petitioner 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 petitioner and has settled all the disputes with him. 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 59<sup>th</sup> 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.313/2013 dated 22.07.2013, under Sections 498A/406/34 IPC registered at Police Station Kalkaji and the proceedings emanating therefrom are quashed against the petitioner.

15. This petition is accordingly disposed of.
16. Application CrI.M.A. No. 18769/2015 is also disposed of.

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

**MARCH 14, 2016**  
**dd**

