

\$~8

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 28th September, 2018

+ CRL.M.C. 1126/2018

ABHINAV JAIN & ORS

..... Petitioners

Through: Mr. Ravi Joshi, Advocate

versus

THE STATE GOVT OF NCT OF DELHI

& ANR

..... Respondents

Through: Mr. Mukesh Kumar, APP for the
State

Dr. Sharat Singh, Adv. for R-2 with R-2 in
person

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The second respondent was married to the first petitioner as per Hindu rites and ceremonies on 25.11.2007. In 2014, she lodged first information report (FIR) no.2406/14 with police station Shakarpur, alleging offences punishable under Sections 406, 498A, 34 of Indian Penal Code, 1860 (IPC) against her husband (first petitioner), his mother (second petitioner) and his father (third petitioner). On conclusion of investigation, police filed charge-sheet, the same being pending on the file of the Metropolitan Magistrate.

2. The parties were referred to the Delhi Mediation Centre at Karkardooma Courts, where they agreed to amicably resolve the matter by entering into a settlement dated 28.11.2017, in terms of which the parties were to approach, as per the timelines indicated, appropriate forum for obtaining the decree of divorce, they having also agreed, *inter alia*, to move for the aforementioned FIR to be quashed.

3. This petition, thus, has been moved invoking the inherent powers and jurisdiction of this court under Section 482 of the Criminal Procedure Code, 1973 (Cr. PC) seeking quashing of the FIR no.2406/14 under Sections 406, 498A, 34 IPC of Police Station Shakarpur.

4. The second respondent on being served with notice has appeared with counsel. The learned predecessor bench recorded her statement (as CW-2) on 12.03.2018, she also having been identified by SI Shri Gopal (CW-1) representing the police department. In the said statement, the second respondent has affirmed on oath that she has settled the dispute with the petitioners in terms of the settlement agreement dated 28.11.2017, out of her own free will and volition. At the hearing, both sides have confirmed that the parties have already moved the Family Court by two petitions, one after the other, on the basis of which their marriage has been dissolved by a decree of divorce granted on 22.02.2018.

5. In terms of the settlement arrived at through mediation, the second respondent (complainant) is to receive an amount of

Rs.16,00,101/- from the first petitioner as full and final settlement of all her claims for self, and also for the minor son Arham, who is in the custody, care and control of the second respondent.

6. The counsel for the petitioners placed on record copy of the order dated 26.09.2018 passed by the Principal Judge, Family Courts in HMA Case No.1369/17 confirming that demand draft no.889885 drawn on State Bank of India in the sum of Rs.16,00,101/- in favour of the second respondent, as revalidated on 17.09.2018 has been filed and has been placed on record of the Family Court. The petitioners' counsel submits that since the second respondent has given her no objection to the prayer in the petition they would have no objection to the said demand draft being released to her in terms of the settlement agreement.

7. Pertinent to note here that the offence under Section 498A IPC is non-compoundable. The parties are constrained to move this court for quashing on the basis of amicable resolution arrived at by them in the facts and circumstances noted above.

8. The scope and ambit of the powers conferred on this court by Section 482 Cr. PC. read with Articles 226 and 227 of the Constitution of India, in the particular context of prayer for quashing of criminal proceedings, was examined by the Supreme Court in *B.S. Joshi and Ors. Vs. State of Haryana and Anr.*, (2003) 4 SCC 675, against the backdrop of a catena of earlier decisions. Noting, with reference to the decision in *State of Karnataka Vs. L Muniswamy*, (1977) 2 SCC 699, that in exercise of this “*inherent*” and “*wholesome power*”, the

touchstone is as to whether “*the ends of justice so require*”, and it was observed thus :

“10. ... that in a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice and that the ends of justice are higher than the ends of mere law though justice had got to be administered according to laws made by the legislature. ...that the compelling necessity for making these observations is that without a proper realization of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.”

(emphasis supplied)

9. The Supreme Court in *B.S. Joshi* (supra) further noted as under :-

“What would happen to the trial of the case where the wife does not support the imputations made in the FIR of the type in question. As earlier noticed, now she has filed an affidavit that the FIR was registered at her instance due to temperamental differences and implied imputations. There may be many reasons for not supporting the imputations. It may be either for the reason that she has resolved disputes with her husband and his other family members and as a result thereof she has again started living with her husband with whom she earlier had differences or she has willingly parted company and is living happily on her own

or has married someone else on the earlier marriage having been dissolved by divorce on consent of parties or fails to support the prosecution on some other similar grounds. In such eventuality, there would almost be no chance of conviction. Would it then be proper to decline to exercise power of quashing on the ground that it would be permitting the parties to compound non-compoundable offences? The answer clearly has to be in the “negative”. It would, however, be a different matter if the High Court on facts declines the prayer for quashing for any valid reasons including lack of bona fides.”

(emphasis supplied)

10. Holding that “special features in ...matrimonial matters are evident” and that it is “the duty of the court to encourage genuine settlements of matrimonial disputes”, referring to *Madhavrao Jiwajirao Scindia Vs. Sambhajirao Chandrojiroo Angre*, (1988) 1 SCC 692, it was further observed that :

“11. ... Where, in the opinion of the court, chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may, while taking into consideration the special facts of a case, also quash the proceedings.”

(emphasis supplied)

11. In *Gian Singh Vs. State of Punjab and Anr.* (2012) 10 SCC 303, the Supreme Court contrasted the request for quashing of criminal proceedings on the basis of settlement with the possibility of compounding of an offence and observed thus :-

“57. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.”

(emphasis supplied)

12. The above views in the context of matrimonial disputes resulting in criminal proceedings have been consistently followed over the years, as may be further illustrated by the decision of a bench of three Hon'ble Judges of the Supreme Court in *Jitendra Raghuvanshi and Ors. Vs. Babita Raghuvanshi and Anr.*, (2013) 4 SCC 58, the following observations summarizing the philosophy succinctly :-

“15. In our view, it is the duty of the courts to encourage genuine settlements of matrimonial disputes, particularly, when the same are on considerable increase. Even if the offences are non-compoundable, if they relate to matrimonial disputes and the Court is satisfied that the parties have settled the same amicably and without any pressure, we hold

that for the purpose of securing ends of justice, Section 320 of the Code would not be a bar to the exercise of power of quashing of FIR, complaint or the subsequent criminal proceedings.

16. There has been an outburst of matrimonial disputes in recent times. The institution of marriage occupies an important place and it has an important role to play in the society. Therefore, every effort should be made in the interest of the individuals in order to enable them to settle down in life and live peacefully. If the parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law, in order to do complete justice in the matrimonial matters, the courts should be less hesitant in exercising their extraordinary jurisdiction. It is trite to state that the power under Section 482 should be exercised sparingly and with circumspection only when the Court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of process of court or that the ends of justice require that the proceedings ought to be quashed..."

(emphasis supplied)

13. In a case where criminal proceedings arise essentially out of a *matrimonial* dispute and the parties have decided to bury the hatchet, the court must *examine* if there is any likelihood of the criminal prosecution resulting in conviction. In fact-situation wherein the matrimonial relation has been brought to an end by mutual consent and the parties are eager to move on with their respective lives seeking closure and if there is nothing to indicate lack of *bonafide* on the part of any side, denial of the prayer for quashing the criminal case would

restore acrimony rather than bring about peace. Allowing continuance of the criminal action would be fruitless and clearly an abuse of judicial process.

14. The case at hand passes the muster of the above-noted tests.

15. The demand draft submitted with the Principal Judge, Family Court as aforesaid shall be released to the second respondent for her use and benefit as also for the benefit of the child.

16. During the hearing, the counsel for the second respondent submitted that an investment in the form of mutual bond of UTI folio no.598250923627 in the sum of Rs.1,00,000/- had been taken out in the name of the child Master Arham Jain. The submission is that the first petitioner is shown as the nominee in respect of the said deposit. The petitioners' through counsel submitted that though the concerned bank has already been advised that henceforth the mother Neha Jain would be the guardian in respect of the holder of the said bond, the first petitioner hereby undertakes that he would issue fresh instructions to the concerned bank to the effect that instead of he being the nominee in respect of such investment, the mother of the child Neha Jain be treated as the nominee. The needful shall be done within a week as has been undertaken.

17. In the above facts and circumstances, the petition is allowed. The crime registered by the police vide FIR 2406/14 under Sections 406, 498A, 34 IPC of Police Station Shakarpur and the proceedings emanating therefrom are hereby quashed.

18. The petition is disposed of accordingly.

19. *Dasti* to both sides.

R.K.GAUBA, J.

September 28, 2018

yg

