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

Decided on: 9th October, 2018

+ CRL.M.C. 4114/2015

SACHIN VISHWKARMA & ORS Petitioners

Through: Mr. Onkar Pandey, Adv.

versus

STATE OF DELHI & ANR Respondents

Through: Mr. Mukesh Kumar, APP for
the State with SI Rakesh
Sharma, PS Mehrauli.
Mr. Rakesh Rao, Adv. for R-2
along 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 29.11.2008. From out of their cohabitation, a male child named Kartikey took birth on 29.01.2010. On 15.10.2011, at the instance of the second respondent, first information report (FIR) no. 449/2011 was registered by police station Mehrauli, involving offences punishable under Sections 498A/406/325/506/34 of Indian Penal Code, 1860 (IPC) against her husband (the first petitioner), his father (the second petitioner) and his mother (the third petitioner). On conclusion of the investigation,

police filed report under Section 173 of the Code of Criminal Procedure, 1973 (Cr. PC) on which cognizance was taken, the said matter being pending on the file of the Metropolitan Magistrate.

2. With the intervention of certain common acquaintances, the parties entered into a settlement whereunder they agreed to amicably resolve the dispute in terms of which they decided to approach the appropriate court for dissolution of their marriage by mutual consent. The first petitioner agreed to pay to the second respondent a total sum of Rs. 2,50,000/- towards all her claims including maintenance of self and of child of the parties, he being in the care and custody of the mother (the second respondent). By the said agreement, they also resolved to approach this Court to have the afore-mentioned FIR quashed.

3. The petition, thus, has been moved before this court invoking Article 227 of the Constitution of India read with Section 482 Cr. PC seeking quashing of the FIR 449/2011 under Sections 498A, 406, 325, 506 and 34 IPC of Police Station Mehrauli.

4. The second respondent on being served with the notice has appeared with counsel. Pursuant to the directions, she has submitted reply sworn on 28.09.2018. By the said reply affidavit, she confirms the afore-mentioned terms of the settlement. She also acknowledges having received the amount of Rs. 2,50,000/- by demand draft no. 743433 dated 24.08.2012 issued by State Bank of India at Barasya Road, Bhopal (MP). The parties had also approached the Family Court by a petition for divorce by mutual consent, the first motion having

been allowed on 12.04.2017 and the second motion having been granted by judgment dated 12.04.2018, thereby dissolving the marriage of the parties.

5. The second respondent, on being asked, has submitted her *Aadhar Card*, as proof of identity, self-attested copy whereof has been taken on record.

6. Pertinent to note here that the offence under Section 498A IPC is not 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.

7. The scope and ambit of the power 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 the 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)

8. 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)

9. 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)

10. 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)

11. 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 summarising 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)

12. In a case where criminal proceedings arise essentially out of 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.

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

14. In the above facts and circumstances, the petition is allowed. The crime registered by the police vide FIR 449/2011 under Sections 498A, 406, 325, 506, 34 IPC of Police Station Mehrauli and the proceedings emanating therefrom are hereby quashed.

15. The petition is disposed of accordingly.

R.K.GAUBA, J.

OCTOBER 09, 2018

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