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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 30th October, 2018

+ CRL. M.C. 3438/2016 and Crl.M.A.14547/2016, 9515/2018

VISHAL ARORA & ORS. Petitioners

Through: Mr. Virender Kumar Kalra,
Adv.

versus

STATE NCT OF DELHI & ANR. Respondents

Through: Mr. Amit Ahlawat, APP for the
State with W/SI Sumedh, PS
Ashok Vihar.
Mr. Prag Chawla, Adv. with
Mr. Ruchjir Kapur, Adv. for
R-2.

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 17.10.1999 and from out of the said wedlock a female child named Sejal was born on 15.09.2000, this followed by birth of a male child, named, Tanmay on 30.11.2006. On 21.01.2008, she lodged a complaint with Crime Against Women Cell which was eventually registered as first information report (FIR) No.390/2008 by Police Station Ashok Vihar involving offences punishable offences 498-A/406/341/354/506/323/34 of Indian Penal Code, 1860 (IPC). On conclusion of investigation, police filed a report under Section 173 of the Code of Criminal Procedure, 1973

(Cr.P.C.) on which cognizance was taken, the matter being pending in the court of Metropolitan Magistrate. In the said case allegations of involvement in the aforementioned offences have been made against the husband (first petitioner), his father (second petitioner), his mother (third petitioner) and his brother (fourth petitioner).

2. It appears that in December, 2015, the parties entered into a settlement by executing document in the nature of compromise deed/memo of understanding. Based on the said compromise, the present petition was filed seeking quashing of the abovesaid FIR, inherent power and jurisdiction of this court under Section 482 Cr.P.C. being invoked at that stage. It appears further that the terms of settlement were not to the entire satisfaction of the second respondent (the complainant). The parties thus were referred to the process of mediation. They entered into fresh settlement agreement dated 21.05.2018 before Delhi High Court Mediation and Conciliation Centre, which has come on record as per report of the mediator. In terms of the said settlement, the parties have agreed to approach, as per the timelines indicated, the appropriate forum for obtaining a decree of divorce and also having agreed, *inter alia*, for the criminal case arising out of the aforementioned FIR sought to be quashed. This petition, thus, has been made before this court invoking its jurisdiction under Section 482 Cr.P.C.

3. The second respondent, pursuant to the directions in the previous order, has submitted her affidavit sworn on 27.10.2018. She is present in person with her counsel and, upon being asked, has

submitted for perusal her *aadhar* card, photocopy whereof attested by her, has been taken on record.

4. The second respondent confirms that she has settled all the disputes with the petitioner in terms of the settlement agreement dated 21.05.2018 out of her own free will and volition, without any pressure or coercion. At the hearing, both sides confirm that they 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.

5. As per the settlement terms, the petitioners are to pay to the second respondent a total amount of Rs.1.50 crores in full and final settlement of the claim of the second respondent in respect of past, present and future maintenance, permanent alimony, *stridhan*, dowry articles and her maintenance as also maintenance of the children.

6. It is stated that the second respondent had earlier received an amount of Rs.23 lacs in terms of earlier settlement which did not work out. In terms of the directions in the order dated 19.05.2017, she had deposited the said amount of money back with the Registrar General.

7. The balance amount of Rs.1.27 crores has been deposited by the petitioners with the Registrar General of this court pursuant to the settlement agreement. The counsel for the petitioners submitted that the petitioners have no objection to both the said deposits, of the total value of Rs.1.50 crores being released to the second respondent. Ordered accordingly.

8. Pertinent to note here that 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.

9. The scope and ambit of the power conferred on this court by Section 482 of the Code of Criminal Procedure, 1973 (Cr. PC) read with Articles 226 and 227 of the Constitution of India, in the particular context of prayer for quashing 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)

10. 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)

11. 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 Jiware 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)

12. 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)

13. 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)

14. 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 *bona fide* 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.

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

16. In the above facts and circumstances, the petition is allowed. The crime registered by the police vide FIR No.390/2008 by Police Station Ashok Vihar involving offences punishable offences 498-A/406/341/354/506/323/34 and the proceedings against the petitioners emanating therefrom are hereby quashed. The amount of Rs.1.50 crores, as deposited in two parts, noted above, shall be released to the second respondent forthwith.

17. The petition is disposed of accordingly.

18. This disposed of pending applications as well.

R.K.GAUBA, J.

OCTOBER 30, 2018

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