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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 25th September, 2018

+ CRL. M.C.4642/2016 & CrI.M.A. 19372/2016

NAIM AHMED & ORS. Petitioners

Through: Mr. Tashriq Ahmad, Adv.

versus

STATE & ANR. Respondents

Through: Mr. Mukesh Kumar, APP for
the State with SI Devender
Singh, PS Jafrabad.
Mr. M. Shamikh, Adv. for R-2
alongwith R-2 in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The second respondent was married to first petitioner as per Muslim rites and ceremonies on 14.03.2012, the parties having lived together for sometime but no child having taken birth out of the wedlock. On 05.06.2014, the second respondent lodged first information report (FIR) no. 308/2014 with police station Jafrabad alleging offences punishable under Sections 498A/406/34 of Indian Penal Code, 1860 (IPC) and Section 4 of Dowry Prohibition Act, 1961 against her husband (the first petitioner), his brothers (second to fifth petitioners), his father (sixth petitioner), his mother (seventh petitioner) and wife of his elder brother (eighth petitioner). On conclusion of investigation, the police filed report under Section 173

of the Code of Criminal Procedure, 1973 (Cr.P.C.) on which cognizance was taken, the said matter being pending on the file of Metropolitan Magistrate.

2. The parties through the intervention of society, however, entered into Memorandum of Understanding (MoU) on 20.04.2015 whereby they agreed to amicably resolve the matter in terms of which they were to proceed to dissolve the marriage by divorce in accordance with muslim law, they also having agreed, *inter alia*, for the criminal case arising out of the afore-mentioned FIR to be sought to be quashed.

3. The petition, thus, has been moved before this court invoking Section 482 Cr. PC seeking quashing of the FIR No.308/2014 under Sections 406, 498A, 34 IPC of Police Station Jafrabad.

4. The second respondent on being served with notice has appeared with counsel. The parties were sent to the Joint Registrar for recording of their respective statements by order dated 04.09.2018. The Joint Registrar has held the necessary proceedings on 10.09.2018, recording the statements of the petitioners except the first petitioner who appeared through his attorney. The Joint Registrar also examined the second respondent, taking on record proof of her identity, it also having been confirmed by the statement of Sub-Inspector Devender Singh of police station Jafrabad.

5. The parties have confirmed that in terms of the MoU the marriage of first petitioner with the second respondent has already been dissolved by pronouncement of Talaq. The second respondent had received an amount of Rs. 3,50,000/- at the time of execution of

MoU which she confirms at the hearing. During the hearing, the petitioners handed over to the second respondent a demand draft bearing no. 822496 dated 08.01.2018 issued by Punjab National Bank, Sherkot (Bijnor), UP in the sum of Rupees Four lakhs in her favour.

6. 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.

7. The scope and ambit of the power conferred on this court by Section 482 of Cr.P.C. 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)

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 no. 308/2014 under Sections 406, 498A, 34 IPC of Police Station Jafrabad and the proceedings emanating therefrom are hereby quashed.

15. The petition and the pending application are disposed of accordingly.

16. *Dasti.*

R.K.GAUBA, J.

SEPTEMBER 25, 2018

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