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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 29th November, 2018

+ CRL. M.C. 4212/2015

VIJAY KUMAR & ORS. Petitioners

Through: Mr. Vijay Khanna, Adv.

versus

THE STATE (NCT OF DELHI) & ANR. Respondents

Through: Mr. Amit Ahlawat, APP for the
State with SI Hem Karan, PS
Bhalswa Dairy.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The second respondent was married to the petitioner as per Hindu rites and ceremonies on 02.03.2006. Out of their cohabitation, two children took birth, both daughters on 28.10.2008 and 11.10.2011 respectively. On 29.09.2013, the second respondent lodged first information report (FIR) no. 282/2013 with police station Bhalaswa Dairy, for the offences under Section 498A/406/34 of Indian Penal Code, 1860 (IPC) against her husband (the first petitioner), his father (the second petitioner), his mother (the third petitioner), his sister (the fourth petitioner), and husband of the said sister (fifth petitioner) besides his maternal uncle (sixth petitioner). The investigation into the said FIR is still pending, the report under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C) not having been submitted.

2. The parties were before the family court for District North at Rohini in maintenance petition no. 226/2013, when they entered into an amicable settlement on 20.12.2014, in terms of which they decided to come together and live peacefully. It was against the said backdrop that the present petition was filed invoking the inherent power and jurisdiction of this Court under Section 482 Cr.P.C. to seek quashing of the criminal case arising out of the above-mentioned FIR. The second respondent, upon being served with the notice resisted the prayer in the petition, by her reply filed on 19.05.2016, making allegations of she having been continued to be subjected to cruelty by the husband in the matrimonial home, referring in this context to a complaint to police station Bhalswa Dairy, which was acknowledged by the said police station vide DD no. 20A on 15.01.2016.

3. Against the above backdrop, the matter came up before this Court on 13.02.2017, when the counsel for the parties informed that the parties intended to settle the matter amicably through the process of mediation. They were accordingly referred to Delhi High Court Mediation and Conciliation Centre. After the process of mediation, the settlement agreement was arrived at on 22.03.2017, the report whereof has come on record. In terms of the said settlement agreement, the parties have decided to part ways including by approaching the family court for dissolution of the marriage by mutual consent. As per the said settlement, the first petitioner was to pay to the second respondent, and she was to receive for herself and for the daughters, a total amount of Rs. 3 lakhs, as full and final instalments of their respective claims, it being payable in various instalments including

Rs. 34,000/-, to be paid at the time of first motion before the family court to the second respondent in her name and Rs. 34,000/- each in the name of the two daughters, this followed by further payment of Rs. 33,000/- to the second respondent at the time of the second motion, along with similar amounts of Rs. 33,000/- each in the names of the two daughters, and further amount of Rs. 33,000/- to be paid to the second respondent at the time of quashing of the FIR and similar payment of Rs. 33,000/-each in the name of two daughters.

4. The second respondent pursuant to the directions in the order dated 17.07.2018, submitted an affidavit sworn by her on 16.08.2018 which was filed on 24.09.2018. As per the said affidavit, she has confirmed that she has already received a total amount of Rs. 3 lakhs in various instalments in terms of the above-mentioned settlement. The learned counsel for the petitioners has placed before this Court copy of the order dated 24.01.2018 passed by the Principal Judge, Family Court for District North at Rohini in HMA petition no. 161/2018, whereby the marriage of the parties had been dissolved by a decree of divorce by mutual consent.

5. Though a direction was given on 09.10.2018 for fresh notice to be issued to the second respondent, such notice is not required inasmuch she has already submitted her affidavit sworn on 16.08.2018 after the proceedings on 17.07.2018.

6. Pertinent to note here that the offence under Section 498A IPC is not compoundable. The parties were thus 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. 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)

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 Jiwarelrao 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 282/2013 under Sections 406, 498A, 34 IPC of Police Station Bhalswa Dairy and the proceedings emanating therefrom are hereby quashed.

15. The petition is disposed of accordingly.

Dasti to both sides.

R.K.GAUBA, J.

NOVEMBER 29, 2018

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