

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Misc Petition No.1149 of 2019

1. Paresh Tank, S/o Late Pradeep Tank, aged about 30 years, R/o B-501, Richmond Grand, Near Torrent Power, Near Makarba Crossing, Prahlad Nagar Road, Ahmadabad, Gujarat.
2. Smt. Kumud Tank, W/o Late Pradeep Tank, aged about 54 years, R/o B-501, Richmond Grand, Near Torrent Power, Near Makarba Crossing, Prahlad Nagar Road, Ahmadabad, Gujarat.
3. Toral Tank, D/o Late Pradeep Tank, aged about 26 years, R/o B-501, Richmond Grand, Near Torrent Power, Near Makarba Crossing, Prahlad Nagar Road, Ahmadabad, Gujarat.

---- Petitioners

Versus

1. State of Chhattisgarh, through its District Magistrate, Durg, Distt. Durg (C.G.)
2. Station House Officer, Women Police Station, Durg, Distt. Durg (C.G.)
3. Smt. Vinita Tank, W/o Paresh Tank, aged about 27 years, R/o through Shri Kumar Kant Tank, H.No.35/1, Street-8-B, Matri Nagar, Resali, Bhilai, Police Station Newai, Tahsil & District Durg (C.G.)

---- Respondents

For Petitioners: Mr. Viral Shah, Mrs. Astha Shukla and Mr. Swajeet Singh Ubeja, Advocates.

For Respondents No.1 and 2 / State: -

Mr. Ravi Kumar Bhagat, Deputy Government Advocate.

For Respondent No.3: -

Mr. Ganesh Burman, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

24/10/2019

1. Petitioner No.1 is husband of respondent No.3, petitioner No.2 is mother-in-law of respondent No.3 and petitioner No.3 is sister-in-law of respondent No.3. Petitioner No.1 and respondent No.3 were married on 15-10-2016 and they immediately went to Australia where petitioner No.1 was serving, but, immediately thereafter, matrimonial dispute arose between petitioner No.1 and respondent No.3 and

respondent No.3 came back to India and filed complaint on 31-12-2016 before Mahila Thana, Durg, thereafter, counselling was done and ultimately, first information report (FIR) was registered against the petitioners for the offence punishable under Section 498-A of the IPC read with Section 4 of the Dowry Prohibition Act, 1961, on 25-2-2017. The petitioners were granted anticipatory bail on 1-6-2017 and 19.06.2017 by the order of the Sessions Court and ultimately, they were charge-sheeted on 19-11-2017 and on 5-2-2018, charges were framed against the petitioners for the offences punishable under Sections 498-A, 323 read with Section 34 & 406 of the IPC and Section 4 of the Dowry Prohibition Act, 1961.

2. This instant petition for quashment of charge-sheet dated 19-11-2017 and criminal proceedings against the petitioners was filed under Section 482 of the CrPC on 3-5-2019 and thereafter, the petitioners and respondent No.3 filed an application for compounding the offence under Section 320 read with Section 482 of the CrPC supported by their affidavits before the trial Magistrate. The trial Magistrate by its order dated 7-5-2019, considered the application for compounding the offences and compounded the offences punishable under Sections 406 and 323 read with Section 34 of the IPC, however, directed to continue the trial of the petitioners for offence punishable under Section 498-A of the IPC read with Section 4 of the Dowry Prohibition Act, 1961 holding them to be non-compoundable. Immediately thereafter, an application was filed before this Court by both the parties for quashing the charges levelled against the petitioners, under Section 320 read with Section 482 of the CrPC, in which this Court directed to record their statements and ultimately, statements of the petitioners and respondent No.3 were recorded on 26-7-2019 in which

they have stated that they have settled the dispute amicably and they have also filed application for divorce by mutual consent. The application for compounding of offence remained pending. Meanwhile, the application for divorce filed by the parties under Section 13(b) of the Hindu Marriage Act was considered by the jurisdictional Family Court and ultimately, on 14-8-2019, application for mutual divorce was granted and the marriage was dissolved and thereafter, again on the application filed by respondent No.3 herein, the trial Magistrate acquitted the petitioners herein of the offences punishable under Sections 12, 18, 19, 20, 21 and 22 of the Protection of Women from Domestic Violence Act, 2005, by compounding the same. However, this petition remained pending in which respondent No.3 filed an application for withdrawal of her consent which this Court disposed of by order dated 21-8-2019.

3. Mr. Viral Shah, learned counsel appearing for the petitioners, submits that in view of the settlement between the parties by which the petitioners have already been acquitted of the offence punishable under Sections 406 and 323 read with Section 34 of the IPC and also acquitted of the offences punishable under Sections 12, 18, 19, 20, 21 and 22 of the Protection of Women from Domestic Violence Act, 2005, on the basis of compounding of the said offences, the chances of the petitioners for conviction of the offence punishable under Section 498-A read with Section 4 of the Dowry Prohibition Act, 1961 are bleak relying upon a decision of the Supreme Court in the matter of Jitendra Raghuvanshi and others v. Babita Raghuvanshi and another¹. Therefore, prosecution of the petitioners for offence punishable under Section 498-A read with Section 4 of the Dowry Prohibition Act, 1961

¹ (2013) 4 SCC 58

be quashed.

4. Mr. Ganesh Burman, learned counsel appearing for respondent No.3, would submit that offence punishable under Sections 406 and 323 read with Section 34 of the IPC and offences punishable under Sections 12, 18, 19, 20, 21 and 22 of the Protection of Women from Domestic Violence Act, 2005 have already been compounded and there has been divorce by mutual consent between the parties and respondent No.3 is also not willing to press her complaint.
5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and went through the record with utmost circumspection.
6. The scope and ambit of the power conferred on this Court by Section 482 of the CrPC read with Articles 226 and 227 of the Constitution of India, in the particular context of prayer for quashing criminal proceedings has been examined by the Supreme Court in the matter of B.S. Joshi and others v. State of Haryana and another² and thereafter in the matter of Gian Singh v. State of Punjab³, and ultimately, noticing the aforesaid decisions, finally, in Jitendra Raghuvanshi (supra), Their Lordships of the Supreme Court in the context of matrimonial disputes resulting into criminal proceedings, held as under: -

“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.

² (2003) 4 SCC 675

³ (2012) 10 SCC 303

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. We also make it clear that exercise of such power would depend upon the facts and circumstances of each case and it has to be exercised in appropriate cases in order to do real and substantial justice for the administration of which alone the courts exist. It is the duty of the courts to encourage genuine settlements of matrimonial disputes and Section 482 of the Code enables the High Court and Article 142 of the Constitution enables this Court to pass such orders.”

7. Reverting to the facts of the present case in light of the decisions rendered by the Supreme Court in the aforesaid judgments, it is quite vivid that in order to give a quietus to the matrimonial dispute, parties have settled their dispute by which the petitioners have already been acquitted of the charges by the jurisdictional criminal Court under Sections 406 and 323 read with Section 34 of the IPC and thereafter under Sections 12, 18, 19, 20, 21 and 22 of the Protection of Women from Domestic Violence Act, 2005 at the instance of respondent No.3. Admittedly, decree of divorce has been granted to petitioner No.1 and respondent No.3 under Section 13(b) of the Hindu Marriage Act by the jurisdictional Family Court. In this case also respondent No.3 has got her statement recorded holding that the dispute has already been settled between the parties, though it was tried to withdraw the same, but ultimately, at the Bar it is submitted that there is no dispute outstanding between the parties and parties have settled the dispute

amicably.

8. In view of the aforesaid facts, since the parties have already moved on with their respective lives seeking closure and they have closed their matrimonial disputes and offence registered against them under the Indian Penal Code except Section 498-A of the IPC and Section 4 of the Dowry Prohibition Act, 1961 and under the provisions of the Protection of Women from Domestic Violence Act, 2005, have been closed pursuant to their willingness and order of the court and mutual divorce has also taken place between the parties and now, there is no dispute persisting at present between the parties, in the considered opinion of this Court, quashing the proceedings for offence under Section 498-A of the IPC and Section 4 of the Dowry Prohibition Act, 1961 would be in the ends of justice, it would bring peace to them, rather allowing the continuation of prosecution for offence under Section 498-A of the IPC and Section 4 of the Dowry Prohibition Act, 1961 would be fruitless and would be abuse of the process of the court.
9. In consequence, the petition is allowed and criminal proceedings in Criminal Case No.9822/2017 pending against the petitioners in the Court of the Judicial Magistrate First Class, Durg for offence punishable under Section 498-A of the IPC and Section 4 of the Dowry Prohibition Act, 1961, only, are hereby quashed and the petitioners are acquitted of the said charges.

Sd/-
(Sanjay K. Agrawal)
Judge