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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 12th July, 2019

+ CRL.M.C. 227/2019

SH. NAVEEN GAUTAM & ORS. Petitioners

Through: Ms. Anuradha Yadav, Adv.
with petitioners in person.

versus

STATE & ANR. Respondents

Through: Mr. Kewal Singh Ahuja, APP
for the State with SI Amit Dutt,
PS Lajpat Nagar.
Mr. Gautam Chakraverty, Adv.
for
R-2 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 07.09.2005. From out of the said wedlock, a male child named Deepanshu took birth on 14.10.2008. The marriage ran into rough weather. The second respondent raised allegations of she having been subjected to cruelty and deprived of her *stridhan*, first information report (FIR) no.350/2013 having been registered on 21.10.2013 by police station Lajpat Nagar on her complaint involving offences punishable under Sections 498A, 406, 34 of Indian Penal Code, 1860 (IPC), the case being directed against her husband (first petitioner), his brother (second petitioner) and his mother (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.

2. It appears that the parties also came to be involved in certain other cases including a petition under section 12 of Protection of Women from Domestic Violence Act, 2005 and a case for divorce filed by the first petitioner. The parties, however, were persuaded to enter into an amicable settlement, they having executed a settlement deed /MOU on 21.03.2018. In terms of the said settlement, the second respondent agreed to forego all her claims and allegations against the petitioners for consideration of Rs.8,00,000/- being paid to her as full and final settlement on account of *stridhan*, maintenance of self and child, the custody of the child having been agreed to be given to her.

3. Pursuant to the above settlement, the parties approached the family court by petition for divorce by mutual consent, a decree to that effect having been granted in HMA Petition No.87/2018 by judgment dated 22.11.2018.

4. In terms of the settlement, the second respondent was to receive the above mentioned amount in three instalments, first two of Rs.2.5 lacs each at the time of first motion and second motion on petition for divorce by mutual consent and the balance Rs.3 lacs at the time of quashing of the criminal case arising out of the above mentioned FIR.

5. The second respondent on notice has entered appearance and pursuant to the directions given in the last order, has sworn an affidavit on 28.02.2019, which has come on record. By the said

affidavit she has confirmed that she has already received Rs.5 lacs in two instalment before the family court and that the domestic violence case has also been withdrawn, the decree of divorce having been granted.

6. She is present in person in the court with her counsel. On being asked, she has shown copy of her *aadhar card* as proof of her identity, its self-attested copy having been kept on record. It may be mentioned that copy of her election identity card was submitted earlier with the petition (page 68).

7. At the hearing, the first petitioner has handed over and the second respondent has received demand draft in the sum of Rs.3 lacs, it bearing No.178728, dated 08.07.2019, drawn on Central Bank of India, Bhogal, this satisfying her claim under the settlement.

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, has been the subject matter of scrutiny and comment by the Supreme Court in a catena of judgments. It is well settled that in exercise of this “*inherent*” and “*wholesome power*”, the touchstone is as to whether

“the ends of justice so require”. This court had the occasion to trace the relevant law on the subject in a batch of matters led by *Yashpal Chaudhrani vs. State (Govt. of NCT Delhi)*, 2019 SCC Online Del 8179 wherein after taking note, *inter alia*, of *State of Karnataka v. L Muniswamy*, (1977) 2 SCC 699; *State of Karnataka v. M. Devendrappa*, (2002) 3 SCC 89; *B.S. Joshi v. State of Haryana*, (2003) 4 SCC 675; *Gian Singh Vs. State of Punjab and Anr.* (2012) 10 SCC 303; *Jitendra Raghuvanshi v. Babita Raghuvanshi*, (2013) 4 SCC 58; *K Srinivas Rao v. D.A. Deepa*, (2013) 5 SCC 226; *Narinder Singh v. State of Punjab*, (2014) 6 SCC 466; *State of Rajasthan v. Shambhu Kewat*, (2014) 4 SCC 149; *Parbhatbhai Aahir Parbatbhai Bhimsinhbhai Kurmur*, (2017) 9 SCC 641 and *State of Madhya Pradesh v. Laxmi Narayan and others*, (2019) 5 SCC 688; the broad principles were culled out as under :-

“55. Though the above-noted authoritative pronouncements of the Supreme Court have consistently laid down the broad principles governing the exercise of power of the High Court under Section 482 of the Cr. PC for bringing an end to the criminal process, for addressing the concerns noted at the outset and future guidance of trial courts, some of the crucial ones may be flagged as under:—

(i). The inherent jurisdiction vested in the High Court, as recognized and preserved by Section 482 Cr. PC, is primarily to “prevent abuse of the process of court” or to “otherwise secure the ends of justice”.

(ii). The ends of justice are higher than the ends of mere law, the prime principle governing the

exercise of inherent power being “to do real, complete and substantial justice” for which the court exists.

(iii) It is the duty of the court to give “adequate treatment to the settlement between the parties” particularly in cases involving compoundable offences, the exercise of inherent power of the High Court under Section 482 Cr.P.C., however, not being inhibited in case of non-compoundable offences though, for the latter category, such power is to be “exercised sparingly and with caution”.

(iv). If the criminal case has “overwhelmingly and predominantly civil character”, particularly if it arises out of “commercial” (financial, mercantile, partnership or such other) transaction - and this would include the “cheque bouncing cases” under Section 138 N.I. Act - or “matrimonial dispute” or “family dispute”, genuine resolution on equitable terms, in entirety, by the parties should result in criminal proceedings being quashed.

(v). Since the institution of marriage has an important role to play in the society, the court is to make every effort to encourage the parties to terminate such discord amicably and if it appears that elements of settlement exist, and the parties are willing, they are to be directed to the process of mediation to explore the possibility of settlement, it being desirable to do so even at the “pre-litigation stage”.

(vi). While examining the prayer for quashing of a non compoundable offence, on the basis of

settlement of the dispute between the wrongful doer and the victim, the High Court is to bear in mind as to whether the possibility of conviction is “remote and oblique” and further, if the continuation of the criminal case would lead to “oppression and prejudice” or “extreme injustice” for the accused.

(vii). The considerations which would weigh with Court include the antecedents of the accused, possible lack of bona fides, his past conduct and that includes the question as to whether he had earlier absconded and as to how he had managed with the complainant to enter into a compromise.

(viii). But, the High Court, when called upon to exercise the power under Section 482 Cr. PC to bring the criminal case to an end on the basis of settlement, must steer clear of intervention in “heinous” or “serious” offences, including those involving “mental depravity”, as indeed “economic offences” affecting “the financial and economic well being of the State”, such as murder, attempt to murder, extortion, forgery, rape, dacoity, financial or economic frauds, cases under Arms Act, etc., the reason being that such offences are “not private in nature” but have “a serious impact upon society”, and continuation of trial thereof is essential due to “overriding element of public interest”.

(ix). The court, however, is not to go by mere use of label of a serious offence (e.g. offence under Section 307 IPC), it being open to it to examine, by scrutiny of the evidence gathered, to find as to whether there are sufficient grounds to frame

charge for such offence and, in this view, it being “not permissible” to intervene till the matter has been properly investigated.”

10. 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.

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

12. In the above facts and circumstances, the petition is allowed. The crime registered by the police vide FIR 350/2013 under Sections 406, 498A, 34 IPC of Police Station Lajpat Nagar and the proceedings emanating therefrom against the petitioners are hereby quashed.

13. The petition and the application filed therewith are disposed of accordingly.

Dasti to both sides.

R.K.GAUBA, J.

JULY 12, 2019/vk