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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 19th July, 2019

+ Crl.M.C. 1511/2019

PRADEEP SINGH GOSAIN

..... Petitioner

Through: Mr. Ashok Thagal, Adv.

versus

STATE & ANR.

..... Respondents

Through: Ms. Meenakshi Chauhan, APP
for the State.

Mr. Pradeep Chhindra & Mr.
Neeraj Kumar Mishra, Advs.
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 08.12.2013. 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. 34/2015 having been registered on 17.01.2015 by police station Swaroop 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) and his mother (second petitioner).

2. The parties had also come to be engaged into a litigation before the Family Court where pursuant to the settlement they had amicably resolved the dispute. The terms of the said settlement were recorded on a joint petition (HMA 812/2018) by the Family Court on 16.05.2018. In pursuance of the said settlement, the petitioner has to pay and the second respondent has to receive a sum of Rs.6,25,000/- as full and final settlement of all her claim. As per the terms, the said amount was to be paid to the second respondent in installments, first Rs. 2,00,000/- at the time of recording of the joint statement in the first motion, second of Rs.2,00,000/- at the time of recording of the statement in the second motion, and the balance amount of Rs.2,25,000/- at the time of prayer being entertained for quashing of the FIR. Additionally, the first petitioner has also to pay Rs. 25,000/- in lieu of some articles which had not been accounted for.

3. The second respondent, on notice, has entered appearance and has filed an affidavit sworn on 04.07.2019 by which she has confirmed the settlement, giving no objection to the prayer of the petitioner for quashing of the FIR. The affidavit filed, however, would not clarify the amount paid or received. In this view, on the request of the parties, the matter was passed over. It has been taken up again in post-lunch session. During the interregnum, she has sworn another affidavit which has been filed in the registry and has been called for and perused. By this fresh affidavit, the second respondent confirms that she has already received Rs. 4,25,000/- from the first petitioner and that only Rs. 2,25,000/- remains outstanding. The first petitioner has handed over to the second respondent and she has

received against acknowledgement demand draft no. 508765 dated 17.07.2019, issued by ICICI Bank, Connaught Place, New Delhi, in the sum of Rs. 2,25,000/- in favour of second respondent. The identity of the second respondent is confirmed by self-attested copy of *aadhar* card, which was filed with the affidavit.

4. 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.

5. 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.”

6. 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.

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

8. In the above facts and circumstances, the petition is allowed. The crime registered by the police vide FIR 34/2015 under Sections 406, 498A, 34 IPC of Police Station Swaroop Nagar and the proceedings emanating therefrom against the petitioners are hereby quashed.

9. The petition is disposed of accordingly.

R.K.GAUBA, J.

JULY 19, 2019

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