

\$~19

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 23rd July, 2019

+ CrI.M.C. 1578/2019

VIJENDER KUMAR YADAV

@ BIJENDER SINGH & ANR.

..... Petitioners

Through: Mr. Nand Kishor, Adv.

versus

THE STATE (GOVT. OF NCT OF DELHI)

& ANR.

..... Respondents

**Through: Mr. Amit Gupta, APP for the
State with ASI Tej Ram, PS
Najafgarh.**

**Ms. Archana Sharma, Adv. 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 16.01.2013. 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.384/2015 having been registered on 11.05.2015 by police station Najafgarh on her complaint involving offences punishable under Sections 498A and 34 of Indian Penal Code, 1860 (IPC), the case being directed against her husband (first petitioner) and his brother (second petitioner). On conclusion of the investigation, police filed report (charge-sheet) under Section 173 of

the Code of Criminal Procedure, 1973 (Cr. PC) in which prosecution has been sought against the first petitioner, the investigating agency having concluded that no prosecutable evidence had come up against the second petitioner. The parties upon reference by the Family Court entered into a settlement at the Counseling Cell of the Family Courts on 21.08.2018 on the strength of which the present petition has been filed seeking quashing of the proceedings arising out of the aforementioned FIR.

2. Second respondent on being served with notice has entered appearance and has filed affidavit sworn on 19.07.2019. Along with the said affidavit she has placed on record photocopy of her *aadhar card* as proof of her identity. By the said affidavit, the second respondent confirms the above-mentioned settlement and also that as per its terms, she has agreed to receive Rs. 2,50,000/- out of which Rs. 1,75,000/- has already been paid to her towards full and final settlement of her claim on account of maintenance, *stridhan* etc. by two instalments before the Family Court. It is also confirmed by her that the marriage of the parties had already been dissolved by a decree of divorce petition (HMA No. 3285/2018), a copy of such decree passed on 17.12.2018 by the Family Court having earlier been submitted.

3. In terms of the settlement, the second respondent has to receive from the first petitioner balance amount of Rs. 75,000/-. The same has been paid to her by demand draft no. 958497 dated 18.07.2019 issued by State Bank of India, MSIL Manesar and handed over to her in the Court.

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 No. 384/2015 under Sections 498A and 34 IPC of Police Station Najafgarh and the proceedings emanating therefrom against the petitioners are hereby quashed.
9. The petition is disposed of accordingly.

R.K.GAUBA, J.

JULY 23, 2019

nk



न्यायमेव जयते