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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 29th July, 2019

+ CRL.M.C. 1714/2019

VIKRAM & ORS.

..... Petitioners

Through: Mr. Inderpal Khokhar and Mr.
Arvind Kumars, Advocate

versus

STATE & ANR.

..... Respondents

Through: Ms. Meenakshi Chauhan, APP for
the State with SI Ramesh, PS Mundka
Mr. Amit Kumar, Advocate 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 09.03.2015. 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.42/2016 having been registered on 19.01.2016 by police station Mundka, on her complaint involving offences punishable under Sections 498-A/406/34 of Indian Penal Code, 1860 (IPC), the case being directed against her husband (first petitioner), his parents (second and third petitioners), and his sister (fourth petitioner). On conclusion of the investigation, police filed

report (charge-sheet) under Section 173 of the Code of Criminal Procedure, 1973 (Cr. PC) on which cognizance was taken, the said matter being pending on the file of the Metropolitan Magistrate.

2. It appears that the parties entered into an amicable resolution at the time of consideration of the application of the first petitioner for anticipatory bail (Bail no.1250) in the court of sessions on 13.02.2017. Pursuant to the said settlement, the parties had first approached the Family Court by petitions for divorce by mutual consent, the marriage having been dissolved accordingly in HMA No.195/2018 by judgment and decree dated 12.01.2018.

3. On the basis of the above mentioned settlement, present petition was filed. The second respondent, on being served, has entered appearance and filed an affidavit sworn on 03.05.2019, alongwith which copy of her *aadhar* card which was submitted as proof of her identity. By the said affidavit, as also orally at the hearing, the second respondent has confirmed that she has agreed to the marriage being dissolved and the criminal case to be brought to an end conditional upon she being paid Rs.5,50,000/- by the first petitioner satisfying all her claims on account of maintenance, *stridhan*, etc. She has also confirmed by the said affidavit that she has already received a sum of Rs.4,00,000/- in two instalments before the Family court, the amount remaining to be paid being Rs.1,50,000/- (Rupees One lakh and fifty thousand). The said balance amount has been paid to her at the hearing by the first petitioner in the form of a banker's cheque bearing no.686088, dated 26.07.2019, in her name for Rs.1,50,000/- (Rupees

One lakh and fifty thousand) drawn on Andhra Bank, copy thereof has been kept on record.

4. The petition, thus, has been moved before this court invoking Section 482 Cr. PC seeking quashing of the FIR 42/2016 under Sections 406, 498A, 34 IPC of Police Station Mundka.

5. 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.

6. 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."

7. 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.

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

9. In the above facts and circumstances, the petition is allowed. The crime registered by the police vide FIR 42/2016 under Sections 406, 498A, 34 IPC of Police Station Mundka and the proceedings emanating therefrom against the petitioners are hereby quashed.

10. The petition is disposed of accordingly.

Dasti to both sides.

R.K.GAUBA, J.

JULY 29, 2019

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