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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 30th July, 2019

+ CRL.M.C. 1733/2019

RAJAN KOCHHAR & ORS

..... Petitioners

Through: Mr. Lovish Seth, Advocate with
petitioners in person

versus

THE STATE (GOVT OF NCT OF DELHI)

& ANR

..... Respondents

Through: Mr. Kewal Singh Ahuja, APP for
the State with ASI Sunil Kumar

Mr. Preet Singh Oberoi, 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 02.12.2009. 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.79/2018 having been registered on 01.03.2018 by police station Kirti Nagar 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 father (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, the said matter being pending on the file of the Metropolitan Magistrate.

2. It appears the parties amicably resolved the dispute by entering into a memorandum of settlement agreement dated 27.03.2018, in terms of which they decided, *inter alia*, to part ways peacefully. The present petition has been filed for quashing the aforementioned criminal case on the basis of the said settlement agreement.

3. The second respondent on notice has entered appearance and filed an affidavit sworn on 31.05.2019. Since the said affidavit was found to be deficient, she was called upon to file a fresh detailed affidavit. The matter was passed over in the forenoon earlier today to give her opportunity to come with such fresh affidavit. She has sworn another affidavit today which has since been filed in the registry and has been called for. Alongwith the said affidavit, she has submitted self-attested copy of her *aadhar* card as proof of her identity.

4. By the aforementioned affidavits, and at the hearing through counsel, the second respondent confirms that she has agreed by the above mentioned settlement agreement to forego the dispute, the marriage of the parties having already been dissolved by a decree of divorce granted by the Family Court on 26.11.2018 in HMA no.95/2018. The second respondent has also confirmed that in terms of the settlement, Neharika Kochhar, daughter of the parties is to remain in her care and custody. She also confirms that pursuant to the

settlement terms, she is to receive a total amount of Rs.28,00,000/- (Rupees Twenty eight lakhs) from the first petitioner, this inclusive of all her claims on account of maintenance of self and daughter and also *stridhan*, etc. She has also confirmed that she has already received a total amount of Rs.18,00,000/- (Rupees Eighteen Lakh) from the first petitioner before the Family Court, the only amount remaining being Rs.10,00,000/- (Rupees Ten Lakh) which is to be paid in the form of demand draft in the name of the daughter.

5. At the hearing, the first petitioner handed over and the second respondent received two demand drafts bearing nos.207506 and 207507, each dated 26.07.2019, each for Rs.5,00,000/- (Rupees Five lakh) each, in favour of Neharika Kochhar, daughter of the parties, both drawn on Central Bank of India.

6. The petition, thus, has been moved before this court invoking Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of the FIR No.79/2018 under Sections 406, 498A, 34 IPC of Police Station Kirti Nagar.

7. 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.

8. 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.”

9. 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.

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

11. In the above facts and circumstances, the petition is allowed. The crime registered by the police vide FIR No.79/2018 under Sections 406, 498A, 34 IPC of Police Station Kirti Nagar and the proceedings emanating therefrom against the petitioners are hereby quashed.

12. The petition is disposed of accordingly.

Dasti to both sides.

R.K.GAUBA, J.

JULY 30, 2019

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