

\$~21

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 1st August, 2019

+ CRL.M.C. 1776/2019

SAHIL SHARMA & ORS

..... Petitioners

Through: Mr. Phillip Massey, Advocate
with Mr. Dev Suman
Mohanpuria, Adv. with
petitioners in person.

versus

STATE & ANR

..... Respondents

Through: Mr. Kewal Singh Ahuja, APP
for the State with SI Vinod, PS
Sarai Rohilla.
Mr. Vikram Jit Saini, Adv. with
Mr. Anuraj Sharma, 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 25.07.2013. 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.1250/2014 having been registered on 28.11.2014 by Police Station Sarai Rohilla, 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), his sister (fourth petitioner), his uncle (fifth petitioner) and his cousin (sixth petitioner).

2. 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.

3. The parties also came to be involved in certain other cases including petition under Protection of Women from Domestic Violence Act, 2005 and a petition for maintenance under section 125 of the Code of Criminal Procedure, 1973 (Cr.P.C.) by the second respondent, besides a petition under section 11 of Hindu Marriage Act, 1955 filed by the first petitioner. They, however, entered into a compromise on 18.08.2018 and executed its terms formally by a document described as “Deed of Compromise”.

4. It is in the wake of the said settlement that the present petition, has been moved by the petitioners before this court invoking Section 482 Cr. PC seeking quashing of the FIR No.1250/2014, under Sections 498-A/406/34 IPC of Police Station Sarai Rohilla.

5. On notice, the second respondent has entered appearance. She has filed an affidavit sworn on 15.07.2019, which was found to be deficient, it not indicating the terms of settlement or compliance therewith. In this view, on request of the parties, the matter was passed

over. It has been taken up again post-lunch session. During the interregnum, the second respondent has sworn another affidavit which has come on record. Along with the fresh affidavit, she has also filed copy of her *aadhar* card as proof her identity, which is also taken on record.

6. The parties had earlier approached the family court by two separate petitions to seek divorce by mutual consent. At that stage the first petitioner had paid to the second respondent and she had received in two installments a sum of Rs.2,00,000/- each. This fact has been recorded in the judgment dated 28.01.2019 of the family court in HMA Petition No.93/2019, whereby the marriage of the parties was dissolved by a decree of divorce by mutual consent.

7. By the fresh affidavit sworn and filed by the second respondent today, she has acknowledged that she has already received another installment of Rs.2,00,000/- from the petitioner, by way of a demand draft bearing No.008601, dated 02.03.2019, drawn on Axis Bank, Shastri Nagar, Delhi, this satisfying her entire claim under the compromise deed.

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 No.1250/2014, under Sections 498A/406/34 IPC of Police Station Sarai Rohilla and the

proceedings emanating therefrom against the petitioners are hereby quashed.

13. The petition stands disposed of accordingly.

R.K.GAUBA, J.

AUGUST 01, 2019

vk

