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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 9th August, 2019

\+ Crl.M.C. 2131/2019

JAI KISHAN @ JONY & ORS. ..... Petitioners
Through: Mr. Pawan Sharma, Adv.

versus

THE STATE & ANR. ..... Respondents
Through: Ms. Meenakshi Chauhan, APP for the State.
Mr. Bhupesh Narula & Mr. Rinku Narula, Advs. 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 03.06.2011. 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. 209/2012 having been registered on 24.06.2012 by police station Mukherjee 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), his mother (second petitioner) and his sister (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. With the intervention of their respective counsel, both the parties were entered into an amicable settlement dated 13.09.2017. In pursuance of the said settlement, the parties had earlier approached the family court which has granted decree of divorce by mutual consent on 10.07.2018 in HMA Petition No.1123/2018**.**

3. The present petition was filed on the basis of aforementioned settlement seeking quashing of the proceedings in the criminal case.

4. The second respondent, on notice, has entered appearance and pursuant to directions has filed an affidavit sworn today i.e. 9th August, 2019, by which she has confirmed the settlement, giving no objection to the prayer of the petitioners for quashing of the FIR. Along with the affidavit she has also filed copy of the *aadhar* card as proof of her identity.

5. By the above mentioned affidavit, the second respondent has confirmed that she has already received an amount of Rs.3,50,000/- from the first petitioner, she being entitled in terms of the settlement to balance payment of Rs. 1,50,000/- towards satisfaction of her entire claim, towards *stridhan*, maintenance, etc.

6. At the hearing, the first petitioner has handed over to the second respondent a demand draft of Rs.1,50,000/- bearing No.229627 dated

07.08.2019 drawn on Oriental Bank of Commerce, Kingsway Camp, a copy whereof is taken on record.

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 Karnakata 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:—*
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> > *(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".*
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> > *(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.*
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> > *(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".*
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> > *(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 209/2012, under Sections 406, 498A, 34 IPC of Police Station Mukherjee Nagar and the proceedings emanating there from against the petitioners are hereby quashed.

12. The petition is disposed of accordingly.

R.K.GAUBA, J.

AUGUST 09, 2019
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