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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 06th February, 2019

+ CRL.M.C. 2390/2018 and Crl. M.A. 8508/2018

SATENDRA & ORS

..... Petitioners

Through: Mr. Harish Pant and Mr. Mohindra
Kumar, Advocates

versus

STATE OF NCT OF DELHI & ANR

..... Respondents

Through: Mr. Sanjeev Sabharwal, APP for
State with SI Jitender Kumar

Mr. Rakesh Kumar Gupta, 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 29.11.2008. A daughter named Kirti took birth out of the said wedlock. On 24.03.2013, the second respondent lodged first information report (FIR) no.95/13 under Sections 498A, 406, 34 of the Indian Penal Code, 1860 (IPC) and Section 4 of Dowry Prohibition Act, 1961 of police station Welcome Colony, against her husband (first petitioner), his father (second petitioner) and his mother (third petitioner).

2. It appears the second respondent had also filed a claim for maintenance allowance under Section 125 of the Code of Criminal Procedure, 1973 (Cr. PC). The parties entered into an amicable settlement by executing settlement deed on 04.03.2016, when the matter was pending before the Family Court. In terms of the said settlement, the second respondent agreed to receive Rs.2,75,000/- as full and final settlement of all her claims towards maintenance allowance, *istridhan*, permanent alimony, etc. As per the said settlement, the parties were to approach, as per the timelines indicated, the appropriate forum for obtaining a decree of divorce, they also having agreed, *inter alia*, for the criminal case arising out of the aforementioned FIR to be sought to be quashed.

3. The petition, thus, has been moved before this court invoking Section 482 Cr. PC seeking quashing of the FIR no.95/2013 under Sections 406, 498A, 34 IPC and Section 4 of Dowry Prohibition Act, 1961 of Police Station Welcome Colony.

4. The second respondent, upon being served, has appeared with counsel. She has sworn an affidavit dated 08.01.2019 which has been filed on 04.02.2019. She is present in person in the court and has shown her *aadhar* card as proof of her identity, its self attested copy having been taken on record. The documents on record include a joint statement of the parties having been recorded on 01.09.2017 by the Family Court in divorce case registered as HMA no.436/2017. In the said statement, the second respondent had acknowledged that she has received till date, an amount of Rs.2 Lakh in three instalments,

first of Rs.50,000/- at the time of withdrawal of the petition under Section 125 Cr. PC and sum of Rs.75,000/- at the time of hearing on the first motion petition for divorce by mutual consent and third, also of Rs.75,000/-, at the time of hearing on the second motion petition for divorce, it having resulted in a decree of divorce by mutual consent granted on 01.09.2017 by the Family Court.

5. Affidavit dated 08.01.2019 again acknowledges the receipt so far of Rs.2 Lakh by the second respondent. At the hearing, the petitioners have tendered to her, and she has received balance sum of Rs.75,000/- in the form of a demand draft bearing no.954454 dated 04.02.2019 issued by Canara Bank, copy whereof has been taken on record.

6. 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.

7. 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, was examined by the Supreme Court in *B.S. Joshi and Ors. Vs. State of Haryana and Anr.*, (2003) 4 SCC 675, against the backdrop of a catena of earlier decisions. Noting, with reference to the decision in *State of Karnataka Vs. L Muniswamy*, (1977) 2 SCC 699, that in exercise of

this “*inherent*” and “*wholesome power*”, the touchstone is as to whether “*the ends of justice so require*”, and it was observed thus :

“10. ... that in a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice and that the ends of justice are higher than the ends of mere law though justice had got to be administered according to laws made by the legislature. ...that the compelling necessity for making these observations is that without a proper realization of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.”

(emphasis supplied)

8. The Supreme Court in *B.S. Joshi* (supra) further noted as under :-

“What would happen to the trial of the case where the wife does not support the imputations made in the FIR of the type in question. As earlier noticed, now she has filed an affidavit that the FIR was registered at her instance due to temperamental differences and implied imputations. There may be many reasons for not supporting the imputations. It may be either for the reason that she has resolved disputes with her husband and his other family members and as a result thereof she has again started living with her husband with whom she earlier had differences or she has willingly parted company and is living happily on her own

or has married someone else on the earlier marriage having been dissolved by divorce on consent of parties or fails to support the prosecution on some other similar grounds. In such eventuality, there would almost be no chance of conviction. Would it then be proper to decline to exercise power of quashing on the ground that it would be permitting the parties to compound non-compoundable offences? The answer clearly has to be in the “negative”. It would, however, be a different matter if the High Court on facts declines the prayer for quashing for any valid reasons including lack of bona fides.”

(emphasis supplied)

9. Holding that “special features in ...matrimonial matters are evident” and that it is “the duty of the court to encourage genuine settlements of matrimonial disputes”, referring to *Madhavrao Jiwajirao Scindia Vs. Sambhajirao Chandrojiroo Angre*, (1988) 1 SCC 692, it was further observed that :

“11. ... Where, in the opinion of the court, chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may, while taking into consideration the special facts of a case, also quash the proceedings.”

(emphasis supplied)

10. In *Gian Singh Vs. State of Punjab and Anr.* (2012) 10 SCC 303, the Supreme Court contrasted the request for quashing of criminal

proceedings on the basis of settlement with the possibility of compounding of an offence and observed thus :-

“57. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.”

(emphasis supplied)

11. The above views in the context of matrimonial disputes resulting in criminal proceedings have been consistently followed over the years, as may be further illustrated by the decision of a bench of three Hon'ble Judges of the Supreme Court in *Jitendra Raghuvanshi and Ors. Vs. Babita Raghuvanshi and Anr.*, (2013) 4 SCC 58, the following observations summarising the philosophy succinctly :-

“15. In our view, it is the duty of the courts to encourage genuine settlements of matrimonial disputes, particularly, when the same are on

considerable increase. Even if the offences are non-compoundable, if they relate to matrimonial disputes and the Court is satisfied that the parties have settled the same amicably and without any pressure, we hold that for the purpose of securing ends of justice, Section 320 of the Code would not be a bar to the exercise of power of quashing of FIR, complaint or the subsequent criminal proceedings.

16. There has been an outburst of matrimonial disputes in recent times. The institution of marriage occupies an important place and it has an important role to play in the society. Therefore, every effort should be made in the interest of the individuals in order to enable them to settle down in life and live peacefully. If the parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law, in order to do complete justice in the matrimonial matters, the courts should be less hesitant in exercising their extraordinary jurisdiction. It is trite to state that the power under Section 482 should be exercised sparingly and with circumspection only when the Court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of process of court or that the ends of justice require that the proceedings ought to be quashed...

(emphasis supplied)

12. 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.

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

14. In the above facts and circumstances, the petition is allowed. The crime registered by the police vide FIR 95/2013 under Sections 406, 498A, 34 IPC and Section 4 of Dowry Prohibition Act, 1961 of Police Station Welcome Colony and the proceedings emanating therefrom are hereby quashed.

15. The petition is disposed of accordingly. This disposes of the pending application as well.

Dasti to both sides.

R.K.GAUBA, J.

FEBRUARY 06, 2019

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